

Uganda

Civil Procedure Act

## Civil Procedure Rules

Statutory Instrument 71-1

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# Uganda

## Civil Procedure Act

### Civil Procedure Rules

#### Statutory Instrument 71-1

Commenced

*[This is the version of this document at 31 December 2023.]*

*[Note: This legislation was revised and consolidated as at 31 December 2000 and 31 December 2023 by the Law Reform Commission of Uganda. All subsequent amendments have been researched and applied by Laws.Africa for ULII.]*

*[Amended by [Civil Procedure \(Amendment\) Rules, 2019 \(Statutory Instrument 33 of 2019\)](#) on 31 May 2019]*

1

*[S.I. 65-3; S.I. 135/1968; S.I. 217/1994; S.I. 26/1998.]*

### Preliminary

#### 1. Citation

The following orders and rules may be cited as the Civil Procedure Rules.

#### 2. Application

These Rules shall apply, as far as practicable, and unless otherwise expressly provided, to all matters arising and to all proceedings taken on any matters under the Act, or any Act amending the Act.

#### 3. Interpretation

Unless the context or subject matter is otherwise required, the terms and expressions defined in the Act have in these Rules the meanings assigned to them.

### Order I – Parties to suits

#### 1. Who may be joined as plaintiffs

All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.

<sup>1</sup> These Rules were made under the Civil Procedure Act, 1964 Revision, [Cap. 65](#), section 85. Section 85 was repealed by the Judicature Act, Act 11/1967, section 48, which saved "...any rules made thereunder relating to the High Court... with such modifications as the Rules Committee may consider necessary to bring them into conformity with the provisions of the Act...". Act 11/1967 was repealed by the Judicature Statute, [Statute 13/1996](#), section 51, which again saved these Rules "... subject to such modifications as the Chief Justice may direct in writing...". (See also the statutory instruments under the Judicature Act, [Cap. 13.](#))

## **2. Power of court to order separate trials**

Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

## **3. Who may be joined as defendants**

All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise.

## **4. Court may give judgment for or against one or more of joint parties**

Judgment may be given without amendment—

- (a) for such one or more of the plaintiffs as may be found to be entitled to relief for such relief as he or she or they may be entitled to; or
- (b) against such one or more of the defendants as may be found to be liable according to their respective liabilities.

## **5. Defendant need not be interested in all the relief claimed**

It shall not be necessary that every defendant shall be interested in all the relief claimed in any suit against him or her.

## **6. Joinder of parties liable on same contract**

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

## **7. When plaintiff in doubt from whom redress to be sought**

Where the plaintiff is in doubt as to the persons from whom he or she is entitled to obtain redress, he or she may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

## **8. One person may sue or defend on behalf of all in same interest**

- (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested. But the court shall in such case give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.
- (2) Any persons on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) of this rule may apply to the court to be made a party to that suit.

## **9. Misjoinder and nonjoinder**

No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

## 10. Suit in name of wrong plaintiff; addition and removal of parties

- (1) Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
- (2) The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his or her consent in writing to being added.
- (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant, and, if the court thinks fit, on the original defendants.
- (5) For the purpose of limitation, the proceedings against any person added or substituted as defendant shall be deemed to have begun only on the service of the summons on him or her.

## 11. Conduct of suit

The court may give the conduct of the suit to such person as it deems proper.

## 12. Appearance of one of several plaintiffs or defendants for others

- (1) Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceeding.
- (2) The authority shall be in writing signed by the party giving it and shall be filed in the case.

## 13. Application to add, strike or substitute a plaintiff or defendant

Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner.

## 14. Notice to third party

- (1) Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the suit, he or she may, by leave of the court, issue a notice (hereafter called a "third party notice") to that effect.
- (2) The leave shall be applied for by summons in chambers *ex parte* supported by affidavit.
- (3) A copy of the notice shall be filed and shall be served on such person according to the rules relating to the service of a summons.
- (4) The notice shall state the nature and grounds of the claim and shall, unless otherwise ordered by the court, be filed within a time limited for filing his or her defence.
- (5) The notice shall be in or to the effect of Form 23 in Appendix A to these Rules with such variations as circumstances require, and a copy of the plaint shall be served with the notice.

### 15. Default of appearance by third party

If a person not a party to the suit who is served as mentioned in rule 14 of this Order (hereafter called the “third party”) desires to dispute the plaintiffs claim in the suit against the defendant on whose behalf the notice has been given, or his or her own liability to the defendant—

- (a) the third party must enter an appearance in the suit on or before the day specified in the notice; and
- (b) in default of his or her so doing he or she shall be deemed to admit the validity of the decree obtained against the defendant, whether obtained by consent or otherwise, and his or her own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice,

except that a person so served and failing to enter an appearance within the period fixed in the notice may apply to the court for leave to enter an appearance, and for good cause such leave may be given upon such terms, if any, as the court shall think fit.

### 16. Judgment against third party in default

Where a third party makes default in entering an appearance in the suit, in case the defendant giving the notice suffers judgment by default—

- (a) the defendant shall be entitled, after causing the satisfaction of the decree against himself or herself to be entered upon the record, to judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice; and
- (b) the court may upon the application of the defendant pass such judgment against the third party before the defendant has satisfied the decree passed against him or her,

but the court may set aside or vary any judgment passed under this rule upon such terms as may seem just.

### 17. Judgment after trial against third party in default

Where a third party makes default in entering an appearance in the suit, in case the suit is tried and results in favour of the plaintiff, the court may either at or after the trial enter such judgment as the nature of the suit may require for the defendant giving notice against the third party; but execution of the judgment shall not be issued without leave of the court, until after satisfaction by the defendant of the decree against him or her; and if the suit is finally decided in the plaintiffs favour, otherwise than by trial, the court may, upon application *ex parte* supported by affidavit, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the decree obtained by the plaintiff against him or her.

### 18. Appearance of third party, directions

If a third party enters an appearance pursuant to the third party notice, the defendant giving the notice may apply to the court by summons in chambers for directions, and the court, upon the hearing of the application, may, if satisfied that there is a proper question to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the suit, as the court may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

### 19. Costs

The court may decide all questions of costs between a third party and the other parties to the suit and may make such orders as to costs as the justice of the case may require.

## 20. Notice served by third party

Where a person served with a third party notice by a defendant or by a third party claims to be entitled to contribution or indemnity over against any person not a party to the suit, he or she may by leave of the court issue a third party notice to that effect; and rules 14 to 19 of this Order shall apply *mutatis mutandis* to every notice so issued.

## 21. Defendant claiming against codefendant

Where a defendant claims to be entitled to contribution or indemnity against any other defendant in the suit, a notice may be issued and the same procedure adopted for the determination of such questions between the defendants as would be issued and taken against the other defendant, if the last-mentioned defendant were a third party; but nothing in this rule shall prejudice the plaintiff against any defendant in the suit.

## 22. Procedure under certain rules of this Order

- (1) Applications under rules 8, 15, 17 and 20 of this Order shall be by summons in chambers.
- (2) Applications under rule 16 of this Order may be made orally or by summons in chambers.

## Order II – Frame of suit

### 1. Suit to include the whole claim

Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his or her claim in order to bring the suit within the jurisdiction of any court.

### 2. Omission to sue for or relinquishment of part of claim

Where a plaintiff omits to sue in respect of or relinquishes any portion of his or her claim, he or she shall not afterwards sue in respect of the portion omitted or relinquished.

### 3. Omission to sue for one of several reliefs

A person entitled to more than one relief in respect of the same cause of action may sue for all or any of those reliefs; but if he or she omits, except with the leave of the court, to sue for all the reliefs, he or she shall not afterwards sue for any relief so omitted.

### 4. Joinder of causes of action

- (1) Except as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite those causes of action in the same suit.
- (2) Where causes of action are united, the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.

### 5. Only certain claims to be joined for recovery of immovable property

- (1) No cause of action shall, without the leave of the court, be joined with a suit for the recovery of immovable property, except—
  - (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part of it;

- (b) claims for damages for breach of any contract under which the property or any part of it is held;
  - (c) claims for damages for any wrong or injury to the premises claimed; and
  - (d) claims in which the relief sought is based on the same cause of action.
- (2) Nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property, and such suit for foreclosure or redemption and for such delivery of possession shall not be deemed a suit for the recovery of immovable property within the meaning of these Rules.

## **6. Claims by or against executor, administrator or heir**

No claim by or against an executor or administrator, as such, shall be joined with claims by or against him or her personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator, or are such as he or she was entitled to, or liable for, jointly with the deceased person whom he or she represents.

## **7. Power of court to order separate trials**

Where it appears to the court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the court may order separate trials or may make such order as may be expedient.

## **8. Objections as to misjoinder**

- (1) Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of together may at any time apply to the court for an order confining the suit to such of the causes of action as may be conveniently disposed of together.
- (2) If, on the hearing of the application, it appears to the court that the causes of action are such as cannot all be conveniently disposed of together, the court may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

## **9. Declaratory judgment**

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

## **10. Procedure under this Order**

Applications under rules 3 and 5 of this Order shall be by summons in chambers.

### **Order III – Recognised agents and advocates**

#### **1. Appearances, etc. may be in person, by recognised agent or advocate**

Any application to or appearance or act in any court required or authorised by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his or her recognised agent, or by an advocate duly appointed to act on his or her behalf; except that any such appearance shall, if the court so directs, be made by the party in person.

## 2. Recognised agents

The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

- (a) persons holding powers of attorney authorising them to make such appearances and applications and do such acts on behalf of parties; and
- (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

## 3. Service of process on recognised agent

- (1) Processes served on the recognised agent of a party shall be as effectual as if they had been served on the party in person, unless the court otherwise directs.
- (2) The provisions for the service of process on a party to a suit shall apply to the service of process on his or her recognised agent.

## 4. Service of process on advocate

Any process served on the advocate of any party or left at the office or ordinary residence of the advocate, whether the process is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the advocate represents, and, unless the court otherwise directs, shall be as effectual for all purposes as if the process had been given to or served on the party in person.

## 5. Agent to accept service

- (1) Besides the recognised agents described in rule 2 of this Order any person residing within the jurisdiction of the court may be appointed an agent to accept service of process.
- (2) The appointment of an agent under subrule (1) of this rule may be special or general, and shall be made by an instrument in writing signed by the principal, and the instrument, or, if the appointment is general, a certified copy of it, shall be filed in court.

# Order IV – Institution of suits

## 1. Suit to be commenced by plaintiff

- (1) Every suit shall be instituted by presenting a plaintiff to the court or such officer as it appoints for this purpose.
- (2) Every plaintiff shall comply with the rules contained in Orders VI and VII of these Rules so far as they are applicable.

## 2. Register of suits

- (1) The court shall cause the particulars of every suit to be entered in a book to be kept for the purpose, and called the register of civil suits.
- (2) The entries in the register shall be numbered in every year according to the order in which the plaintiffs are admitted.

## Order V – Issue and service of summons

### 1. Summons

- (1) When a suit has been duly instituted a summons may be issued to the defendant—
  - (a) ordering him or her to file a defence within a time to be specified in the summons; or
  - (b) ordering him or her to appear and answer the claim on a day to be specified in the summons.
- (2) Service of summons issued under subrule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension.
- (3) Where summons have been issued under this rule, and—
  - (a) service has not been effected within twenty-one days from the date of issue; and
  - (b) there is no application for an extension of time under subrule (2) of this rule; or
  - (c) the application for extension of time has been dismissed,the suit shall be dismissed without notice.
- (4) A defendant to whom a summons has been issued under subrule (1) of this rule may file a defence—
  - (a) in person;
  - (b) by a recognised agent; or
  - (c) by an advocate duly instructed.
- (5) Every such summons shall be signed by the judge or such officer as he or she appoints, and shall be sealed with the seal of the court.

### 2. Items to accompany summons

Every summons shall be accompanied by a copy of the plaint, a brief summary of the evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on; except that an additional list of authorities may be provided later with the leave of court.

### 3. Order that plaintiff or defendant appear in person

- (1) Where the court sees reason to require the personal appearance of the defendant, the summons shall order him or her to appear in person in court on the day specified in the summons.
- (2) Where the court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for that appearance.

### 4. No party to be ordered to appear in person unless resident within certain limits

No party shall be ordered to appear in person unless he or she resides—

- (a) within the local limits of the court's jurisdiction; or
- (b) without those limits but at a place less than fifty miles or, where there is a railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he or she resides and the place where the court is situate, less than two hundred miles distance from the courthouse.

## **5. Summons to be either for orders or for final disposal**

In the case of magistrates courts, the court shall determine, at the time of issuing the summons, whether it shall be for orders only or for the final disposal of the suit; and the summons shall contain a direction accordingly.

## **6. Where summons is for final disposal, defendant to be directed to produce evidence**

In the case of magistrates courts where the summons is for the final disposal of the suit, it shall direct the defendant to produce on the day fixed for his or her appearance all documents in his or her possession or power upon which he or she intends to rely in support of his or her case, and all witnesses whom he or she intends to call.

## **7. Delivery or transmission of summons for service**

- (1) Where the court has issued a summons to a defendant—
  - (a) it may be delivered for service—
    - (i) to any person for the time being duly authorised by the court;
    - (ii) to an advocate or an advocate's clerk who may be approved by the court generally to effect service of process; or
  - (b) it may be sent by post or messenger to any magistrate's court having jurisdiction in the place where the defendant resides.
- (2) A court to which a summons is sent under subrule (1)(b) of this rule shall upon receipt of the summons proceed as if it had been issued by that court, and shall then return the summons to the court of issue, together with the record of any of its proceedings with regard to it.

## **8. Mode of service**

Service of the summons shall be made by delivering or tendering a duplicate of the summons signed by the judge, or such officer as the judge appoints for this purpose, and sealed with the seal of the court.

## **9. Service on several defendants**

Except as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

## **10. Service to be on defendant in person or on his or her agent**

Wherever it is practicable, service shall be made on the defendant in person, unless he or she has an agent empowered to accept service, in which case service on the agent shall be sufficient.

## **11. Service on agent by whom defendant carries on business**

- (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons is issued, service on any manager or agent who at the time of service personally carries on that business or work for that person within those limits shall be deemed good service.
- (2) For the purpose of this rule, the master of a ship shall be deemed to be an agent of the owner or charterer.

**12. Service on agent in charge in suits for immovable property**

Where, in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, it may be made on an agent of the defendant empowered to accept service or on the agent of the defendant in charge of the property.

**13. Service on agent or member of defendant's family when defendant cannot be found**

Where in any suit the defendant cannot be found, service may be made on an agent of the defendant empowered to accept service or on any adult member of the family of the defendant who is residing with him or her.

**14. Person served to sign acknowledgment**

Where a duplicate of the summons is duly delivered or tendered to the defendant personally or to an agent or other person on his or her behalf, the defendant or the agent or other person shall be required to endorse an acknowledgment of service on the original summons; except that if the court is satisfied that the defendant or his or her agent or other person on his or her behalf has refused so to endorse, the court may declare the summons to have been duly served.

**15. Procedure when defendant refuses to accept service or cannot be found**

Where the serving officer, after using all due and reasonable diligence, cannot find the defendant, or any person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued with a report endorsed on it or annexed to it stating that he or she has so affixed the copy, the circumstances in which he or she did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

**16. Affidavit of service**

The serving officer shall, in all cases in which the summons has been served under rule 14 of this Order, make or annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which the summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons.

**17. Examination of serving officer**

Where a summons is returned under rule 15 of this Order, the court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him or her to be so examined by another court, touching his or her proceedings, and may make such further inquiry in the matter as it thinks fit; and the court shall either declare that the summons has been duly served or order such service as it thinks fit.

**18. Substituted service**

- (1) Where the court is satisfied that for any reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy of it in some conspicuous place in the courthouse, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.
- (2) Substituted service under an order of the court shall be as effectual as if it had been made on the defendant personally.

- (3) Where the court makes an order for substituted service, it shall fix such time for the appearance of the defendant as the case may require.

### **19. Service on defendant in prison**

Where the defendant is confined in a prison the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

### **20. Service on public officers and soldiers**

- (1) Where the defendant is a public officer in civil employ, or is the servant of a railway company or local authority, the court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he or she is employed, together with a copy to be retained by the defendant.
- (2) Where the defendant is a soldier, the court shall send the summons for service to his or her commanding officer, together with a copy to be retained by the defendant. For the purposes of this rule, "soldier" shall not include an officer.

### **21. Duty of person to whom the summons is sent**

- (1) Where a summons is delivered or sent to any person for service under rule 19 or 20 of this Order, that person shall be bound to serve it, if possible, and to return it under his or her signature with a written acknowledgment of the defendant, and the signature shall be deemed to be evidence of service.
- (2) Where from any cause service is impossible, the summons shall be returned to the court with a full statement of the cause and of the steps taken to procure service, and the statement shall be deemed to be evidence of non-service.

### **22. In certain cases service of the summons, etc. allowed out of jurisdiction**

Service out of the jurisdiction of a summons or notice of a summons may be allowed by the court whenever

- (a) the whole subject matter of the suit is immovable property situated within the jurisdiction, (with or without rents and profits);
- (b) any act, deed, will, contract, obligation or liability affecting immovable property situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the suit;
- (c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction;
- (d) the suit is for the administration of the personal estate of any deceased person, who at the time of his or her death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Uganda;
- (e) the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which, according to the terms of the contract, ought to be performed within the jurisdiction;
- (f) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof;
- (g) any person out of the jurisdiction is a necessary or proper party to a suit properly brought against some other person duly served within the jurisdiction; or
- (h) the suit is founded on a tort committed within the jurisdiction.

**23. Probate actions**

In probate suits, service of a summons or notice of a summons may by leave of the court be allowed out of the jurisdiction.

**24. Application to be supported by evidence**

Every application for leave to serve the summons or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country the defendant is or probably may be found, and whether the defendant is a Commonwealth citizen or British protected person or not, and the grounds on which the application is made; and no such leave shall be granted unless it is made sufficiently to appear to the court that the case is a proper one for service out of the jurisdiction under this Order.

**25. Order to fix time for filing written statement**

Any order giving leave to effect the service or give the notice shall limit a time after the service or notice within which the defendant is to file a defence, such time to depend on the place or country where or within which the summons is to be served or the notice given.

**26. Service where defendant resides out of Uganda**

Where leave to serve a summons out of the jurisdiction has been granted under rule 22 of this Order and the defendant is a Commonwealth citizen or British protected person or resides in a Commonwealth country out of Uganda, the summons shall be served in such manner as the court may order.

**27. Notice *in lieu* of writ**

Where the defendant is neither a Commonwealth citizen nor a British protected person and is not in a Commonwealth country, notice of the summons and not the summons itself is to be served upon him or her.

**28. Service in a foreign country**

Where leave is given to serve notice of the summons in any foreign country to which this rule may by order of the Chief Justice from time to time be applied, the following procedure shall be adopted—

- (a) the notice to be served shall be sealed with the seal of the High Court for use out of the jurisdiction, and shall be forwarded by the registrar to the Minister together with a copy of it translated into the language of the country in which service is to be effected, and with a request for the further transmission of the notice through the proper channels to the government of the country in which leave to serve notice of the summons has been given; and the request shall be in Form 10 of Appendix A to these Rules with such variations as circumstances may require;
- (b) the party bespeaking a copy notice of summons for service under this rule shall, at the time of bespeaking the notice, file a *præcipe* in Form 11 of Appendix A to these Rules;
- (c) an official certificate, or declaration upon oath, or otherwise, transmitted through the proper channels by the government or court of a foreign country to which this rule applies, to the High Court shall, provided that it certifies or declares the notice of the summons to have been personally served, or to have been duly served upon the defendant in accordance with the law of that foreign country, or words to that effect, be deemed to be sufficient proof of the service, and shall be filed of record as, and be equivalent to, an affidavit of service within the requirements of these Rules for that purpose;
- (d) where an official certificate or declaration, transmitted to the High Court in the manner provided in paragraph (c) of this rule, certifies or declares that efforts to serve a notice of summons have been without effect, the court may, upon the *ex parte* application of the plaintiff, order that the plaintiff

be at liberty to bespeak a request for substituted service of the notice; and the order shall be in Form 12 of Appendix A to these Rules, with such variations as circumstances may require; and

- (e) a request for substituted service of a notice of summons under this rule may be spoken by the plaintiff at the department where summonses are issued upon filing a *præcipe* in Form 11 of Appendix A to these Rules, and the notice of summons and copy of the notice, and the order, shall be sealed and transmitted to the Minister in the manner set out in paragraph (a) of this rule together with a request in Form 13 of Appendix A to these Rules, with such variations as circumstances may require.

## 29. Extension of procedure to any order or notice

The court may direct that any summons, order or notice shall be served on any party or person in a foreign country, and the procedure prescribed by rule 28 of this Order, with reference to service of notice of a summons, shall apply to service of any summons, order or notice so directed to be served.

## 30. Service of foreign legal process in Uganda

Where in any civil or commercial matter pending before a court or tribunal of a foreign country a letter of request from the court or tribunal for service on any person in Uganda of any process or citation in such matter is transmitted to the High Court by the Minister with an intimation that it is desirable that effect should be given to the letter of request, the following procedure shall be adopted—

- (a) the letter of request for service shall be accompanied by a translation of the letter in the English language, and by two copies of the process of citation to be served, and two copies of the process of citation to be served in the English language;
- (b) service shall be affected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation of it, in accordance with the rules and practice of the High Court of Uganda regulating service of persons;
- (c) after the service has been affected the process server shall return to the registrar of the High Court one copy of the process together with the evidence of service by affidavit of the person effecting the service verified by a magistrate and particulars of charges for the cost of effecting the service;
- (d) the particulars of charges for the cost of effecting service shall be submitted to the chief registrar of the High Court, who shall certify the correctness of the charges, or such other amount as shall be properly payable for the cost of effecting service;
- (e) the registrar shall transmit the letter of request for service received from the foreign country to the authority who transmitted it to the High Court, together with the evidence of service with a certificate appended to it duly sealed with the seal of the High Court for use out of the jurisdiction. The certificate shall be in Form 14 of Appendix A to these Rules.

## 31. General powers of the court

Upon the application of the Attorney General the court may make all such orders for substituted service or otherwise as may be necessary to give effect to rule 30 of this Order.

## 32. Procedure under this Order

Applications under this Order shall be by summons in chambers.

# Order VI – Pleadings generally

## 1. Pleading to state material facts

- (1) Every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence, as the case may be.

- (2) The pleadings shall, when necessary, be divided into paragraphs, numbered consecutively; and dates, sums and numbers shall be expressed in figures.

## **2. Items to accompany pleading**

Every pleading shall be accompanied by a brief summary of evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on; except that an additional list of authorities may be provided later with the leave of court.

## **3. Particulars to be given where necessary**

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

## **4. Further and better statement or particulars**

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

## **5. Condition precedent**

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his or her pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his or her pleading.

## **6. New fact must be specially pleaded**

The defendant or plaintiff, as the case may be, shall raise by his or her pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, limitation act, release, payment, performance, or facts, showing illegality either by statute or common law.

## **7. Departure from previous pleadings**

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

## **8. Denial to be specific**

It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages.

## **9. Joinder of issue**

- (1) Subject to rule 8 of this Order, the plaintiff by his or her reply may join issue upon the defence; and each party in his or her pleading, if any, subsequent to reply, may join issue upon the previous pleading.

- (2) The joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit and shall then operate as a denial of the facts not so admitted.

#### **10. Evasive denial**

When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer the point of substance. Thus, if it is alleged that he or she received a certain sum of money, it shall not be sufficient to deny that he or she received that particular amount, but he or she must deny that he or she received that sum or any part of it, or else set out how much he or she received. If the allegation is made with diver's circumstances, it shall not be sufficient to deny it along with those circumstances.

#### **11. Denial of contract**

Where a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial in fact of the express contract alleged, or of the matters of fact from which the contract may be implied, and not as a denial of the legality or sufficiency in law of the contract.

#### **12. Effect of document to be stated**

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

#### **13. Malice, knowledge, etc.**

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

#### **14. Notice**

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

#### **15. Implied contract or relation**

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

#### **16. Presumptions of law**

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

**17. Technical objection**

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

**18. Striking out unnecessary matter, etc.**

The court may, at any stage of the proceedings, order to be struck out or amended any matter in any endorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action, and may in any such case, if it thinks fit, order the costs of the application to be paid as between advocate and client.

**19. Amendment of pleadings**

The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

**20. Plaintiff may amend without leave**

A plaintiff may, without leave, amend his or her plaint once at any time within twenty-one days from the date of issue of the summons to the defendant or, where a written statement of defence is filed, then within fourteen days from the filing of the written statement of defence or the last of such written statements.

**21. Defendant amending without leave**

A defendant who has set up any counterclaim or setoff may without leave amend the counterclaim or setoff at any time within twenty-eight days of the filing of the counterclaim or setoff, or, where the plaintiff files a written statement in reply to the counterclaim or setoff, then within fourteen days from the filing of the written statement in reply.

**22. Disallowance of amendment**

Where a party has amended his or her pleading under rule 20 or 21 of this Order, the opposite party may within fifteen days from the date of service upon or delivery to him or her of the duplicate of the amended document apply to the court to disallow the amendment or any part of it; and the court may, if satisfied that the justice of the case requires it, disallow the amendment or any part of it or allow it subject to such terms as to costs or otherwise as may be just.

**23. Amendment to be filed and served**

Whenever any pleading is amended, the amended document shall be filed within the time allowed for amending the pleading; and where the filing occurs before the date specified in the summons for the appearance of or the entering of appearance by the defendant, then a duplicate of the amended document shall be served upon the opposite party in the manner provided for the service of a summons, but where the amended document is filed after that date, a duplicate of the amended document shall be delivered to the opposite party by the party filing.

**24. Reply to amendment**

Where any party has amended his or her pleading under rule 20 or 21 of this Order, the opposite party shall plead to the amended pleading or amend his or her pleading within the time he or she then has to plead, or within fifteen days of the service or delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the service or delivery of the amendment, and does not plead again or amend within the time above mentioned, he or she shall be deemed to rely on his or her original pleading in answer to that amendment.

**25. Failure to amend after order**

If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is limited by the order then within fourteen days from the date of the order, he or she shall not be permitted to amend after the expiration of such limited time as aforesaid or the fourteen days, as the case may be, unless the time is extended by the court.

**26. Pleading to be signed**

Every pleading shall be signed by an advocate or by the party if he or she sues or defends in person.

**27. Pleadings in magistrates courts**

- (1) Suits in a magistrate's court may be instituted by lodging a plaint and may be tried without further pleadings unless the court otherwise orders.
- (2) In a suit so tried issues shall be framed in accordance with Order XV of these Rules.

**28. Points of law may be raised by pleading**

Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing.

**29. Dismissal of suit**

If, in the opinion of the court, the decision of the point of law substantially disposes of the whole suit, or of any distinct cause of action, ground of defence, setoff, counterclaim, or reply therein, the court may thereupon dismiss the suit or make such other order in the suit as may be just.

**30. Striking out pleading**

- (1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just.
- (2) All orders made in pursuance of this rule shall be appealable as of right.

**31. Procedure under this Order**

Applications under rules 18, 19 and 22 of this Order shall be by summons in chambers.

**Order VII – Plaint****1. Particulars to be contained in plaint**

The plaint shall contain the following particulars—

- (a) the name of the court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff, and an address for service;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect;

- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a setoff or relinquished a portion of his or her claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject matter of the suit so far as the case admits.

## **2. In money suits**

Where the plaintiff seeks the recovery of money, the plaintiff shall state the precise amount claimed, except where the plaintiff sues for mesne profits, or for an amount which will be found due to him or her on taking unsettled accounts between him or her and the defendant.

## **3. Where the subject matter of the suit is immovable property**

Where the subject matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it.

## **4. When plaintiff sues as representative**

Where the plaintiff sues in a representative character, the plaintiff shall show not only that he or she has an actual existing interest in the subject matter but that he or she has taken the steps, if any, necessary to enable him or her to institute a suit concerning it.

## **5. Defendant's interest and liability to be shown**

The plaintiff shall show that the defendant is or claims to be interested in the subject matter, and that he or she is liable to be called upon to answer the plaintiff's demand.

## **6. Grounds of exemption from limitations**

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the grounds upon which exemption from that law is claimed.

## **7. Relief claimed to be stated**

Every plaintiff shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for; and the same rule shall apply to any relief claimed by the defendant in his or her written statement.

## **8. Relief founded on separate grounds**

Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

## **9. Procedure on admitting plaintiff**

- (1) The plaintiff shall present as many copies of the plaintiff as there are defendants, unless the court, by reason of the length of the plaintiff, or the number of the defendants, or for any other sufficient reason, permits him or her to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he or she shall present those statements.

- (2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the statements shall show in what capacity the plaintiff or defendant sues or is sued.
- (3) The plaintiff may, by leave of the court, amend the statements so as to make them correspond with the plaint.
- (4) The chief ministerial officer of the court shall sign the list of copies or statements, if, on examination, he or she finds them to be correct.

#### **10. Return of plaint**

- (1) The plaint may at any stage of the suit be returned to be presented to the court in which the suit should have been instituted.
- (2) On returning a plaint the judges shall endorse on it the date of its presentation and return, the name of the party presenting it and a brief statement of the reasons for returning it.

#### **11. Rejection of plaint**

The plaint shall be rejected in the following cases—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but an insufficient fee has been paid, and the plaintiff, on being required by the court to pay the requisite fee within a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where the suit is shown by the plaint to be frivolous or vexatious.

#### **12. Procedure on rejecting plaint**

Where a plaint is rejected the judge shall record an order to the effect with the reasons for the order.

#### **13. Where rejection of plaint does not preclude presentation of fresh plaint**

The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

#### **14. Production of document on which plaintiff sues and listing of other documents on which plaintiff relies**

- (1) Where a plaintiff sues upon a document in his or her possession or power, he or she shall produce it in court when the plaint is presented and shall at the same time deliver the document or a copy of it to be filed with the plaint.
- (2) Where a plaintiff relies on any other documents (whether in his or her possession or power or not) as evidence in support of his or her claim, he or she shall enter the documents in a list to be added or annexed to the plaint.

#### **15. Statement in case of documents not in plaintiff's possession or power**

Where any such document is not in the possession or power of the plaintiff, he or she shall, if possible, state in whose possession or power it is.

**16. Suits on lost negotiable instruments**

Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon the instrument, the court may pass such decree as it would have passed if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

**17. Production of shop book or other account and copy of relevant entry; certification and filing of the copy**

- (1) Except insofar as is otherwise provided by the Evidence (Bankers' Books) Act, where the document on which the plaintiff sues is an entry in a shop book or other account in his or her possession or power, the plaintiff shall produce the book or account at the time of filing the plaint together with a copy of the entry on which he or she relies.
- (2) The court, or such officer as it appoints for this purpose, shall immediately mark the document for the purpose of identification, and after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

**18. Inadmissibility of document not produced when plaint filed**

- (1) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his or her behalf at the hearing of the suit.
- (2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his or her memory.

**19. Procedure under this Order**

Applications under this Order shall be by summons in chambers.

**Order VIII – Defence and counterclaim****1. Written statement**

- (1) The defendant may, and if so, required by the court at the time of issue of the summons or at any time thereafter shall, at or before the first hearing or within such time as the court may prescribe, file his or her defence.
- (2) Where a defendant has been served with a summons in the form provided by rule 1(1)(a) of Order V of these Rules, he or she shall, unless some other or further order is made by the court, file his or her defence within fifteen days after service of the summons.

**2. Setoff and counterclaim**

- (1) A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether the setoff or counterclaim sounds in damages or not, and the setoff or counterclaim shall have the same effect as a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross-claim. But the court may on the application of the plaintiff before trial, if in the opinion of the court the setoff or

counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself or herself of it.

- (2) Where a defendant includes a counterclaim in the defence, the defendant shall accompany it with a brief summary of evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on.

### **3. Specific denial**

Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against a person under disability; but the court may in its discretion require any facts so admitted to be proved otherwise than by that admission.

### **4. Pleading to damages**

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

### **5. Persons in representative capacity**

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

### **6. Proper admission not made**

Where the court is of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, it may make such order as shall be just with respect to any extra costs occasioned by they are having been denied or not admitted.

### **7. Counterclaim**

Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he or she shall, in his or her statement of defence, state specifically that he or she does so by way of counterclaim.

### **8. Title of counterclaim**

Where a defendant by his or her defence sets up any counterclaim which raises questions between himself or herself and the plaintiff together with any other persons, he or she shall add to the title of his or her defence a further title similar to the title in a plaint, setting forth the names of all the persons who, if the counterclaim were to be enforced by cross-action, would be defendants to the cross-action and shall deliver to the court his or her defence for service on such of them as are parties to the action together with his or her defence for service on the plaintiff within the period within which he or she is required to file his or her defence.

### **9. Claim against person not party**

Where any such person as mentioned in rule 8 of this Order is not a party to the suit, he or she shall be summoned to appear by being served with a copy of the defence, which shall be served in accordance with the rules for regulating service of a summons.

### **10. Appearance by added parties**

Any person not already a party to the suit who is served with a defence and counterclaim as aforesaid must appear in the suit as if he or she had been served with a summons to appear in the suit.

### **11. Reply to counterclaim**

- (1) Any person named in a defence as a party to a counterclaim thereby made may, unless some other or further order is made by the court, deliver a reply within fifteen days after service upon him or her of the counterclaim.
- (2) Where a reply to the counterclaim is filed under subrule (1) of this rule, the plaintiff shall serve it upon the defendant within fifteen days after its filing.
- (3) No other reply or rejoinder shall, subsequent to subrule (1) of this rule, be filed without leave of court, the application for which must be filed within fifteen days from the date of the last service.

### **12. Exclusion of counterclaim**

Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid as party to the counterclaim contends that the claim raised by the counterclaim ought not to be disposed of by way of counterclaim, but in an independent suit, he or she may, at any time before reply, apply to the court for an order that the counterclaim may be excluded; and the court may, on the hearing of the application, make such order as shall be just.

### **13. Discontinuance**

If, in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with.

### **14. Judgment for balance**

Where in any suit a setoff or counterclaim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for that balance, or may otherwise adjudge to the defendant such relief as he or she may be entitled to upon the merits of the case.

### **15. Plea of possession**

- (1) No defendant in a suit for the recovery of immovable property who is in possession by himself or herself or his or her tenant need plead his or her title, unless his or her defence depends on an equitable estate or right or he or she claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he or she is so in possession, and it shall be taken to be implied in that statement that he or she denies, or does not admit, the allegations of fact contained in the plaint.
- (2) The defendant may nevertheless rely upon any ground of defence which he or she can prove except as hereinbefore mentioned.

### **16. Defence or setoff founded on separate grounds**

Where the defendant relies upon several distinct grounds of defence or setoff founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

### **17. New ground of defence**

Any ground of defence which has arisen after the institution of the suit or the filing of a defence claiming a setoff may be raised by the defendant or plaintiff, as the case may be, in his or her pleading.

## 18. Subsequent pleadings

- (1) A plaintiff shall be entitled to file a reply within fifteen days after the defence or the last of the defences has been delivered to him or her, unless the time is extended.
- (2) No pleading subsequent to the reply shall be filed without leave of the court, and then shall be filed only upon such terms as the court shall think fit.
- (3) Where a counterclaim is pleaded, a defence to the counterclaim shall be subject to the rules applicable to defences.
- (4) As soon as any party has joined issue upon the preceding pleading of the opposite party without adding any further or other pleading to it, or has made default in pleading, the pleadings as between those parties shall be deemed to be closed, and all material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.
- (5) Where a pleading subsequent to reply has not been ordered, then at the expiration of seven days from the filing of the reply, or where a reply has not been filed within the time fixed by or in accordance with these Rules, or a subsequent pleading has been ordered and has not been filed within the time fixed by the order or such enlarged time as may be fixed in accordance with these Rules, then at the expiration of the time so fixed, the pleadings shall be deemed to be closed, and all material statements of fact in the pleading last filed shall be deemed to have been denied and put in issue; except that this subrule shall not apply to a reply to a counterclaim and, unless a plaintiff files a reply to a counterclaim within the time fixed by or in accordance with these Rules, the statement of facts contained in the counterclaim shall at the expiration of the time so fixed be deemed to be admitted, but the court may at any subsequent time give leave to the plaintiff to file a reply.

## 19. Filing of defence

Subject to rule 8 of this Order, a defendant shall file his or her defence and either party shall file any pleading subsequent to the filing of the defence by delivering the defence or other pleading to the court for placing upon the record and by delivering a duplicate of the defence or other pleading at the address for service of the opposite party.

## 20. Procedure under this Order

Applications under rule 18 of this Order shall be by summons in chambers.

### Order IX – Filing of defence, setting down suit for hearing, etc.

#### 1. Mode of filing defence

- (1) A defendant on or before the day fixed in the summons for him or her to file a defence shall file the defence by delivering to the proper officer a defence in writing dated on the day of its filing, and containing the name of the defendant's advocate, or stating that the defendant defends in person and also the defendant's address for service. In such case he or she shall at the same time deliver to the officer a copy of the defence, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person filing the defence, and the copy of the defence so sealed shall be a certificate that the defence was filed on the day indicated by the seal.
- (2) In the case of a defendant desiring to file a defence in person, he or she may *in lieu* of delivering to the proper officer the defence and the copy of the defence, file the defence through the post by sending to the proper officer by prepaid registered letter—
  - (a) three copies of the defence each of which shall be accompanied by a brief summary of evidence, a list of witnesses, a list of documents and a list of authorities to be relied on; the

defence shall, when necessary, be divided into paragraphs numbered consecutively; dates, sums and numbers shall be expressed in figures; and

- (b) two envelopes each sufficiently stamped, one addressed to the plaintiff's advocate (or to the plaintiff if he or she sues in person) at the address for service, and the other addressed to the defendant filing the defence.
- (3) On receipt of these documents the proper officer shall immediately file the defence as of the date when it was posted and shall seal the copy of the defence with the official seal, showing the date on which it is sealed and shall seal the defence with the official seal, showing the date of postage and shall post the defence to the plaintiff or his or her advocate, and the copy of the defence to the defendants, and shall file a copy of the defence.

## 2. Acknowledgement not to constitute waiver

The filing of a defence by the defendant shall not be treated as a waiver by him or her of any irregularity in the summons or service of the summons or in any order giving leave to serve the summons out of the jurisdiction or extending the validity of the summons for the purpose of service.

## 3. Dispute as to jurisdiction

- (1) A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 2 of this Order or on any other ground, shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the court for—
  - (a) an order setting aside the summons or service of the summons on him or her;
  - (b) an order declaring that the summons has not been duly served on him or her;
  - (c) the discharge of any order giving leave to serve the summons on him or her out of the jurisdiction;
  - (d) the discharge of any order extending the validity of the summons for the purpose of service;
  - (e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings;
  - (f) the discharge of any order made to prevent any dealing with any property of the defendant;
  - (g) a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action; or
  - (h) such other relief as may be appropriate.
- (2) An application under subrule (1) of this rule shall be by summons in chambers.
- (3) An application under subrule (1) of this rule shall be supported by an affidavit verifying the facts on which the application is based, and a copy of the affidavit shall be served with the summons by which the application is made.
- (4) Upon hearing an application under subrule (1) of this rule the court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial of the matter as a preliminary issue.
- (5) A defendant who makes an application under subrule (1) of this rule shall not be treated as having submitted to the jurisdiction of the court by reason of his or her having filed a defence; and if the court makes no order on the application or dismisses it, the notice shall cease to have effect and in that case, subrule (6) of this rule shall apply as if the defendant had not made any such application.
- (6) Except where the defendant makes an application in accordance with subrule (1) of this rule, the filing of a defence by a defendant shall, unless the defence is withdrawn by leave of the court under

rule 1 of Order XXV of these Rules, be treated as a submission by the defendant to the jurisdiction of the court in the proceedings.

#### **4. Suits against infants and lunatics**

Where no defence has been filed on or before the day fixed in the summons for a defendant who is an infant or a person of unsound mind, the plaintiff shall before further proceeding with the suit apply to the court for an order that some proper person be assigned guardian of the defendant by whom he or she may appear and defend the action. But no such order shall be made unless it appears upon the hearing of the application that the summons was duly served and that all the requirements as to notice of the application contained in rule 3(4) of Order XXXII of these Rules have been complied with unless the court at the hearing of the application shall dispense with any notice required thereby.

#### **5. Affidavit of service upon failure to file defence**

Where any defendant fails to file a defence on or before the day fixed in the summons and the plaintiff is desirous of proceeding upon default of filing the defence under any of the rules of this Order, he or she shall cause an affidavit of service of the summons and failure of the defendant to file a defence within the prescribed time to be filed upon the record.

#### **6. Judgment upon a liquidated demand**

Where the plaint is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.

#### **7. Liquidated demand against several defendants**

Where the plaint is drawn claiming a liquidated demand and there are several defendants of whom one or more files a defence on or before the day fixed in the summons, and another or others of them fail to file a defence, the court may, subject to rule 5 of this Order, pass judgment as in rule 6 of this Order against such as have not filed a defence, and execution may issue upon such judgment and decree without prejudice to the plaintiff's right to proceed with the action against such as have filed a defence.

#### **8. Assessment of damages**

Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this Order, enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court of the value of the goods and damages or the damages only, as the case may be, in respect of the amount found to be due in the course of the assessment.

#### **9. Assessment where some defendants have filed a defence**

Where the plaint is drawn as is mentioned in rule 8 of this Order and there are several defendants of whom one or more files a defence, and another or others fail to file a defence, on or before the day fixed in the summons, the court, subject to rule 5 of this Order, may assess the value of the goods and the damages or either of them, as the case may be, as against the defendant or defendants who have not filed a defence at the same time as the trial of the suit against the other defendant or defendants and may proceed to pass judgment in accordance with the assessment.

## 10. General rule where no defence filed

In all suits not by the rules of this Order otherwise specifically provided for, in case the party does not file a defence on or before the day fixed therein and upon a compliance with rule 5 of this Order, the suit may proceed as if that party had filed a defence.

## 11. Setting down suit for hearing

- (1) At any time after the defence or, in a suit in which there is more than one defendant, the last of the defences has been filed, the plaintiff may, upon giving notice to the defendant or defendants, as the case may be, set down the suit for hearing.
- (2) Where the time allowed for filing a defence or, in a suit in which there is more than one defendant, the time allowed for filing the last of the defences has expired and the defendant or defendants, as the case may be, has or have failed to file his or her or their defences, the plaintiff may set down the suit for hearing *ex parte*.

## 12. Setting aside *ex parte* judgment

Where judgment has been passed pursuant to any of the preceding rules of this Order, or where judgment has been entered by the registrar in cases under Order L of these Rules, the court may set aside or vary the judgment upon such terms as may be just.

## 13. Step in suit after defence filed

Subject to Order XII of these Rules where a defendant has filed a defence under rule 1 of this Order, the court may set down the suit for hearing with notice to the parties.

## 14. Appearance by defendant in answer to a summons

Where a day has been fixed in a summons for the defendant to appear and answer the claim, the parties shall be in attendance at the courthouse in person, or by their respective advocates or recognised agents, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the court.

## 15. Defendant to give an address for service

Each defendant upon whom a summons requiring him or her to appear and answer a claim has been served shall at or before the first attendance under rule 14 of this Order file a memorandum giving an address for service and shall deliver a duplicate of the memorandum to the opposite party.

## 16. Suit dismissed upon failure to pay fees

Where on the day fixed for filing a defence or to appear and answer, it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court fee or charges, if any, for the service, the court may make an order that the suit be dismissed.

## 17. When neither party appears, suit dismissed

Where neither party appears when the suit is called on for hearing, the court may make an order that the suit be dismissed.

## 18. Plaintiff may bring fresh suit or court may restore suit to file

Where a suit is dismissed under rule 16 or 17 of this Order, the plaintiff may, subject to the law of limitation, bring a fresh suit or he or she may apply for an order to set the dismissal aside; and if he or she satisfies the court that there was sufficient cause for his or her not paying the court fee and charges,

if any, required within the time fixed before the issue of the summons or for his or her nonappearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

### **19. Dismissal of suit where summons unserved and plaintiff fails for a year to apply for fresh summons**

- (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of one year from the date of the return made to the court by the serving officer, to apply for the issue of a fresh summons, and to satisfy the court that he or she has used his or her best endeavours to discover the residence of the defendant who has not been served, or that the defendant is avoiding service of process, the court may make an order that the suit be dismissed as against the defendant.
- (2) In such case the plaintiff may, subject to the law of limitation, bring a fresh suit.

### **20. Procedure when only plaintiff appears**

- (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing—
  - (a) if the court is satisfied that the summons or notice of hearing was duly served, it may proceed *ex parte*;
  - (b) if the court is not satisfied that the summons or notice of hearing was duly served, it shall direct a second summons or notice to be issued and served on the defendant; and
  - (c) if the court is satisfied that the summons or notice of hearing was served on the defendant, but not in sufficient time to enable him or her to appear and answer on the day fixed, or that the defendant was for other sufficient cause unable to appear in person or cause appearance to be made on his or her behalf, it shall postpone the hearing of the suit to a future day to be fixed by the court and shall direct notice of that day to be given to the defendant.
- (2) Where it is owing to the plaintiff's default that the summons or notice of hearing was not duly served or was not served in sufficient time, the court may order the plaintiff to pay the costs occasioned by postponement.

### **21. Procedure where defendant appears on day of adjourned hearing**

Where the court has adjourned the hearing of the suit *ex parte*, and the defendant at or before the hearing appears and assigns good cause for his or her previous nonappearance, he or she may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he or she had appeared on the day fixed for his or her appearance.

### **22. Procedure when defendant only appears**

Where the defendant appears, and the plaintiff does not appear, when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part of it, in which case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

### **23. Decree against plaintiff by default bars fresh suit**

- (1) Where a suit is wholly or partly dismissed under Rule 22 of this Order, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he or she may apply for an order to set the dismissal aside, and, if he or she satisfies the court that there was sufficient cause for nonappearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

- (2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

#### **24. Procedure in case of nonattendance of one or more of several plaintiffs**

Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

#### **25. Procedure in case of nonattendance of one or more of several defendants**

Where there are more defendants than one, and one or more of them appear and the others do not appear, the suit shall proceed and the court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

#### **26. Consequence of nonattendance without sufficient cause shown of party ordered to appear in person**

Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the court for failing to appear, he or she shall be subjected to all the provisions of the foregoing rules of this Order applicable to plaintiffs and defendants, respectively, who do not appear.

#### **27. Setting aside decree *ex parte* against defendant**

In any case in which a decree is passed *ex parte* against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; and if he or she satisfies the court that the summons was not duly served, or that he or she was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment into court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; except that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.

#### **28. No decree to be set aside without notice to the opposite party**

No decree shall be set aside on any such application as aforesaid unless notice of the application has been served on the opposite party.

#### **29. Procedure under this Order**

Applications under rule 4 of this Order shall be by summons in chambers.

### **Order X – Interrogatories, discovery and inspection**

#### **1. Discovery by interrogatories**

In any suit the plaintiff or defendant may apply to the court within twenty-one days from the date of the last reply or rejoinder referred to in Order VIII, rule 18(5), of these Rules for leave to deliver interrogatories and discoveries in writing for the examination of the opposite parties, or any one or more of those parties, and those interrogatories when delivered shall have a note at the foot of them stating which of the interrogatories each of the persons is required to answer; except that—

- (a) no party shall deliver more than one set of interrogatories to the same party without an order for that purpose; and

- (b) interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

## 2. Particular interrogatories to be submitted

- (1) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court.
- (2) In deciding upon the application the court shall take into account any offer, which may be made by the party sought to be interrogated, to deliver particulars or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

## 3. Costs of interrogatories

In adjusting the costs of the suit inquiry shall, at the instance of any party, be made into the propriety of exhibiting the interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that the interrogatories have been exhibited unreasonably, vexatiously or at improper length, the cost occasioned by the interrogatories and the answers to them shall be paid in any event by the party in fault.

## 4. Form of interrogatories

Interrogatories shall be in Form 2 of Appendix B to these Rules, with such variations as circumstances may require.

## 5. Corporations

Where any party to a suit is a corporation or a body of persons, empowered by the law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him or her to deliver interrogatories to any member or officer of the corporation or body, and an order may be made accordingly.

## 6. Objections to interrogatories by answer

Any objection to answering any interrogatories on the ground that they are scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

## 7. Setting aside and striking out interrogatories

Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for the purpose may be made within seven days after service of the interrogatories.

## 8. Affidavit in answer, filing

Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

## 9. Form of affidavit in answer

An affidavit in answer to interrogatories shall be in Form 3 of Appendix B to these Rules, with such variations as circumstances may require.

**10. No exception to be taken**

No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

**11. Order to answer or answer further**

Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him or her to answer, or to answer further, as the case may be, and an order may be made requiring him or her to answer or answer further, either by affidavit or by *viva voce* examination, as the court may direct.

**12. Application for discovery of documents**

- (1) Any party may, without filing any affidavit, apply to the court for an order directing any other party to the suit to make discovery on oath of the documents, which are or have been in his or her possession or power, relating to any matter in question in the suit.
- (2) On the hearing of the application the court may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit; except that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

**13. Affidavit of objection to production of documents**

The affidavit to be made by a party against whom such order as is mentioned in rule 12 of this Order has been made shall specify which if any of the documents mentioned in the affidavit he or she objects to produce and shall be in Form 5 of Appendix B to these Rules, with such variation as the case may require.

**14. Production of documents**

The court may, at any time during the pendency of any suit, order the production by any party to the suit, upon oath, of such of the documents in his or her possession or power, relating to any matter in question in the suit, as the court shall think right; and the court may deal with the documents, when produced, in such manner as shall appear just.

**15. Inspection of documents referred to in pleadings or affidavits**

Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce the document for the inspection of the party giving the notice, or of his or her advocate, and to permit him or her or them to take copies of the document; and any party not complying with the notice shall not afterwards be at liberty to put any such document in evidence on his or her behalf in that suit unless he or she shall satisfy the court that the document relates only to his or her own title, he or she being a defendant to the suit, or that he or she had some other cause or excuse which the court shall deem sufficient for not complying with the notice, in which case the court may allow the document to be put in evidence on such terms as to costs and otherwise as the court shall think fit.

**16. Notice to produce for inspection**

Notice to any party to produce for inspection any documents referred to in his or her pleading or affidavits shall be in Form 7 of Appendix B to these Rules, with such variations as circumstances may require.

### 17. Time for inspection when notice given

- (1) The party to whom the notice is given shall, within ten days from the receipt of the notice, deliver to the party giving a notice stating a time within three days from the delivery of the notice at which the documents, or such of them as he or she does not object to produce, may be inspected at the office of his or her advocate, or, in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which if any of the documents he or she objects to produce, and on what ground.
- (2) The notice shall be in Form 8 of Appendix B to these Rules, with such variations as the case may require.

### 18. Order for inspection

- (1) Where the party served with notice under rule 15 of this Order omits to give the notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his or her advocate, the court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit; except that the order shall not be made when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.
- (2) Any application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his or her affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court shall not make an order for inspection of those documents when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

### 19. Verified copies

- (1) Where inspection of any business books is applied for, the court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries in the books to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and the affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations; but notwithstanding that such copy has been supplied, the court may order inspection of the book from which the copy was made.
- (2) Where, on an application for an order for inspection, privilege is claimed for any document, the court may inspect the document for the purpose of deciding as to the validity of the claim of privilege.
- (3) The court may, on the application of any party to a suit, at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his or her possession or power, and if not then in his or her possession, when he or she parted with the document or documents and what has become of it or them. The application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his or her possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

### 20. Premature discovery

Where the party from whom discovery of any kind or inspection is sought objects to the discovery or inspection, or any part of it, the court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon

the right to the discovery or inspection, order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

### **21. Noncompliance with order for discovery**

Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he or she shall, if a plaintiff, is liable to have his or her suit dismissed for want of prosecution, and, if a defendant, to have his or her defence, if any, struck out, and to be placed in the same position as if he or she had not defended; and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect, and an order may be made accordingly.

### **22. Using answers to interrogatories at trial**

Any party may, at the trial of a suit, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories without putting in the others or the whole of the answer; but in that case the court may look at the whole of the answers, and, if it is of opinion that any others of them are so connected with those put in that the last mentioned answers ought not to be used without them, it may direct them to be put in.

### **23. Order to apply to minors**

This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

### **24. Procedure under this Order**

Applications under this Order shall be by summons in chambers.

## **Order XI – Consolidation of suits**

### **1. Consolidation of suits**

Where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one of the parties or of its own motion, at its discretion, and upon such terms as may seem fit—

- (a) order a consolidation of those suits; and
- (b) direct that further proceedings in any of the suits be stayed until further order.

### **2. Procedure under this Order**

Applications under this Order shall be by summons in chambers.

## **Order XII – Scheduling conference and alternative dispute resolution**

### **1. Scheduling conference**

- (1) The court shall hold a scheduling conference to sort out points of agreement and disagreement, the possibility of mediation, arbitration and any other form of settlement—
  - (a) within seven days after the order on delivery of interrogatories and discoveries has been made under rule 1 of Order X of these Rules; or

- (b) where no application for interrogatories and discoveries has been made under rule 1 of Order X of these Rules, then within twenty-eight days from the date of the last reply or rejoinder referred to in rule 18(5) of Order VIII of these Rules,

except that the time may be extended on application to the court, showing sufficient reasons for the extension.

- (2) Where the parties reach an agreement, orders shall immediately be made in accordance with rules 6 and 7 of Order XV of these Rules.

## **2. Alternative dispute resolution**

- (1) Where the parties do not reach an agreement under rule 1(2) of this Order, the court may, if it is of the view that the case has a good potential for settlement, order alternative dispute resolution before a member of the bar or the bench, named by the court.
- (2) Alternative dispute resolution shall be completed within twenty-one days after the date of the order; except that the time may be extended for a period not exceeding fifteen days on application to the court, showing sufficient reasons for the extension.
- (3) The Chief Justice may issue directions for better carrying into effect alternative dispute resolution.

## **3. Interlocutory applications**

- (1) All remaining interlocutory applications shall be filed within twenty-one days from the date of completion of the alternative dispute resolution and where there has been no alternative dispute resolution, within fifteen days after the completion of the scheduling conference; that date shall be referred to as the cutoff date.
- (2) Service of an interlocutory application to the opposite party shall be made within fifteen days from the filing of the application, and a reply to the application by the opposite party shall be filed within fifteen days from the date of service of the application and be served on the applicant within fifteen days from the date of filing of the reply.
- (3) An interlocutory application shall be fixed for hearing within twenty-one days from the date of service of the reply on the applicant.
- (4) All interlocutory applications shall be heard and finalised within forty-five days from the date fixed for the hearing of the application unless the court, for sufficient reason, extends the time.

## **Order XIII – Admissions**

### **1. Notice of admission of case**

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

### **2. Notice to admit documents**

Either party may call on the other to admit any document, saving all just exceptions; and, in case of refusal or neglect to admit, after the notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs; and no costs of proving any document shall be allowed, unless the notice is given, except where the omission to give the notice is, in the opinion of the court, a saving of expense.

### 3. Form of notice

A notice to admit documents shall be in Form 9 of Appendix B to these Rules, with such variations as circumstances may require.

### 4. Notice to admit facts

Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact mentioned in the notice, and in case of refusal or neglect to admit the fact within six days after service of the notice, or within such further time as may be allowed by the court, the cost of providing the fact shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs; except that—

- (a) any admission made, in pursuance of the notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice; and
- (b) the court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

### 5. Form of admission

A notice to admit facts shall be in Form 10 of Appendix B to these Rules, and an admission of facts shall be in Form 11 of Appendix B to these Rules, with such variations as circumstances may require.

### 6. Judgment on admissions

Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.

### 7. Affidavit of signature

An affidavit of the advocate or his or her clerk of the due signature of any admissions made in pursuance of any notice to admit documents or facts shall be sufficient evidence of the admissions, if evidence of the admissions is required.

### 8. Notice to produce documents in court

- (1) A notice to produce documents shall be in Form 12 of Appendix B to these Rules, with such variations as circumstances may require.
- (2) An affidavit of the advocate or his or her clerk of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice and of the time when it was served.

### 9. Costs

If a notice to admit or produce comprises documents which are not necessary, the costs occasioned by the notice shall be borne by the party giving the notice.

## **Order XIV – Production, impounding and return of documents**

### **1. Endorsements on documents admitted in evidence**

- (1) Subject to subrule (2) of this rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars—
  - (a) the number and title of the suit;
  - (b) the party producing the document; and
  - (c) the date on which it was produced, and the endorsement shall be signed or initialled by an officer of the court.
- (2) Where a document so admitted is an entry in a book, account or record, and a copy of the document has been substituted for the original under rule 2 of this Order, the particulars required by subrule (1) of this rule shall be endorsed on the copy, and the endorsement on the copy shall be signed or initialled by the judge or by an officer of the court under his or her direction.

### **2. Endorsements on copies of admitted entries in books, accounts and records**

- (1) Except insofar as is otherwise provided by any law relating to the production in evidence of bankers' books, where a document admitted in evidence in the suit is an entry in a letter book or a shop book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.
- (2) Where the document admitted in evidence is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the court may require a copy of the entry to be furnished—
  - (a) where the record, book or account is produced on behalf of a party, then by that party; or
  - (b) where the record, book or account is produced in obedience to an order of the court acting of its own motion, then by either or any party.
- (3) Where a copy of an entry is furnished under subrules (1) and (2) of this rule, the court shall, after causing the copy to be examined, compared and certified, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it; except that the court may accept, in the case of a copy of a public record, a certificate of correctness from the public officer in whose charge the record is.

### **3. Recording of admitted and return of rejected documents**

- (1) Every document which has been admitted in evidence, or a copy of it where a copy has been substituted for the original under rule 2 of this Order, shall form part of the record of the suit.
- (2) Documents not admitted in evidence shall not form part of the record, and shall be returned to the persons respectively producing them after they have been endorsed by the judge or officer of the court with the particulars mentioned in rule 1(1)(a), (b) and (c) of this Order, together with a statement of their having been rejected.

### **4. Court may order any document to be impounded**

Notwithstanding anything hereinbefore contained, the court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the court for such period and subject to such conditions as the court thinks fit.

## 5. Return of admitted documents

- (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him or her in the suit and placed on the record, shall, unless the document is impounded under rule 4 of this Order, be entitled to receive back the document—
  - (a) when the suit has been disposed of, and, if the suit is one in which an appeal is allowed, where the time for filing an appeal has elapsed and no appeal has been filed; and
  - (b) if any appeal has been filed, when the appeal has been disposed of,except that—
  - (c) a document may be returned at any time earlier than that prescribed by this rule if the person applying for it delivers to the proper officer a certified copy to be substituted for the original and undertakes in writing to produce the original if required to do so; and
  - (d) no document shall be returned which, by force of the decree, has become wholly void or useless.
- (2) On the return of a document admitted in evidence a receipt shall be given by the person receiving it.

## 6. Court may send for records of its own or of other court

- (1) The court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records, or from any other court, the record of any other suit or proceeding and inspect the record.
- (2) Every application made under this rule shall, unless the court otherwise directs, be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion of the record as the applicant requires, or that the production of the original is necessary for the purposes of justice.
- (3) Nothing in this rule shall be deemed to enable the court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

## 7. Provisions as to documents applied to material objects

The provisions contained in this Order as to documents shall, so far as may be, apply to all other material objects producible as evidence.

## 8. Procedure under this Order

Applications under rule 6 of this Order shall be by summons in chambers.

## **Order XV – Settlement of issue and determination of suit on issues of law or on issues agreed upon**

### 1. Framing of issues

- (1) Issues arise when a material proposition of law or fact is affirmed by the one party and denied by the other.
- (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute a defence.
- (3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

- (4) Issues are of two kinds: issues of law and issues of fact.
- (5) At the hearing of the suit the court shall, after reading the pleadings, if any, and after such examination of the parties or their advocates as may appear necessary, ascertain upon what material propositions of law or fact the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.
- (6) Nothing in this rule requires the court to frame and record issues where the defendant at the hearing of the suit makes no defence, or where issue has been joined upon the pleadings.

## **2. Issues of law and issues of fact**

Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part of it may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

## **3. Materials from which issues may be framed**

The court may frame the issues from all or any of the following materials—

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and
- (c) the contents of documents produced by either party.

## **4. Court may examine witnesses or documents before framing issues**

Where the court is of opinion that the issues cannot be correctly framed without the examination of some person not before the court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may, subject to any law for the time being in force, compel the attendance of any person, or the production of any document by the person in whose possession or power it is, by summons or other process.

## **5. Power to amend and strike out issues**

- (1) The court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.
- (2) The court may also at any time before passing a decree strike out any issues that appear to it to be wrongly framed or introduced.

## **6. Questions of law or fact may by agreement be stated in the form of issues**

Where the parties to a suit are agreed as to the question of law or of fact to be decided between them, they may state the question in the form of an issue and enter into an agreement in writing that, upon the finding of the court in the affirmative or the negative of the issue—

- (a) a sum of money specified in the agreement, or to be ascertained by the court or in such manner as the court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;
- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or
- (c) one or more of the parties shall do or abstain from doing some particular act in the agreement and relating to the matter in dispute.

## **7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment**

Where the court is satisfied, after making such inquiry as it deems proper—

- (a) that the agreement was duly executed by the parties;
- (b) that they have a substantial interest in the decision of the question as aforesaid; and
- (c) that the question is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision on the issue in the same manner as if the issue had been framed by the court; and shall, upon the finding or decision of the issue, pronounce judgment according to the terms of the agreement; and upon the judgment so pronounced a decree shall follow.

## **Order XVI – Summoning and attendance of witnesses**

### **1. Summons to attend to give evidence or produce documents**

At any time after the suit is instituted the parties may obtain, on application to the court or to such officer as it appoints for this purpose, summonses to persons whose attendance is required either to give evidence or to produce documents.

### **2. Expenses of witnesses to be paid into court on applying for summonses**

- (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into court such sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the court in which he or she is required to attend, and for one day's attendance.
- (2) In determining the amount payable under this rule, regard shall be had to such scale for expenses of witnesses as may from time to time be approved by the High Court, but the court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

### **3. Tender of expenses or notification of sum lodged**

The sum so paid into court shall be tendered to the person summoned at the time of serving the summons, if it can be served personally; or if the court so directs the person summoned may be notified that the sum so paid into court will be paid out to him or her on his or her attendance.

### **4. Procedure where insufficient sum paid in**

- (1) Where it appears to the court or to such officer as it appoints for this purpose that the sum paid into court is not sufficient to cover the expenses or reasonable remuneration, the court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order that sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the court may discharge the person summoned without requiring him or her to give evidence; or may both order the levy and discharge the person as aforesaid.
- (2) Where it is necessary to detain the person summoned for a longer period than one day, the court may from time to time order the party at whose instance he or she was summoned to pay into court such sum as is sufficient to defray the expenses of his or her detention for such further period, and, in default of the deposit being made, may order that sum to be levied by attachment and sale of

the movable property of such party; or the court may discharge the person summoned without requiring him or her to give evidence; or may both order the levy and discharge that person as aforesaid.

#### **5. Time, place and purpose of attendance to be specified in summons**

Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he or she is required to attend, and whether his or her attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

#### **6. Summons to produce documents**

Any person may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he or she causes the document to be produced instead of attending personally to produce it.

#### **7. Power to require persons present in court to give evidence or produce document**

Any person present in court may be required by the court to give evidence or to produce any document then and there in his or her possession or power.

#### **8. Service of summons**

Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V of these Rules as to proof of service shall apply in the case of all summonses served under this rule.

#### **9. Time for serving summons**

- (1) Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned to allow him or her a reasonable time for preparation and for travelling to the place at which his or her attendance is required.
- (2) If, in the opinion of the court or officer by whom summonses are issued, a party applying for a summons has not allowed sufficient time as aforesaid, the court or officer may refuse to issue the summons.

#### **10. Procedure where witness fails to comply with summons**

- (1) Where a person to whom a summons has been issued, either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with the summons, the court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him or her to be so examined by another court, touching the service or non-service of the summons.
- (2) Where the court sees reason to believe that the evidence or production is material, and that the person has, without lawful excuse, failed to attend or to produce the document in compliance with the summons or has intentionally avoided service, it may issue a proclamation requiring him or her to attend to give evidence or to produce the document at a time and place to be named in the proclamation; and a copy of the proclamation shall be affixed on the outer door or other conspicuous part of the house in which he or she ordinarily resides.
- (3) *In lieu* of or at the time of issuing the proclamation, or at any time afterwards, the court may, in its discretion, issue a warrant, either with or without bail, for the arrest of the person, and may make an order for the attachment of his or her property to such amount as it thinks fit, not exceeding

the amount of the costs of attachment and of any fine which may be imposed under rule 12 of this Order.

#### **11. If witness appears, attachment may be withdrawn**

Where, at any time after the attachment of his or her property, the person appears and satisfies the court—

- (a) that he or she did not, without lawful excuse, fail to comply with the summons or intentionally avoid service; and
- (b) where he or she has failed to attend at the time and place named in a proclamation issued under rule 10 of this Order, that he or she had no notice of the proclamation in time to attend,

the court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

#### **12. Procedure if witness fails to appear**

The court may, where the person does not appear, or appears but fails so to satisfy the court, impose upon him or her such fine, not exceeding one thousand shillings, as it thinks fit, having regard to his or her condition in life and all the circumstances of the case, and may order his or her property, or any part of it, to be attached and sold, or, if already attached under rule 10 of this Order, to be sold for the purpose of satisfying all costs of the attachment, together with the amount of the fine, if any; except that if the person whose attendance is required pays into court the costs and fine aforesaid, the court shall order the property to be released from attachment.

#### **13. Mode of attachment**

The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment debtor.

#### **14. Duty of persons summoned to give evidence or produce document**

Whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it or cause it to be produced at that time and place.

#### **15. When witnesses may depart**

- (1) A person so summoned and attending shall, unless the court otherwise directs, attend at each hearing until the suit has been disposed of.
- (2) On the application of either party, and the payment through the court of all necessary expenses, if any, the court may require any person so summoned and attending to furnish security to attend at the next or any other hearing, or until the suit is disposed of, and, in default of his or her furnishing the security, may order him or her to be detained in the civil prison.

#### **16. Application of rules 10 to 13 of this Order**

The provisions of rules 10 to 13 of this Order shall, so far as they are applicable, be deemed to apply to any person who, having attended in compliance with a summons, departs without lawful excuse in contravention of rule 15 of this Order.

#### **17. Procedure where witness apprehended cannot give evidence or produce document**

Where any person arrested under a warrant is brought before the court in custody, and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he or she has been summoned to give or produce, the court may require him or her to give reasonable bail or other

security for his or her appearance at such time and place as it thinks fit, and on that bail or security being given may release him or her, and in default of his or her giving such bail or security may order him or her to be detained in the civil prison.

#### **18. No witness to be ordered to appear in person unless resident within certain limits**

No one shall be ordered to attend in person to give evidence or to produce any document unless he or she resides—

- (a) within the local limits of the court's jurisdiction; or
- (b) without those limits but at a place not more than five days' journey from the courthouse.

#### **19. Consequence of refusal of a party to give evidence when called on by the court**

Where any party to a suit present in court refuses, without lawful excuse, when required by the court, to give evidence or to produce any document then and there in his or her possession or power, the court may pronounce judgment against him or her or make such order in relation to the suit as it thinks fit.

#### **20. Rules as to witnesses to apply to parties summoned**

Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him or her so far as they are applicable.

### **Order XVII – Prosecution of suits and adjournments**

#### **1. Court may grant time, adjourn hearing and make an order with respect to costs of adjournment**

- (1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the suit.
- (2) In every such case the court shall fix a day for the further hearing of the suit, or may adjourn the hearing generally and may make such order as it thinks fit with respect to the costs occasioned by that adjournment; except that—
  - (a) when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded; and
  - (b) where the hearing of the suit has been adjourned generally, either party may have liberty to apply to the court to restore the case to the list.

#### **2. Procedure where no application is made to restore suit adjourned generally**

Where the hearing of a suit has been adjourned generally, the court may, if no application as aforesaid is made within twelve months of the last adjournment, give notice to the parties to show cause why the suit should not be dismissed, and if cause is not shown to the satisfaction of the court, the suit shall be dismissed.

#### **3. Procedure if parties fail to appear on day fixed**

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed for that purpose by Order IX of these Rules, or make such other order as it thinks fit.

#### **4. Court may proceed notwithstanding either party fails to produce evidence**

Where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately.

#### **5. Dismissal of suit for want of prosecution**

If the plaintiff does not within eight weeks from the delivery of any defence, or, where a counterclaim is pleaded, then within ten weeks from the delivery of the counterclaim, set down the suit for hearing, then the defendant may either set down the suit for hearing or apply to the court to dismiss the suit for want of prosecution, and on the hearing of the application the court may order the suit to be dismissed accordingly, or may make such other order, and on such terms, as to the court may seem just.

#### **6. Suit may be dismissed if no step taken for two years**

- (1) In any case, not otherwise provided for, in which no application is made or step taken for a period of two years by either party with a view to proceeding with the suit, the court may order the suit to be dismissed.
- (2) In such case the plaintiff may, subject to the law of limitation, bring a fresh suit.

### **Order XVIII – Hearing of the suit and examination of witnesses**

#### **1. Right to begin**

The plaintiff shall have the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he or she seeks, in which case the defendant shall have the right to begin.

#### **2. Statement and production of evidence**

- (1) On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his or her case and produce his or her evidence in support of the issues which he or she is bound to prove.
- (2) The other party shall then state his or her case and produce his or her evidence, if any, and may then address the court generally on the whole case.
- (3) The party beginning may then reply generally on the whole case; except that in cases in which evidence is tendered by the party beginning only he or she shall have no right to reply.

#### **3. Evidence where several issues**

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his or her option, either produce his or her evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his or her evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

#### **4. Witnesses to be examined in open court**

The evidence of the witnesses in attendance shall be taken orally in open court in the presence of and under the personal direction and superintendence of the judge.

#### **5. How evidence to be recorded**

The evidence of each witness shall be taken down in writing by or in the presence and under the personal direction and superintendence of the judge, not ordinarily in the form of question and answer but in that of a narrative, and when completed shall be signed by the judge.

#### **6. Records made in shorthand or by mechanical means**

Notwithstanding rule 5 of this Order, the evidence given or any other proceeding at the hearing of any suit may be recorded in shorthand or by mechanical means, and, if the parties to the suit agree, the transcript of anything so recorded shall, if certified by the judge to be correct, be deemed to be a record of the evidence or other proceeding for all the purposes of the suit.

#### **7. Summary of evidence in certain cases**

Notwithstanding rule 5 of this Order, in all cases before any court in which the subject matter in dispute or amount claimed can be valued in money and that value does not exceed three hundred shillings, it shall be sufficient for the judge to make in writing a brief summary of the evidence given before him or her.

#### **8. Any particular question and answer may be taken down**

The court may, of its own motion or on the application of any party or his or her advocate, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

#### **9. Questions objected to and allowed by court**

Where any question put to a witness is objected to by a party or his or her advocate, and the court allows the question to be put, the judge shall take down the question, the answer, the objection and the name of the person making it.

#### **10. Remarks on demeanour of witness**

The court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

#### **11. Power to deal with evidence taken before another judge**

- (1) Where a judge is prevented by death, transfer or other cause from concluding the trial of a suit, his or her successor may deal with any evidence taken down under rules 1 to 10 of this Order as if the evidence had been taken down by him or her or under his or her direction under those rules, and may proceed with the suit from the stage at which his or her predecessor left it.
- (2) The provisions of subrule (1) of this rule shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Act.

#### **12. Power to examine witness immediately**

- (1) Where a witness is about to leave the jurisdiction of the court, or other sufficient cause is shown to the satisfaction of the court why his or her evidence should be taken immediately, the court may,

upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of the witness in the manner hereinbefore provided.

- (2) Where the evidence is not taken immediately and in the presence of the parties, such notice as the court thinks sufficient of the day fixed for the examination shall be given to the parties.
- (3) The evidence so taken shall be read over to the witness and, if he or she admits it to be correct, shall be signed by him or her, and the judge shall, if necessary, correct the evidence, and shall sign it, and it may then be read at any hearing of the suit.

### **13. Court may recall and examine witness**

The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force, put such questions to him or her as the court thinks fit.

### **14. Power of court to inspect**

The court may at any stage of a suit inspect any property or thing concerning which any question may arise.

### **15. Procedure under this Order**

Applications under rule 12 of this Order shall be by summons in chambers.

## **Order XIX – Affidavits**

### **1. Power to order any point to be proved by affidavit**

Any court may at any time for sufficient reason order that any particular fact may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the court thinks reasonable; except that where it appears to the court that either party *bona fide* desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorising the evidence of that witness to be given by affidavit.

### **2. Power to order attendance of deponent for cross-examination**

- (1) Upon any application evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance for cross-examination of the deponent.
- (2) The attendance shall be in court unless the deponent is exempted from personal appearance in court or the court otherwise directs.

### **3. Matters to which affidavits shall be confined**

- (1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.
- (2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall, unless the court otherwise directs, be paid by the party filing the affidavit.

## **Order XX – Application for an account**

### **1. Order for accounts**

Where a plaintiff prays for an account, or where the relief sought in the plaintiff involves the taking of an account, then, if the defendant either fails to appear or does not after appearance, by affidavit or otherwise, satisfy the court that there is some preliminary question to be tried, an order for proper accounts, with all necessary inquiries and directions usual in similar cases, shall immediately be made.

### **2. Procedure under this Order**

- (1) An application for an order under rule 1 of this Order shall be by summons in chambers, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his or her claim to an account.
- (2) The application may be made at any time after the time for entering an appearance has expired.

## **Order XXI – Judgment and decree**

### **1. Judgment when pronounced**

In suits where a hearing is necessary, the court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

### **2. Power to pronounce judgment written by another judge**

- (1) A judge may pronounce a judgment written and signed but not pronounced by his or her predecessor.
- (2) A judge of the High Court may pronounce a judgment written and signed but not pronounced by another judge of the High Court.
- (3) The registrar, if so directed by a judge of the High Court, may pronounce a judgment written and signed by a judge of the High Court.

### **3. Judgment to be signed**

- (1) A judgment pronounced by the judge who wrote it shall be dated and signed by him or her in open court at the time of pronouncing it.
- (2) A judgment pronounced by a judge other than the judge by whom it was written shall be dated and countersigned by him or her in open court at the time of pronouncing it.
- (3) A judgment once signed shall not afterwards be altered or added to except as provided by section 99 the Act or on review.

### **4. Contents of judgment**

Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for the decision.

## 5. Court to state its decision on each issue

In suits in which issues have been framed, the court shall state its finding or decision, with the reasons for the finding or decision, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

## 6. Contents of decree

- (1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim, and it shall specify clearly the relief granted or other determination of the suit.
- (2) The decree shall also state by whom or out of what property or in what proportion the costs incurred in the suit are to be paid.
- (3) The court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

## 7. Preparation of decrees and orders

- (1) A decree shall bear the date of the day on which the judgment was delivered.
- (2) It shall be the duty of the party who is successful in a suit in the High Court to prepare without delay a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue delay. If the draft is approved by the parties, it shall be submitted to the registrar who, if he or she is satisfied that it is drawn up in accordance with the judgment, shall sign and seal the decree accordingly. If all the parties and the registrar do not agree upon the terms of the decree within such time as the registrar shall fix, it shall be settled by the judge who pronounced the judgment, and the parties shall be entitled to be heard on the terms of the decree if they so desire.
- (3) In a magistrate's court, the decree shall be drawn up and signed by the magistrate who pronounced it or by his or her successor.
- (4) Any order, whether in the High Court or in a magistrate's court, which is required to be drawn up shall be prepared and signed in like manner.

## 8. Costs

The decree or order shall not state the amount of the costs, which, after they have been taxed or otherwise ascertained, shall be stated in a separate certificate to be signed by the registrar, or, in a magistrate's court, by the magistrate.

## 9. Procedure where judge has vacated office or is unable to sign decree

- (1) Where a judge has vacated office after pronouncing judgment, but without signing the decree, a decree drawn up in accordance with the judgment may be signed by his or her successor.
- (2) Where a judge of the High Court is unable from any cause to sign a decree drawn up in accordance with a judgment of his or hers, which has been pronounced, the decree may be signed by any other judge of the High Court.

## 10. Decree for recovery of immovable property

Where the subject matter of the suit is immovable property, the decree shall contain a description of the property sufficient to identify it, and where the property can be identified by boundaries or by numbers in a Government record or survey, the decree shall specify the boundaries or numbers.

### **11. Decree for delivery of movable property**

Where the suit is in respect of movable property, and the decree is for the delivery of the property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

### **12. Judgment may direct payment by installments**

- (1) Where and insofar as a judgment is for the payment of money, the court may for any sufficient reason at the time of passing the judgment order that payment of the amount adjudged shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
- (2) After the passing of any such judgment, the court may, on the application of the judgment debtor, and with the consent of the decree holder, order that payment of the amount adjudged shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him or her, or otherwise, as it thinks fit.

### **13. Decree for possession and mesne profits**

- (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the court may pass a decree—
  - (a) for the possession of the property;
  - (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;
  - (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
    - (i) the delivery of possession to the decree holder;
    - (ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the court; or
    - (iii) the expiration of three years from the date of the decree,whichever event first occurs.
- (2) Where an inquiry is directed under subrule (1)(b) or (c) of this rule, a final decree in respect of the rent and mesne profits shall be passed in accordance with the result of the inquiry.

### **14. Decree in administration suit**

- (1) Where a suit is for an account in respect of any property or for its due administration under the decree of the court, the court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.
- (2) In the administration by the court of the property of any deceased person, if the property proves to be insufficient for the payment in full of his or her debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities, respectively, as may be in force for the time being with respect to the estates of persons adjudged or declared insolvent; and all persons, who, in any such case would be entitled to be paid out of the property, may come in under the preliminary decree, and make such claims against the property as they may respectively be entitled to by virtue of the Act.

**15. Decree in suit for dissolution of partnership**

Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the court, before passing a final decree, may pass a preliminary decree, declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved, or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

**16. Decree in suit for account between principal and agent**

In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

**17. Special directions as to accounts**

The court may, either by the decree directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matter contained in them with liberty to the parties interested to take such objection thereto as they may be advised.

**18. Decree in suit for partition of property or separate possession of a share**

Where a court passes a decree for the partition of property, or for the separate possession of a share in the property, the court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the parties interested in the property and giving such further directions as may be required.

**19. Decree where setoff allowed**

- (1) Where the defendant has been allowed a setoff against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.
- (2) Any decree passed in a suit in which a setoff is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no setoff had been claimed.
- (3) The provisions of this rule shall apply whether the setoff is admissible under rule 2 of Order VIII of these Rules, or otherwise.

**20. Certified copies of judgment and decree to be furnished**

Certified copies of the judgment and decree shall be furnished to the parties on application to the court and at their expense.

**21. Procedure under this Order**

Applications under rule 12 of this Order shall be by summons in chambers.

## Order XXII – Execution of decrees and orders

### 1. Modes of paying money under decree

- (1) All money payable under a decree shall be paid as follows—
  - (a) into the court whose duty it is to execute the decree;
  - (b) direct to the decree holder; or
  - (c) otherwise as the court which made the decree directs.
- (2) Where any payment is made under subrule (1)(a) of this rule, notice of the payment shall be given to the decree holder.

### 2. Payment out of court to decree holder

- (1) Where any money payable under a decree of any kind is paid direct to the decree holder or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree holder, the decree holder shall certify the payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the payment or adjustment accordingly.
- (2) The judgment debtor also may inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree holder to show cause, on a day to be fixed by the court, why the payment or adjustment should not be recorded as certified; and if, after service of the notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record it accordingly.
- (3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any court executing the decree.

### 3. Lands situate in more than one jurisdiction

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more courts, any one of those courts may attach and sell the entire estate or tenure.

### 4. Procedure where court desires that its own decree shall be executed by another court

A court sending a decree for execution by another court shall send—

- (a) a copy of the decree;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and
- (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

### 5. Court receiving copies of decree to file them without proof

The court to which a decree is so sent shall cause the copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies of the decree or order, unless the court, for any special reasons to be recorded under the hand of the judge, requires such proof

## 6. Execution or transfer by High Court of transferred decree

Where the court to which the decree is sent for execution is the High Court, the decree shall be executed by that court in the same manner as if it had been passed by that court in the exercise of its ordinary original civil jurisdiction, or it may be transferred by that court for execution to any magistrate's court.

## 7. Application for execution

Where the holder of a decree desires to execute it, he or she shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to that court or to the proper officer of that other court.

## 8. Oral and written applications

- (1) Where a decree is for the payment of money the court may, on the oral application of the decree holder at the time of the passing of the decree, order immediate execution of the decree by the arrest of the judgment debtor, prior to the preparation of a warrant, if he or she is within the precincts of the court.
- (2) Except as otherwise provided by subrule (1) of this rule, every application for the execution of a decree shall be in writing, signed and verified by the applicant or his or her advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars—
  - (a) the number of the suit;
  - (b) the names of the parties;
  - (c) the date of the decree;
  - (d) whether any appeal has been preferred from the decree;
  - (e) whether any, and, if any, what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
  - (f) whether any, and, if any, what, previous applications have been made for the execution of the decree, the dates of those applications and their results;
  - (g) the amount with interest, if any, due upon the decree, or other relief granted by the decree, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;
  - (h) the amount of the costs, if any, awarded;
  - (i) the name of the person against whom execution of the decree is sought; and
  - (j) the mode in which the assistance of the court is required, whether—
    - (i) by the delivery of any property specifically decreed;
    - (ii) by the attachment and sale, or by the sale without attachment, of any property;
    - (iii) by the arrest and detention in prison of any person;
    - (iv) by the appointment of a receiver; or
    - (v) otherwise, as the nature of the relief granted may require.
- (3) The court to which an application is made under subrule (2) of this rule may require the applicant to produce a certified copy of the decree.

**9. Application for attachment of movable property not in judgment debtor's possession**

Where an application is made for the attachment of any movable property belonging to a judgment debtor, but not in his or her possession, the decree holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the property.

**10. Application for attachment of immovable property to contain certain particulars**

Where an application is made for the attachment of any immovable property belonging to a judgment debtor, it shall contain at the foot—

- (a) a description of the property sufficient to identify it, and, in case the property can be identified by boundaries, or numbers in Government records or surveys, a specification of those boundaries or numbers; and
- (b) a specification of the judgment debtor's share or interest in the property to the best of the belief of the applicant, and so far as he or she has been able to ascertain the share or interest.

**11. Power to require certified extract from land registries in certain cases**

Where an application is made for the attachment of any land which is registered in the land registries, the court may require the applicant to produce a certified extract from the register of that office, specifying the persons registered as proprietors of, or as possessing, any transferable interest in the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

**12. Application for execution by joint decree holder**

- (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of those persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.
- (2) Where the court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

**13. Application for execution by transferee of decree**

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by the decree holder; except that—

- (a) where the decree, or the interest as aforesaid, has been transferred by assignment, notice of the application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the court has heard their objections, if any, to its execution; and
- (b) where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

**14. Procedure on receiving an application for execution of decree**

- (1) On receiving an application for the execution of a decree as provided by rule 8(2) of this Order, the court shall ascertain whether such of the requirements of rules 8 to 10 of this Order as may be applicable to the case have been complied with; and, if they have not been complied with, the court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

- (2) Where an application is amended under subrule (1) of this rule, it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.
- (3) Every amendment made under this rule shall be signed or initialled by the judge.
- (4) When the application is admitted, the court shall, subject to the provisions hereafter contained, order execution of the decree according to the nature of the application; except that in the case of a decree for the payment of money the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

### **15. Execution in case of cross decrees**

- (1) Where applications are made to a court for the execution of cross decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by that court, then—
  - (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and
  - (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.
- (2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment debts due by the original assignor as in respect of judgment debts due by the assignee himself or herself.
- (3) This rule shall not be deemed to apply, unless—
  - (a) the decree holder in one of the suits in which the decrees have been made is the judgment debtor in the other and each party fills the same character in both suits; and
  - (b) the sums under the decree are definite.
- (4) The holder of a decree passed against several persons jointly and severally may treat it as a cross decree in relation to a decree passed against him or her singly in favour of one or more of such persons.

### **16. Execution in case of cross claims under same decree**

Where application is made to a court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then—

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction of the smaller sum shall be entered upon the decree.

### **17. Cross decrees and cross claims in mortgage suits**

The provisions of rules 15 and 16 of this Order shall apply to decrees for sale in enforcement of a mortgage or charge.

### **18. Simultaneous execution**

The court may, in its discretion, refuse execution at the same time against the person and property of the judgment debtor.

**19. Notice to show cause against execution in certain cases**

- (1) Where an application for execution is made—
  - (a) more than one year after the date of the decree; or
  - (b) against the legal representative of a party to the decree,

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him or her to show cause, on a date to be fixed, why the decree should not be executed against him or her; except that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom the execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him or her.

- (2) Nothing in subrule (1) of this rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice prescribed in that subrule if, for reasons to be recorded, it considers that the issue of the notice would cause unreasonable delay or would defeat the ends of justice.

**20. Procedure after issue of notice**

- (1) Where the person to whom notice is issued under rule 19 of this Order does not appear or does not show cause to the satisfaction of the court why the decree should not be executed, the court shall order the decree to be executed.
- (2) Where the person offers any objection to the execution of the decree, the court shall consider the objection and make such order as it thinks fit.

**21. Process for execution**

- (1) When the preliminary measures, if any, required by the foregoing rules have been taken, the court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.
- (2) Every such process shall bear the date of the day on which it is issued, and shall be signed by the judge or such officer as the court may appoint for this purpose, and shall be sealed with the seal of the court and delivered to the proper officer to be executed.

**22. Endorsement on process**

- (1) The officer entrusted with the execution of the process shall endorse on it the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return of the process has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the court.
- (2) Where the endorsement is to the effect that the officer is unable to execute the process, the court may examine him or her touching his or her alleged inability, and may, if it thinks fit, summon and examine witnesses as to the inability, and shall record the results.

**23. When court may stay execution**

- (1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of the decree for a reasonable time to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution of the decree, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or

appellate court if execution has been issued by the appellate court or if application for execution has been made to it.

- (2) Where the property or person of the judgment debtor has been seized under an execution, the court which issued the execution may order the restitution of the property or the discharge of the person pending the results of the application.
- (3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment debtor the court may require such security from, or impose such conditions upon, the judgment debtor as it thinks fit.

#### **24. Liability of judgment debtor discharged**

No order of restitution or discharge under rule 23 of this Order shall prevent the property or person of a judgment debtor from being retaken in execution of the decree sent for execution.

#### **25. Order of court which passed decree or of appellate court to be binding upon court applied to**

Any order of the court by which the decree was passed, or of such appellate court as aforesaid, in relation to the execution of the decree, shall be binding upon the court to which the decree is sent for execution.

#### **26. Stay of execution pending suit between decree holder and judgment debtor**

Where a suit is pending in any court against the holder of a decree of the court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

#### **27. Decree for payment of money**

Every decree for the payment of money, including a decree for the payment of money as an alternative to some other relief, may be executed by the detention in the civil prison of the judgment debtor, or by the attachment and sale of his or her property, or by both detention and attachment.

#### **28. Decree for specific movable property**

- (1) Where the decree is for any specific movable property, or for any share in a specific movable property, it may be executed by the seizure, if practicable, of the movable property or share, and by the delivery of the movable property or share to the party to whom it has been adjudged, or to such person as he or she appoints to receive delivery on his or her behalf, or by the detention in the civil prison of the judgment debtor, or by the attachment of his or her property, or by both detention and attachment.
- (2) Where any attachment under subrule (1) of this rule has remained in force for six months, if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, the property may be sold, and out of the proceeds the court may award to the decree holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, that amount and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment debtor on his or her application.
- (3) Where the judgment debtor has obeyed the decree and paid all costs of executing the decree which he or she is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

**29. Decree for specific performance, for restitution of conjugal rights or for an injunction**

- (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree, and has wilfully failed to obey it, the decree may be enforced by his or her detention in the civil prison, or by the attachment of his or her property, or by both detention and attachment.
- (2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation, or, with the leave of the court, by the detention in a civil prison of the directors or other principal officers of the corporation, or by both attachment and detention.
- (3) Where any attachment under subrule (1) or (2) of this rule has remained in force for six months, if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the court may award to the decree holder such compensation as it thinks fit, and shall pay the balance, if any, to the judgment debtor on his or her application.
- (4) Where the judgment debtor has obeyed the decree and paid all costs of executing the decree which he or she is bound to pay, or where at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.
- (5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, *in lieu* of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder, or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.

**30. Discretion of court in executing decrees for restitution of conjugal rights**

- (1) Notwithstanding anything in rule 29 of this Order, the court, either at the time of passing a decree for the restitution of conjugal rights or at any time afterwards, may order that the decree shall not be executed by detention in prison.
- (2) Where the court has made an order under subrule (1) of this rule and the decree holder is the wife, it may order that, in the event of the decree not being obeyed within such period as may be fixed for this purpose, the judgment debtor shall make to the decree holder such periodical payments as may be just, and, if it thinks fit, require that the judgment debtor shall, to its satisfaction, secure to the decree holder such periodical payments.
- (3) The court may from time to time vary or modify any order made under subrule (2) of this rule for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or any part of the money so ordered to be paid, and again revive the order, either wholly or in part, as it may think just.
- (4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

**31. Decree for execution of document or endorsement of negotiable instrument**

- (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument, and the judgment debtor neglects or refuses to obey the decree, the decree holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the draft or endorsement to the court.

- (2) The court shall thereupon cause the draft to be served on the judgment debtor together with a notice requiring his or her objections, if any, to be made within such time as the court fixes for this purpose.
- (3) Where the judgment debtor objects to the draft, his or her objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft as it thinks fit.
- (4) The decree holder shall deliver to the court a copy of the draft with such alterations, if any, as the court may have directed, and the judge or such officer as may be appointed for this purpose shall execute the document so delivered.
- (5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form—

judge of the \_\_\_\_\_ court at \_\_\_\_\_,

for AB, in a suit by EF against AB (or as the case may be)”

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse it.

- (6) The court or such officer as it may appoint for this purpose shall cause the document to be registered, if its registration is required by the law for the time being in force or the decree holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

### **32. Decree for delivery of immovable property**

- (1) Where a decree is for the delivery of any immovable property, possession of the immovable property shall be delivered to the party to whom it has been adjudged, or to such person as he or she may appoint to receive delivery on his or her behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.
- (2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property.
- (3) Where possession of any building or enclosure is to be delivered, and the person in possession being bound by the decree does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of her community to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession.

### **33. Decree for delivery of immovable property when in occupancy of tenant**

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the property and not bound by the decree to relinquish the occupancy, the court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property and notifying the occupant in such manner as may be suitable of the substance of the decree in regard to the property.

### **34. Discretionary power to permit judgment debtor to show cause against detention in prison**

- (1) Notwithstanding anything in these Rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in a civil prison of a judgment debtor who is liable to be arrested in pursuance of the application, the court may, instead of issuing a warrant for his or her arrest, issue a notice calling upon him or her to appear before the court on a day to be specified in the notice and show cause why he or she should not be committed to a civil prison.

- (2) Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor.

### **35. Warrant for arrest to direct judgment debtor to be brought up**

Every warrant for the arrest of a judgment debtor shall direct the officer entrusted with its execution to bring him or her before the court with all convenient speed, unless the amount which he or she has been ordered to pay, together with the interest on that amount and the costs, if any, to which he or she is liable, is sooner paid.

### **36. Subsistence allowance**

- (1) No judgment debtor shall be arrested in execution of a decree until the decree holder pays into court such sum as may be sufficient for the subsistence of the judgment debtor from the time of his or her arrest until he or she can be brought before the court.
- (2) Where a judgment debtor is committed to a civil prison in execution of a decree, the court shall fix for his or her subsistence such monthly allowance as he or she may be entitled to according to the scales fixed under section 41 of the Act, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he or she belongs.
- (3) The monthly allowance fixed by the court shall be supplied by the party on whose application the judgment debtor has been arrested by monthly payments to the officer of the court appointed for this purpose in advance before the first day of each month.
- (4) Sums disbursed by the decree holder for the subsistence of the judgment debtor in a civil prison shall be deemed to be costs in the suit; except that the judgment debtor shall not be detained in a civil prison or arrested on account of any sum so disbursed.

### **37. Proceedings on appearance of judgment debtor in obedience to notice or after arrest**

- (1) Where a judgment debtor appears before the court in obedience to a notice issued under rule 34 of this Order, or is brought before the court after being arrested in execution of a decree for the payment of money, and it appears to the court that the judgment debtor is unable, from poverty or other sufficient cause, to pay the amount of the decree, or, if that amount is payable by instalments, the amount of any instalment, the court may, upon such terms as it thinks fit, make an order disallowing the application for his or her arrest and detention or directing his or her release, as the case may be.
- (2) Before making an order under subrule (1) of this rule, the court may take into consideration any allegation of the decree holder touching any of the following matters—
  - (a) the decree being for a sum for which the judgment debtor was bound in any fiduciary capacity to account;
  - (b) the transfer, concealment or removal by the judgment debtor of any part of his or her property after the date of the institution of the suit in which the decree was passed, or the commission by him or her after that date of any other act of bad faith in relation to his or her property, with the object or effect of obstructing or delaying the decree holder in the execution of the decree;
  - (c) any undue preference given by the judgment debtor to any of his or her other creditors;
  - (d) refusal or neglect on the part of the judgment debtor to pay the amount of the decree or some part of it when he or she has, or since the date of the decree has had, the means of paying it; or
  - (e) the likelihood of the judgment debtor absconding or leaving the jurisdiction of the court with the object or effect of obstructing or delaying the decree holder in the execution of the decree.

- (3) While any of the matters mentioned in subrule (2) of this rule are being considered, the court may, in its discretion, order the judgment debtor to be detained in a civil prison, or leave him or her in the custody of an officer of the court, or release him or her on his or her furnishing security, to the satisfaction of the court, for his or her appearance when required by the court.
- (4) A judgment debtor released under this rule may be rearrested.
- (5) Where the court does not make an order under subrule (1) of this rule, it shall cause the judgment debtor to be arrested, if he or she has not already been arrested, and, subject to the provisions of the Act, commit him or her to a civil prison.

### **38. Examination of judgment debtor as to his or her property**

Where a decree is for the payment of money, the decree holder may apply to the court for an order that—

- (a) the judgment debtor; or
- (b) in the case of a corporation, any officer of the corporation; or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment debtor, and whether the judgment debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of the judgment debtor or officer, or other person, and for the production of any books or documents.

### **39. Attachment in case of decree for rent, or mesne profits, or other matter, amount of which to be subsequently determined**

Where a decree directs an inquiry as to rent or mesne profits, or any other matter, the property of the judgment debtor may, before the amount due from him or her has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

### **40. Attachment of movable property other than agricultural produce in possession of judgment debtor**

- (1) Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his or her own custody, or in the custody of one of his or her subordinates, and shall be responsible for the due custody of the property.
- (2) Notwithstanding subrule (1) of this rule, where the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once; and further when the property seized is livestock the court may make such arrangement for the custody and maintenance of the livestock as it may deem sufficient.

### **41. Attachment of agricultural produce**

Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

- (a) where the produce is a growing crop, on the land on which the crop is growing; or
- (b) where the produce has been cut or gathered, on the barn, stock, or place in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment debtor ordinarily resides, or, with the leave of the court, on the outer door or on some other conspicuous part of the house in which he or she carries on business or personally works for gain, or in which he or she is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the court.

**42. Provisions as to agricultural produce under attachment**

- (1) Where agricultural produce is attached, the court shall make such arrangements for the custody of the produce as it may deem sufficient, and, for the purpose of enabling the court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.
- (2) Subject to such conditions as may be imposed by the court for this purpose, either in the order of attachment or in any subsequent order, the judgment debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment debtor fails to do all or any of such acts the decree holder may, with the permission of the court and subject to the like conditions, do all or any of them either by himself or herself or by any person appointed by him or her for this purpose, and the costs incurred by the decree holder shall be recoverable from the judgment debtor as if they were included in, or formed part of, the decree.
- (3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require reattachment merely because it has been severed from the soil.
- (4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment
- (5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

**43. Attachment of debt, share and other property not in possession of judgment debtor**

- (1) In the case of—
  - (a) a share in the capital of a corporation;
  - (b) other movable property not in the possession of the judgment debtor, except property deposited in, or in the custody of any court,the attachment shall be made by a written order prohibiting—
  - (c) in the case of the share, the person in whose name the share may be standing from transferring the share or receiving any dividend on the share; and
  - (d) in the case of the other movable property except as aforesaid, the person in possession of the property from giving it over to the judgment debtor.
- (2) A copy of the order shall be affixed on some conspicuous part of the courthouse, and another copy shall be sent, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the property.

**44. Attachment of shares in movables**

Where the property to be attached consists of the share or interest of the judgment debtor in movable property belonging to him or her and another as co-owners, the attachment shall be made by a notice to the judgment debtor prohibiting him or her from transferring the share or interest or charging it in any way.

**45. Attachment of salary or allowances of public officer or servant of railway company or local authority**

- (1) Where the property to be attached is the salary or allowance of a public officer, or of a servant of a railway company, or local authority, or of any person privately employed, the court may order that

the amount shall, subject to section 44 of the Act, be withheld from the salary or allowance either in one payment or by monthly installments, as the court may direct; and upon notice of the order to the person whose duty it is to disburse the salary or allowances, that person shall withhold and remit to the court the amount due under the order, or the monthly installments, as the case may be.

- (2) Where the attachable proportion of the salary or allowance is already being withheld and remitted to a court in pursuance of a previous and unsatisfied order of attachment, the person whose duty it is to disburse the salary or allowances shall immediately return the subsequent order to the court issuing it with a full statement of all the particulars of the existing attachment.
- (3) Every order made under this rule, unless it is returned in accordance with subrule (2) of this rule, shall, without further notice or other process, bind the Government, or a railway company, or local authority, or private employer, as the case may be, while the judgment debtor is within the local limits to which the Act extends, and while he or she is beyond those limits if he or she is in receipt of any salary or allowances payable out of the revenues of the Government or the funds of a railway company carrying on business in any part of Uganda, or local authority in Uganda; and the Government or the railway company or local authority or employer, as the case may be, shall be liable for any sum paid in contravention of this rule.

#### **46. Attachment of partnership property**

- (1) Except as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.
- (2) The court may, on the application of the holder of a decree against a partner, make an order charging the interest of the partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of the partner in the profits, whether already declared or accruing, and of any other money which may be coming to him or her in respect of the partnership, and direct accounts and inquiries and make an order for the sale of the interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by the partner, or as the circumstances of the case may require.
- (3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the interest.
- (4) Every application for an order under subrule (2) of this rule shall be served on the judgment debtor and on his or her partners or such of them as are within Uganda.
- (5) Every application made by any partner of the judgment debtor under subrule (3) of this rule shall be served on the decree holder and on the judgment debtor, and on such of the other partners as do not join in the application and as are within Uganda.
- (6) Service under subrule (4) or (5) of this rule shall be deemed to be service on all the partners, and all orders made on the applications shall be similarly served.

#### **47. Execution of decree against firm**

- (1) Where a decree has been passed against a firm, execution may be granted—
  - (a) against any property of the partnership;
  - (b) against any person who has appeared in his or her own name under rule 6 or 7 of Order XXX of these Rules, or who has admitted on the pleadings that he or she is, or who has been adjudged to be, a partner;

- (c) against any person who has been individually served as a partner with the summons and has failed to appear,

except that nothing in this subrule shall be deemed to limit or otherwise affect the provisions of section 11 of the Partnership Act.

- (2) Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in subrule (1)(b) or (c) of this rule as being a partner in the firm, he or she may apply to the court which passed the decree for leave, and, where the liability is not disputed, the court may grant the leave, or, where the liability is disputed, may order that the liability of that person be tried and determined in any manner in which any issue in a suit may be tried and determined.
- (3) Where the liability of any person has been tried and determined under subrule (2) of this rule, the order made on the liability shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.
- (4) Except as against any property of the partnership, a decree against a firm shall not release, render liable, or otherwise affect any partner in the firm unless he or she has been served with a summons to appear.

#### **48. Attachment of negotiable instrument**

Where the property to be attached is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to further orders of the court.

#### **49. Attachment of property in custody of court or public officer**

Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to the court or officer requesting that the property, and any interest or dividend becoming payable on the property, may be held subject to the further orders of the court from which the notice is issued; except that where the property is in the custody of a court, any question of title or priority arising between the decree holder and any other person, not being the judgment debtor, claiming to be interested in the property by virtue of any assignment or otherwise shall be determined by the court.

#### **50. Attachment of decree**

- (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made—
  - (a) if the decrees were passed by the same court, then by order of that court; and
  - (b) if the decree sought to be attached was passed by another court, then by the issue to that other court of a notice by the court which passed the decree sought to be executed, requesting that other court to stay the execution of its decree until—
    - (i) the court which passed the decree sought to be executed cancels the notice; or
    - (ii) the holder of the decree sought to be executed or his or her judgment debtor applies to the court receiving the notice to execute its own decree.
- (2) Where a court makes an order under subrule (1)(a) of this rule, or receives an application under subrule (1)(b)(ii) of this rule, it shall, on the application of the creditor who has attached the decree or his or her judgment debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.
- (3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in subrule (1) of this rule shall be deemed to be representative of the holder of the

attached decree and to be entitled to execute the attached decree in any manner lawful for the holder of that decree.

- (4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in subrule (1) of this rule, the attachment shall be made by a notice by the court which passed the decree sought to be executed to the holder of the decree sought to be attached, prohibiting him or her from transferring or charging the decree in any way; and, where the decree has been passed by any other court, also by sending to that other court a notice to abstain from executing the decree sought to be attached until the notice is cancelled by the court from which it was sent.
- (5) The holder of a decree attached under this rule shall give to the court executing the decree such information and aid as may be required.
- (6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the court making an order of attachment under this rule shall give notice of the order to the judgment debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment debtor in contravention of that order after receipt of notice of the order, either through the court or otherwise, shall be recognised by any court so long as the attachment remains in force.

### **51. Attachment of immovable property**

- (1) Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from the transfer or charge and ordering the judgment debtor to deliver up to the court the duplicate certificate of title to the property.
- (2) A copy of the order shall be served by affixing it on a conspicuous part of the property or be served on the judgment debtor and further advertised as the court may direct; except that the court may further direct that, if an order cannot be served as aforesaid, it shall be served by affixing a copy of it on some conspicuous place in the court and also on some conspicuous part of the house, if any, in which the judgment debtor is known to have last resided or carried on business or personally worked for gain or in such other manner as the court thinks fit.

### **52. Removal of attachment after satisfaction of decree**

Where—

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into court, or satisfaction of the decree is otherwise made through the court or is certified by the court; or
- (b) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and in the case of immovable property the withdrawal shall, if the judgment debtor so desires, be proclaimed at his or her expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 51 of this Order.

### **53. Order for payment of coin or currency notes to party entitled under decree**

Where the property attached is current coin or currency notes, the court may, at any time during the continuance of the attachment, direct that the coin or notes, or a part of the coin or notes sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the coin or notes or a part of the coin or notes.

**54. Determination of attachment**

- (1) Where any property has been attached in execution of a decree, but by reason of the decree holder's default the court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date.
- (2) Upon the dismissal of the application the attachment shall cease.

**55. Investigation of claims to, and objections to attachment of, attached property**

- (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that the property is not liable to the attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he or she was a party to the suit; except that no such investigation shall be made where the court considers that the claim or objection was designedly delayed.
- (2) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection.

**56. Evidence to be adduced by claimant**

The claimant or objector shall adduce evidence to show that at the date of the attachment he or she had some interest in the property attached.

**57. Release of property from attachment**

Where upon the investigation under rule 55 the court is satisfied that for the reason stated in the claim or objection the property was not, when attached, in the possession of the judgment debtor or of some person in trust for him or her, or in the occupancy of a tenant or other person paying rent to him or her, or that, being in the possession of the judgment debtor at that time, it was so in his or her possession not on his or her own account or as his or her own property, but on account of or in trust for some other person, or partly on his or her own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

**58. Disallowance of claim to property attached**

Where the court is satisfied that the property was, at the time it was attached, in the possession of the judgment debtor as his or her own property and not on account of any other person, or was in the possession of some other person in trust for him or her, or in the occupancy of a tenant or other person paying rent to him or her, the court shall disallow the claim.

**59. Continuance of attachment subject to claim of incumbrancer**

Where the court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession and thinks fit to continue the attachment, it may do so, subject to the mortgage or charge.

**60. Saving of suits to establish right to attached property**

Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he or she claims to the property in dispute, but, subject to the result of the suit, if any, the order shall be conclusive.

**61. Power to order property attached to be sold and proceeds to be paid to person entitled**

Any court executing a decree may order that any property attached by it and liable to sale, or such portion of the property as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of the sale, or a sufficient portion of the proceeds, shall be paid to the party entitled under the decree to receive them.

**62. Sales, by whom conducted and how made**

Except as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the court or by such other person as the court may appoint for this purpose, and shall be made by public auction in the prescribed manner.

**63. Notification of sales by public auction**

- (1) Where any immovable property is ordered to be sold by public auction in execution of a decree the court shall cause a copy of the order to be served in the manner set out in rule 51(2) of this Order for the service of the order of attachment and, in sales of both movable and immovable property, shall also cause public notice and advertisement of the intended sale in such manner as the court thinks fit.
- (2) The court shall draw up the public notice and advertisement and settle the terms of the public notice and advertisement without reference to the decree holder or judgment debtor, or may, in its discretion, afford either party an opportunity to attend at the settling of the terms of the public notice and advertisement.
- (3) The public notice shall contain such conditions of sale as the court may think fit, drawn under the provisions of this Order or to which the decree holder and judgment debtor may agree, and the court may provide in the notice for the sale of the property in lots and also may direct the officer or other person conducting the sale to withdraw the property or any lot, if the highest bid for it appears so clearly inadequate as to make it advisable so to do.
- (4) Every application for an order for sale under this rule shall be accompanied by a statement signed in the manner hereinbefore prescribed for the signing of pleadings and containing, so far as they are known to or can be ascertained by the person so signing, the matters required by subrule (2) of this rule to be specified in the public notice.
- (5) For the purpose of ascertaining the matters to be specified in the public notice, the court may summon any person whom it thinks necessary to summon and may examine him or her in respect to any such matters and require him or her to produce any document in his or her possession or power relating thereto.
- (6) The costs of advertising a sale shall be deemed to be costs of the sale.

**64. Time of sale**

No sale hereunder shall take place until after the expiration of at least thirty days in the case of immovable property, and, except in the case of property of the nature described in rule 40(2) of this Order, of at least fifteen days in the case of movable property, calculated from the date on which the public notice of sale has been advertised as provided in these Rules; except that in the case of movable property the judgment debtor may consent in writing to a less period.

**65. Adjournment or stoppage of sale**

- (1) The court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his or her discretion adjourn the sale, recording his or her reasons for the adjournment; except that where the sale is made in, or within the precincts of, the courthouse no such adjournment shall be made without leave of the court.

- (2) Where a sale is adjourned under subrule (1) of this rule for a longer period than seven days, fresh public notice shall be given, unless the judgment debtor consents to waive it.
- (3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his or her satisfaction that the amount of the debt and costs has been paid into the court which ordered the sale.

#### **66. Defaulting purchaser answerable for loss on resale**

Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending the resale, shall be certified to the court by the officer or other person holding the sale, and shall, at the instance of either the decree holder or the judgment debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

#### **67. Decree holder not to bid for or buy property without permission**

- (1) No holder of a decree in execution of which property is sold shall, without the express permission of the court, bid for or purchase the property.
- (2) Where a decree holder purchases with that permission, the purchase money and the amount due on the decree may, subject to section 51 of the Act, be set off against one another, and the court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.
- (3) Where a decree holder purchases, by himself or herself or through another person, without that permission, the court may, if it thinks fit, on the application of the judgment debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the resale and all expenses attending it, shall be paid by the decree holder.

#### **68. Restriction on bidding or purchase by officers**

No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire, any interest in the property sold.

#### **69. Negotiable instruments and shares in corporations**

Where the property to be sold is a negotiable instrument or a share in a corporation, the court may, instead of directing the sale to be by public auction, authorise the sale of the instrument or share through a broker.

#### **70. Sales by public auction**

- (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale, or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall immediately be resold.
- (2) On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the purchase money, and the sale shall become absolute.
- (3) Where the movable property to be sold is a share in goods belonging to the judgment debtor and a co-owner, and two or more persons, of whom one is the co-owner, respectively bid the same sum for the property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

#### **71. Irregularity not to vitiate sale, but any person injured may sue**

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of the irregularity at the hand of any other person may institute

a suit against him or her for compensation, or (if that person is the purchaser) for the recovery of the specific property and for compensation in default of the recovery.

## **72. Delivery of movable property, debts and shares**

- (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.
- (2) Where the property sold is movable property in the possession of some person other than the judgment debtor, the delivery of the property to the purchaser shall be made by giving notice to the person in possession ordering him or her to deliver possession of the property to the purchaser.
- (3) Where the property sold is a share in a corporation, the delivery of the property shall be made by a written order of the court prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest on the share, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

## **73. Transfer of negotiable instruments and shares**

- (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer the negotiable instrument or share, the judge or such officer as he or she may appoint for this purpose may execute the document, or make such endorsement as may be necessary, and the execution or endorsement shall have the same effect as an execution or endorsement by the party.
- (2) The execution or endorsement may be in the following form, namely—

AB by CD, judge of the court of \_\_\_\_\_, in a suit by EF against AB”.
- (3) Until the transfer of the negotiable instrument or share, the court may, by order, appoint some person to receive any interest or dividend due on the negotiable instrument or share and to sign a receipt for it; and any receipt so signed shall be valid and effectual for all purposes. Any interest or dividend so received shall be paid into court.

## **74. Vesting order in case of other property**

In the case of any movable property not hereinbefore provided for, the court may make an order vesting the property in the purchaser, or as he or she may direct; and the property shall vest accordingly.

## **75. Sale of immovable property**

Sales of immovable property in execution of decrees may be ordered by any court.

## **76. Postponement of sale to enable judgment debtor to raise amount of decree**

- (1) Where an order for the sale of immovable property has been made, if the judgment debtor can satisfy the court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of the property or some part of it, or of any other immovable property of the judgment debtor, the court may, on his or her application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper to enable him or her to raise the amount.

- (2) In such case the court shall grant a certificate to the judgment debtor authorising him or her within a period to be mentioned in the certificate and notwithstanding anything contained in section 47 of the Act to make the proposed mortgage, lease or sale; except that—
  - (a) all monies payable under the mortgage, lease or sale shall be paid, not to the judgment debtor, but except insofar as a decree holder is entitled to set off the money under rule 67 of this Order, into court; and
  - (b) no mortgage, lease, or sale under this rule shall become absolute until it has been confirmed by the court.
- (3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, the property.

#### **77. Deposit by purchaser and resale on default**

- (1) On every sale of immovable property, the person declared to be the purchaser shall pay immediately after the declaration a deposit of 25 percent on the amount of his or her purchase money to the officer or other person conducting the sale, and, in default of the deposit, the property shall immediately be resold.
- (2) Where the decree holder is the purchaser, and is entitled to set off the purchase money under rule 67 of this Order, the court may dispense with the requirements of this rule.

#### **78. Time for payment in full of purchase money**

- (1) The balance, if any, of the purchase money payable under rule 77 of this Order, shall be paid by the purchaser to the officer or other person conducting the sale, or to the court within fifteen days of the date of the sale of the property; except that in calculating the amount to be so paid, the purchaser shall have the advantage of any setoff to which he or she may be entitled under rule 67(2) of this Order.
- (2) On receipt of the balance, if any, of the purchase money or, if the decree holder is the purchaser, on the receipt of any sum not set off under rule 67(2) of this Order, the officer or other person conducting the sale shall—
  - (a) immediately execute any instrument of transfer required by any law for the time being in force;
  - (b) immediately inform the court of the completion of the sale; and
  - (c) subject to the provisions of any law for the time being in force, pay immediately to the court any money received after deducting the costs of the sale.

#### **79. Procedure in default of payment**

In default of payment within the period mentioned in rule 78 of this Order, the deposit may, if the court thinks fit, after defraying the expenses of the sale, be forfeited and shall be allocated to the satisfaction of the decree, and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

#### **80. Notification on resale**

Every resale of immovable property in default of payment of the purchase money within the period allowed for the payment shall be made after the issue of a fresh public notification in the manner and for the period hereinbefore prescribed for the sale.

**81. Bid of co-sharer to have preference**

Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for the property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

**82. Delivery of property in occupancy of judgment debtor**

Where the immovable property sold is in the occupancy of the judgment debtor, or of some person on his or her behalf, or of some person claiming under a title created by the judgment debtor subsequently to the attachment of the property, the court shall, on the application of the purchaser, order delivery to be made by putting the purchaser, or any person whom he or she may appoint to receive delivery on his or her behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the property.

**83. Delivery of property in occupancy of tenant**

Where the property sold is in the occupancy of a tenant or other person entitled to occupy it, the court shall, on the application of the purchaser, order delivery to be made by notifying the occupant in such manner as the court may direct that the interest of the judgment debtor has been transferred to the purchaser.

**84. Resistance or obstruction to possession of immovable property**

- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he or she may make an application to the court complaining of the resistance or obstruction.
- (2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer it.

**85. Detention of judgment debtor for resistance or obstruction to possession of immovable property**

Where the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor, or by some other person at his or her instigation, it shall direct that the applicant be put into possession of the property, and, where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment debtor, or any person acting at his or her instigation, to be detained in a civil prison for a term which may extend to thirty days.

**86. Resistance or obstruction by *bona fide* claimant**

Where the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment debtor) claiming in good faith to be in possession of the property on his or her own account or on account of some person other than the judgment debtor, the court shall make such order as it may deem to be just.

**87. Rules not applicable to transferee *lite pendente***

Nothing in rule 86 of this Order shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

## 88. Order conclusive subject to regular suit

Any party not being a judgment debtor against whom an order is made under rule 85 or 86 of this Order may institute a suit to establish the right which he or she claims to the present possession of the property; but, subject to the result of the suit, if any, the order shall be conclusive.

## 89. Procedure under this Order

- (1) Applications under rules 2(2), 4, 12, 13, 23(1), 26, 38, 46(2), 67(1) and (3), 82, 83 and 84(1) of this Order shall be by summons in chambers.
- (2) Applications under rule 46(2) of this Order shall be in accordance with the provisions of section 26 of the Partnership Act.

## Order XXIII – Attachment of debts

### 1. Order for the attachment of debts

- (1) A court may, upon the *ex parte* application of a decree holder, and either before or after an oral examination of the judgment debtor, and upon affidavit by the decree holder or his or her advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment debtor and is within the jurisdiction, order that all debts owing or accruing from the third person (hereafter called “the garnishee”) to the judgment debtor shall be attached to answer the decree together with the costs of the garnishee proceedings.
- (2) By the same or any subsequent order, the court may order that the garnishee shall appear before the court to show cause why he or she should not pay to the decree holder the debt due from him or her to the judgment debtor or so much of the debt as may be sufficient to satisfy the decree together with the costs aforesaid.
- (3) At least seven days before the day of hearing the order *nisi* shall be served on the garnishee, and, unless otherwise ordered, on the judgment debtor.
- (4) Service on the judgment debtor may be made either at the address for service if the judgment debtor has appeared in the suit and given an address for service, or on his or her advocate if he or she has appeared by advocate, or if there has been no appearance then by leaving the order at his or her usual residence or place of business or in such other manner as the court may direct.
- (5) The order *nisi* shall be in Form 16 of Appendix D to these Rules.

### 2. Effect of garnishee order

Service of an order that debts due to a judgment debtor liable under a decree shall be attached, or notice of the order to the garnishee in such manner as the court may direct, shall bind such debts in his or her hands.

### 3. Execution against garnishee

If the garnishee does not dispute the debt due or claimed to be due from him or her to the judgment debtor, or, if he or she does not appear upon the day of hearing named in an order *nisi*, then the court may order execution against the person and goods of the garnishee to levy the amount due from him or her, or so much of the amount due as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings.

#### **4. Trial of liability of garnishee**

If the garnishee disputes his or her liability, the court, instead of making an order that execution be levied, may order that any issue or question necessary for determining his or her indebtedness be tried and determined in the manner in which an issue or question in a suit is tried or determined.

#### **5. Claim of third person**

Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the court may order such third person to appear, and state the nature and particulars of his or her claim upon the debt.

#### **6. Trial of claim of third persons**

After hearing the allegations of any third person under such order as is mentioned in rule 5 of this Order, or of any other person who by the same or any subsequent order the court may order to appear, or in case of such third person not appearing when ordered, the court may order execution for levying the amount due from the garnishee, together with the costs of the garnishee proceedings, or order any issue or question to be tried or determined according to rules 1 to 5 of this Order and may bar the claim of such third person or make such other order as the court shall think fit.

#### **7. Payment by or execution on the garnishee is a valid discharge**

Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him or her as against the judgment debtor to the amount paid or levied, although such proceeding or order may be set aside or the decree reversed.

#### **8. Record of proceedings**

Proceedings under this Order shall be filed upon the record of the suit in which the decree sought to be enforced was obtained.

#### **9. Costs of proceedings**

The costs of any application for an attachment of debts and of any proceedings arising from or incidental to the application shall be in the discretion of the court, and the costs of the decree holder shall, unless otherwise directed, be retained out of the money recovered by him or her under the garnishee order, and in priority to the amount due under the decree.

#### **10. Procedure under this Order**

Applications under rule 1 of this Order shall be by summons in chambers.

### **Order XXIV – Death, insolvency and marriage of parties**

#### **1. No abatement by party's death if right survives**

The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.

#### **2. Procedure where one of several plaintiffs or defendants dies and right to sue survives**

Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant

or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

### **3. Procedure in case of death of one of several plaintiffs or of sole plaintiff**

- (1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made for that purpose, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
- (2) Where within the time limited by law no application is made under subrule (1) of this rule, the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him or her the costs which he or she may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff.

### **4. Procedure in case of death of one of several defendants or of sole defendant**

- (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made for that purpose, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.
- (2) Any person so made a party may make any defence appropriate to his or her character as legal representative of the deceased defendant.
- (3) Where within the time limited by law no application is made under subrule (1) of this rule, the suit shall abate as against the deceased defendant.

### **5. Determination of question as to legal representative**

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff, or a deceased defendant, the question shall be determined by the court.

### **6. Suit not abated by marriage of female party**

- (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.
- (2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject matter of the decree.

### **7. When plaintiff's insolvency bars suit**

- (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his or her creditors shall not cause the suit to abate, unless the assignee or receiver declines to continue the suit or (unless for any special reason the court otherwise directs) to give security for the costs of the suit within such time as the court may direct.
- (2) Where the assignee or receiver neglects or refuses to continue the suit, and to give the security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the court may make an order dismissing the suit and awarding to the defendant the costs which he or she has incurred in defending the suit to be proved as a debt against the plaintiff's estate.

## **8. Effect of abatement or dismissal**

- (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.
- (2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he or she was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside the dismissal upon such terms as to costs or otherwise as it thinks fit.

## **9. Procedure in case of assignment before final order in suit**

- (1) In other cases of an assignment, creation, or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom the interest has come or devolved.
- (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured the attachment to the benefit of subrule (1) of this rule.

## **10. Application of Order to appeals**

In the application of this Order to appeals, so far as may be, “plaintiff” includes an appellant, “defendant” a respondent, and “suit” an appeal.

## **11. Application of Order to proceedings**

Nothing in rules 3, 4 and 8 of this Order shall apply to proceedings in execution of a decree or order.

## **12. Procedure under this Order**

Any application to the court under rules 3, 4, 5, 6, 7, 8 and 9 of this Order shall be by motion and any application under rule 2 of this Order shall be by chamber summons.

# **Order XXV – Withdrawal and adjustment of suits**

## **1. Withdrawal of suit by plaintiff or defendant**

- (1) The plaintiff may at any time before the delivery of the defendant’s defence, or after the receipt of that defence before taking any other proceeding in the suit (except any application in chambers) by notice in writing wholly discontinue his or her suit against all or any of the defendants or withdraw any part or parts of his or her alleged cause of complaint, and thereupon he or she shall pay the defendant’s costs of the suit, or if the suit is not wholly discontinued the costs occasioned by the matter so withdrawn. Upon the filing of the notice of discontinuance the costs shall be taxed, but the discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.
- (2) Except as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw or discontinue a suit without leave of the court, but the court may, before or at, or after hearing upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the action to be discontinued or any part of the alleged cause of complaint to be struck out.
- (3) The court may, in like manner, and with the like discretion as to terms, upon the application of a defendant order the whole or any part of his or her alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent for a defendant to withdraw his or her defence or any part of it without such leave.

## **2. Withdrawal by consent**

When a suit has been set down for hearing it may be withdrawn prior to the hearing by either the plaintiff or the defendant upon filing a consent signed by all the parties.

## **3. Decree may be issued for costs**

Any defendant may enter judgment for the costs of the suit if it is wholly discontinued against him or her or for the costs occasioned by the matter withdrawn, if the action is not wholly discontinued.

## **4. Stay of subsequent suit**

If any subsequent suit is brought before payment of the costs of a discontinued suit upon the same, or substantially the same, cause of action, the court may order a stay of the subsequent suit until the costs have been paid.

## **5. Limitation in subsequent suit**

In any fresh suit instituted subject to terms imposed by the court under rule 1 of this Order, the plaintiff shall be bound by the law of limitation in the same manner as if the former suit had not been instituted.

## **6. Compromise of a suit**

Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court may, on the application of a party, order the agreement, compromise, or satisfaction to be recorded, and pass a decree in accordance with the agreement, compromise or satisfaction so far as it relates to the suit.

## **7. Procedure under this Order**

Applications under rule 1 of this Order shall be by summons in chambers.

### **Order XXVI – Security for costs**

#### **1. Security for the costs of a defendant**

The court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any defendant.

#### **2. Effect of failure to furnish security**

- (1) If the security is not furnished within the time fixed, the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw from the suit.
- (2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the court that he or she was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

#### **3. Procedure under this Order**

Applications under rule 1 of this Order shall be by summons in chambers.

## Order XXVII – Payment into court and tender

### 1. Defendant may pay money into court in satisfaction or denying liability

Where any suit is brought to recover a debt or damages, any defendant may before or at the time of filing his or her defence, or at any later time by leave of the court, pay into court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he or she may with a defence denying liability (except in suits or counterclaims for libel or slander) pay money into court which shall be subject to the provisions of rule 6 of this Order; except that in a suit on a bond, payment into court shall be admissible in respect of particular breaches only, and not of the whole suit.

### 2. Defence to state payment in

Payment into court shall be signified in the defence, and the claim or cause of action in satisfaction of which the payment is made shall be specified in the defence.

### 3. Defence of tender before suit

With a defence setting up a tender before suit the sum of money alleged to have been tendered must be brought into court.

### 4. Payment in before defence

If the defendant pays money into court before filing his or her defence, he or she shall serve upon the plaintiff a notice specifying the fact of the payment into court and the claim or cause of action in respect of which the payment has been made. The notice shall aver that the sum of money paid into court is sufficient to satisfy the specified claim or cause of action.

### 5. Payment out to plaintiff in certain cases

In the following cases of payment into court under this Order, namely—

- (a) when payment into court is made before filing a defence;
- (b) when the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into court is made is not denied in the defence;
- (c) when payment into court is made with a defence setting up a tender of the sum paid,

the money paid into court shall be paid out to the plaintiff on his or her request or to his or her advocate on the plaintiff's written authority, unless the court shall otherwise order.

### 6. Where defence denies liability

- (1) When the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into court has been made is denied in the defence, the following rules shall apply—
  - (a) the plaintiff may within the time limited in rule 7 of this Order accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, in which case he or she shall be entitled to have the money paid out to him or her as hereafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings in respect of the claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in court subject to the provisions hereafter mentioned;
  - (b) if the plaintiff accepts the money so paid in, he or she shall after service of the notice as is described in rule 7 of this Order, or after delivery of a reply accepting the money, be entitled

to have the money paid out to himself or herself on request or to his or her advocate on the plaintiff's written authority, unless the court shall otherwise order; and

- (c) if the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, but proceeds with the suit in respect of the claim or cause of action, or any part of it, the money shall remain in court and be subject to the order of the court, and shall not be paid out of court except in pursuance of an order. The order may be made at any time before or at or after the trial of the suit.
- (2) If the plaintiff proceeds with the suit in respect of the claim or cause of action, or any part of it, and recovers less than the amount paid into court, the amount paid in shall, subject to the setoff of costs hereafter provided for, be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and of any costs awarded to the plaintiff, and the balance, if any, shall under such order be repaid or credited to the defendant. If the defendant succeeds in respect of the claim or cause of action, the whole amount shall, under the order, be repaid or credited to him or her.
- (3) The order for payment out of the money so in court shall not, except on special grounds, be made until after the taxation of the costs of the suit, and the money shall then be paid out to the party or parties entitled after setting off damages and the costs allowed to either party and after proper credits have been given for all sums recovered by or ordered to be paid to either of the parties in the suit or counterclaim, if any.
- (4) A plaintiff who does not accept money paid into court with a denial of liability, but proceeds to trial and does not recover more than the sum paid into court, shall not be allowed his or her costs of the issues as to liability unless the court is satisfied that there were reasonable grounds for not accepting the sum paid in.

## **7. Plaintiff accepting in satisfaction**

The plaintiff, when payment into court is made before the defence is filed, may, within seven days after the receipt of notice of the payment, or, when the payment is first signified in a defence, before reply, or where no reply is ordered, within ten days from filing of defence or the last of the defences, accept in satisfaction of the claim or cause of action in respect of which the payment has been made the sum so paid in, in which case he or she shall give notice to the defendant that he or she accepts the sum paid into court in satisfaction of the claim in respect of which it was paid in, and shall be at liberty in case the entire claim or cause of action is thereby satisfied to tax his or her costs after the expiration of seven days from the service of the notice, unless the court shall otherwise order, and in case of nonpayment of the costs within forty-eight hours after the taxation, to issue a decree for his or her costs so taxed.

## **8. Payment in by one of several defendants**

- (1) When in a suit against two or more defendants money is paid into court by one or some but not all of them in respect of a cause of action for which the defendants are sued jointly and the plaintiff accepts the sum so paid in he or she shall, in addition to giving the notice described in rule 7 of this Order, give notice to the other defendants of his or her having accepted the money so paid in, and thereupon all further proceedings in respect of the joint cause of action, except as to costs, shall be stayed, and the court may upon application by any party make such order as may appear just as to the costs of the plaintiff and of the defendants (other than the defendant or defendants who has or have made the payment into court) incurred in respect of the cause of action satisfied by the payment.
- (2) If the plaintiff does not accept the money so paid in by one or two or more defendants in respect of a joint cause of action, but proceeds to trial and recovers less than the amount paid into court, the court may make such order as may appear just in respect of the costs of the joint cause of action as between the plaintiff and the defendants other than the defendant or defendants who has or have made the payment.

## 9. Counterclaim

A plaintiff or any person made defendant to a counterclaim may, in answer to a counterclaim, pay money into court in satisfaction of the counterclaim, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant.

## 10. Money paid in under order

Money paid into court under an order of the court shall not be paid out except in pursuance of an order of the court; except that where before the filing of the defence money has been paid into court by the defendant pursuant to an order under Order XXXVI of these Rules, he or she may (unless the court shall order otherwise) by his or her pleading appropriate the whole or any part of the money, and any additional payment if necessary to the whole or any specified portion of the plaintiff's claim, or if he or she pleads a tender, may appropriate the whole or any part of the money in court as payment into court of the money alleged to have been tendered; and the money so appropriated shall thereupon be deemed to be money paid into court pursuant to the preceding rules of this Order relating to money paid into court with a plea of tender, as the case may be, and shall be subject in all respects to those rules.

## 11. Monies recovered by infant or person of unsound mind

- (1) In any cause or matter in the High Court in which money or damages is or are claimed by or on behalf of an infant or a person, subject to the provisions of section 116 of the Lunacy Act, 1890, of the United Kingdom as to administration and management, not being a lunatic so found by inquisition suing either alone or in conjunction with other parties, no settlement or compromise or acceptance of money paid into court, whether before or at or after the hearing, shall, as regards the claims of any such infant or person of unsound mind, be valid without the sanction of the court, and no money or damages recovered or awarded in any such cause or matter in respect of the claims of any such infant or person of unsound mind, whether by judgment or by settlement, compromise, payment into court or otherwise, before or at or after the hearing shall be paid to the next friend of the plaintiff or to the plaintiffs advocate, unless the court shall so direct.
- (2) All money or damages so recovered or awarded shall, unless the court shall otherwise direct, be paid to the Administrator General, and shall, subject to any general or special directions of the court, be held and applied by him or her in such manner as he or she shall think fit for the maintenance and education or otherwise for the benefit of the infant or person of unsound mind; except that the Administrator General may pay out of the decretal amount such costs as the plaintiff may have incurred in the institution and conduct of the cause or matter in which the decree shall have been issued.

## 12. Procedure under this Order

Applications under rules 6(1)(c) and (2), 10 and 11 of this Order shall be by summons in chambers.

## Order XXVIII – Commissions

### 1. Cases in which court may issue commission to examine witnesses

Any court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the limits of its jurisdiction who is exempted under the Act from attending the court or who is from sickness or infirmity unable to attend it.

### 2. Order for commission

An order for the issue of a commission for the examination of a witness may be made by the court on application supported by affidavit.

### 3. Where witness resides within court's jurisdiction

A commission for the examination of a person who resides within the local limits of the jurisdiction of the court issuing it may be issued to any person whom the court thinks fit.

### 4. Persons for whose examination commission may issue

- (1) Any court may in any suit issue a commission for the examination of—
  - (a) any person resident beyond the local limits of its jurisdiction;
  - (b) any person who is about to leave those limits before the date on which he or she is required to be examined in court; and
  - (c) any civil or military officer of the Government who cannot in the opinion of the court attend without detriment to the public service.
- (2) The commission may be issued to any court, other than the High Court, within the local limits of the jurisdiction of which the person resides, or to any advocate or other person whom the court issuing the commission may appoint.

### 5. Request to examine witness abroad

Where any court to which application is made for the issue of a commission for the examination of a person residing at any place not within Uganda is satisfied that the evidence of that person is necessary, the court may issue the commission or a letter of request.

### 6. Court to examine witness pursuant to commission

Every court in Uganda receiving a commission for the examination of any person shall examine him or her or cause him or her to be examined pursuant to the commission.

### 7. Return of commission with deposition of witness

Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of the order; and the commission and the return thereto and the evidence taken under it shall, subject to rule 8 of this Order, form part of the record of the suit.

### 8. When deposition may be read in evidence

Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the evidence is offered, unless—

- (a) the person who gave the evidence is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in court, or is a civil or military officer of the Government who cannot, in the opinion of the court, attend without detriment to the public service; or
- (b) the court in its discretion dispenses with the proof of any of the circumstances mentioned in paragraph (a) of this rule and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking the evidence by commission has ceased at the time of reading the evidence.

## **9. Commissions to make local investigations**

In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him or her to make such investigation and to report on it to the court.

## **10. Procedure of commissioner; report and depositions to be evidence**

- (1) The commissioner, after such local investigation as he or she deems necessary and after reducing to writing the evidence taken by him or her, shall return the evidence, together with his or her report in writing signed by him or her, to the court.
- (2) The report of the commissioner and the evidence taken by him or her (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the court, or, with the permission of the court, any of the parties to the suit, may examine the commissioner personally in open court touching any of the matters referred to him or her or mentioned in his or her report, or as to his or her report, or as to the manner in which he or she has made the investigation.
- (3) Where the court is for any reason dissatisfied with the proceedings of the commissioner, it may direct such further inquiry to be made as it shall think fit.

## **11. Referee to examine accounts**

In any suit in which an examination of accounts is necessary, the court may refer the accounts to such person as it thinks fit, directing him or her to make the examination.

## **12. Court to give referee necessary instructions; proceedings and report to be evidence**

- (1) The court shall furnish a referee appointed under rule 11 of this Order with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the referee is merely to transmit the proceedings which he or she may hold on the inquiry, or also to report his or her own opinion on the point referred for his or her examination.
- (2) The proceedings and report, if any, of the referee shall be evidence in the suit, but where the court has reason to be dissatisfied with them it may direct such further inquiry as it shall think fit.

## **13. Partition of immovable property**

Where a preliminary decree for partition has been passed, the court may appoint such person as it thinks fit to make the partition or separation according to the rights as declared in the decree.

## **14. Procedure upon partition**

- (1) The person appointed shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which he or she was appointed, and shall allot the shares to the parties, and may, if authorised to do so by the order, award sums to be paid for the purpose of equalising the value of the shares.
- (2) The person appointed shall then prepare and sign a report, or, where more than one person was appointed and they cannot agree, they shall prepare and sign separate reports, appointing the share of each party and distinguishing each share (if so, directed by the order) by measurements and boundaries. The report or reports shall be annexed to the appointments and transmitted to the court; and the court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary, or set aside the report or reports.

- (3) Where the court confirms or varies the report or reports it shall pass a decree in accordance with the report or reports as confirmed or varied; but where the court sets aside the report or reports it shall make such order as it shall think fit.

#### **15. Expenses of commission to be paid into court**

Before issuing any commission, reference or appointment under this Order, the court may order such sum, if any, as it thinks reasonable for the expenses of the commission, reference or inquiry, to be paid within a time to be fixed into court by the party at whose instance or for whose benefit the commission, reference or appointment is issued.

#### **16. Powers of commissioner**

Any person appointed under this Order may, unless otherwise directed by the order of appointment—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the person appointed thinks proper to call upon to give evidence in the matter referred to him or her;
- (b) call for and examine documents and other things relevant to the subject of the inquiry; or
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

#### **17. Attendance and examination of witnesses before commissioner**

- (1) The provisions of the Act and these Rules relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order, and for the purposes of this rule any person appointed under this Order shall be deemed to be a judge.
- (2) A commissioner appointed under the Act may apply to the court which has appointed him or her for the issue of any process which he or she may find necessary to issue to or against any witness who resides within the local limits of the jurisdiction of the court, and the court may in its discretion issue such process as it considers reasonable and proper.

#### **18. Parties to appear before commissioner**

- (1) Where a commission is issued under the preceding rules of this Order, the court shall direct that the parties to the suit shall appear before the commissioner in person or by their agents or advocates.
- (2) Where all or any of the parties do not so appear, the person executing the commission may proceed in their absence.

#### **19. Commissions issued by foreign courts**

The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by—

- (a) courts situated in any part of the Commonwealth other than Uganda; and
- (b) courts of any foreign country for the time being in alliance with the Republic of Uganda.

#### **20. Procedure under this Order**

Applications under rule 2 of this Order shall be by summons in chambers.

## **Order XXIX – Suits by or against corporations**

### **1. Subscription and verification of pleading**

In a suit by or against a corporation any pleading may be signed on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

### **2. Service on corporation**

Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

- (a) on the secretary, or on any director or other principal officer of the corporation; or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office, then at the place where the corporation carries on business.

## **Order XXX – Suits by or against firms and persons carrying on business in names other than their own**

### **1. Suing of partners in name of firm**

Any two or more persons claiming or being liable as partners and carrying on business in Uganda may sue or be sued in the name of the firm, if any, of which those persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in the firm, to be furnished and verified in such manner as the court may direct.

### **2. Disclosure of partners' names**

- (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their advocate shall, on demand in writing by or on behalf of any defendant, immediately declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.
- (2) Where the plaintiffs or their advocate fail to comply with any demand made under subrule (1) of this rule, all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the court may direct.
- (3) Where the names of the partners are declared in the manner referred to in subrule (1) of this rule, the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint; except that all the proceedings shall nevertheless continue in the name of the firm.

### **3. Service**

- (1) Where persons are sued as partners in the name of their firm, the summons shall be served—
  - (a) upon any one or more of the partners;
  - (b) at the principal place at which the partnership business is carried on within Uganda upon any person having, at the time of service, the control or management of the partnership business there; or
  - (c) as the court may direct.

- (2) The service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without Uganda; except that in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person in Uganda whom it is sought to make liable.

#### **4. Right of suit on death of partner**

- (1) Notwithstanding any law to the contrary, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions of this Order, and any of those persons dies, whether before the institution or during the pendency of the suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.
- (2) Nothing in subrule (1) of this rule shall limit or otherwise affect any right which the legal representative of the deceased may have—
  - (a) to apply to be made a party to the suit; or
  - (b) to enforce any claim against the survivor or survivors.

#### **5. Notice in what capacity served**

Where a summons is issued to a firm, and is served in the manner provided by rule 3 of this Order, every person upon whom it is served shall be informed by notice in writing given at the time of the service, whether he or she is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of the notice, the person served shall be deemed to be served as a partner.

#### **6. Appearance of partners**

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

#### **7. No appearance except by partners**

Where a summons is served in the manner provided by rule 3 of this Order upon a person having the control or management of the partnership business, no appearance by him or her shall be necessary unless he or she is a partner of the firm sued.

#### **8. Appearance in action against firm**

- (1) Any person served as a partner under rule 3 of this Order but who denies that he or she was a partner or liable as such at any material time may enter an appearance stating in it that he or she does so as “a person served as a partner in the defendant firm, but who denies that he or she was a partner at any material time”. The appearance as long as it stands shall be treated as an appearance for the firm.
- (2) If an appearance is so entered—
  - (a) the plaintiff may apply to set it aside on the ground that the person entering it was a partner or liable as such, or may leave that question to be determined at a later stage of the proceedings; or
  - (b) the person entering the appearance may apply to set aside the service on him or her on the ground that he or she was not a partner or liable as such; or he or she may at the proper time deliver a defence denying either or both—
    - (i) his or her liability as a partner;
    - (ii) the liability of the defendant firm in respect of the plaintiff’s claim.

- (3) An order may on the application of either party at any time be made that the questions as to the liability of the person served and the liability of the defendant firm may be tried in such manner and at such time or times as the court may think fit.

#### **9. Suits between co-partners**

This Order shall apply to suits between a firm and one or more of the partners in the firm, and to suits between firms having one or more partners in common; but no execution shall be issued in the suits except by leave of the court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and such directions given as may be just.

#### **10. Suits against person carrying on business in name other than his or her own**

Any person carrying on business in a name or style other than his or her own name may be sued in that name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

#### **11. Practice under this Order**

Applications under this Order shall be made by summons in chambers, except in the case of applications under rule 4(2) of this Order which shall be made by motion on notice.

#### **12. Business Names Registration Act not to be affected**

Nothing in this Order shall affect the provisions of the Business Names Registration Act or of any amendments of that Act.

### **Order XXXI – Suits by or against trustees, executors and administrators**

#### **1. Representation of beneficiaries in suits concerning property vested in trustees**

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in the property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit but the court may, if it thinks fit, order them or any of them to be made parties.

#### **2. Joinder of trustees, executors and administrators**

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them; except the executors who have not proved their testator's will, and trustees, executors and administrators outside Uganda, need not be made parties.

#### **3. Husband of married executrix not to join**

Unless the court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

#### **4. Procedure under this Order**

Applications under this Order shall be by summons in chambers.

## **Order XXXII – Suits by or against minors and persons of unsound mind**

### **1. Minor to sue by next friend**

- (1) Every suit by a minor shall be instituted in his or her name by a person who in the suit shall be called the next friend of the minor.
- (2) Before the name of any person shall be used in any action as next friend of any infant where the suit is instituted by an advocate, that person shall sign a written authority to the advocate for that purpose, and the authority shall be presented together with the plaint and shall be filed on the record.

### **2. Where suit is instituted without next friend, plaint to be taken off file**

- (1) Where a suit is instituted by or on behalf of a minor without a next friend the defendant may apply to have the plaint taken off the file, with costs to be paid by the advocate or other person by whom it was presented.
- (2) Notice of the application shall be given to the person, and the court, after hearing his or her objections, if any, may make such order in the matter as it thinks fit.

### **3. Guardian for the suit to be appointed by court for minor defendant**

- (1) Where the defendant is a minor, the court, on being satisfied of the fact of his or her minority, shall appoint a proper person to be guardian *ad litem* of the minor.
- (2) An order for the appointment of a guardian *ad litem* may be obtained upon application in the name and on behalf of the minor or by the plaintiff.
- (3) The application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he or she is a fit person to be so appointed.
- (4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent for that purpose, or, where there is no such guardian, upon notice to the father or other natural guardian, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objections which may be urged on behalf of any person served with notice under this subrule.

### **4. Who may act as next friend or be appointed guardian for the suit**

- (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his or her guardian *ad litem*, provided that the interest of the person is not adverse to that of the minor, and that he or she is not, in the case of a next friend, a defendant, or, in the case of a guardian *ad litem*, a plaintiff.
- (2) Where a minor has a guardian appointed or declared by a competent authority, no person other than the guardian shall act as the next friend of the minor or be appointed his or her guardian *ad litem*, unless the court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act, or be appointed, as the case may be.
- (3) No person shall without his or her consent be appointed a guardian *ad litem*.
- (4) Where there is no other person fit and willing to act as guardian *ad litem*, the court may appoint any of its officers to be the guardian, and may direct that the costs to be incurred by the officer in the performance of his or her duties as the guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in court in which the minor is interested, and may

give directions for the payment or allowance of such costs as justice and the circumstances of the case may require.

#### **5. Representations of minor by next friend or guardian for the suit**

- (1) Every application to the court on behalf of a minor, other than an application under rule 10(2) of this Order, shall be made by his or her next friend or by his or her guardian *ad litem*.
- (2) Every order made in a suit or on any application before the court in or by which a minor is in any way concerned or affected, without the minor being represented by a next friend or guardian *ad litem*, as the case may be, may be discharged, and, where the advocate of the party at whose instance the order was obtained knew, or might reasonably have known, the fact of the minority, with costs to be paid by the advocate.

#### **6. Receipt by next friend or guardian for the suit of property under decree for minor**

- (1) A next friend or guardian *ad litem* shall not, without the leave of the court, receive any money or other movable property on behalf of a minor, either—
  - (a) by way of compromise before a decree or order; or
  - (b) under a decree or order in favour of the minor.
- (2) Where the next friend or guardian *ad litem* has not been appointed or declared by a competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the court to receive the money or other movable property, the court shall, if it grants him or her leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

#### **7. Agreement or compromise by next friend or guardian for the suit**

- (1) No next friend or guardian *ad litem* shall, without the leave of the court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he or she acts as next friend or guardian.
- (2) Any such agreement or compromise entered into without the leave of the court so recorded shall be voidable against all parties other than the minor.

#### **8. Retirement of next friend**

- (1) Unless otherwise ordered by the court, a next friend shall not retire without first procuring a fit person to be put in his or her place and giving security for the costs already incurred.
- (2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he or she has no interest adverse to that of the minor.

#### **9. Removal of next friend**

- (1) Where the interest of the next friend of a minor is adverse to that of the minor, or where he or she is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him or her, or where he or she does not do his or her duty, or during the pendency of the suit ceases to reside in Uganda, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his or her removal; and the court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to the costs as it thinks fit.
- (2) Where the next friend is not a guardian appointed or declared by an authority competent for this purpose, and an application is made by a guardian so appointed or declared who desires to be

himself or herself appointed in the place of the next friend, the court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his or her place upon such terms as to the costs already in the suit as it thinks fit.

#### **10. Stay of proceedings on removal, etc. of next friend**

- (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his or her place.
- (2) Where the advocate of the minor omits, within a reasonable time, to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the court for the appointment of one, and the court may appoint such person as it thinks fit.

#### **11. Retirement, removal or death of guardian for the suit**

- (1) Where the guardian *ad litem* desires to retire or does not do his or her duty, or where other sufficient ground is made to appear, the court may permit the guardian to retire or may remove him or her and may make such order as to costs as it thinks fit.
- (2) Where the guardian *ad litem* retires, dies or is removed by the court during the pendency of the suit, the court shall appoint a new guardian in his or her place.

#### **12. Course to be followed by minor plaintiff or applicant on attaining majority**

- (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he or she will proceed with the suit or application.
- (2) Where he or she elects to proceed with the suit or application he or she shall apply for an order discharging the next friend and for leave to proceed in his or her own name.
- (3) The title of the suit or application shall in that case be corrected so as to read thenceforth thus—

AB, late a minor, by CD, his or her next friend, but now having attained majority.”
- (4) Where he or she elects to abandon the suit or application he or she shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party, or which may have been paid by his or her next friend.
- (5) Any application under this rule may be made *ex parte* by summons in chambers; but no order discharging a next friend and permitting a minor plaintiff to proceed in his or her own name shall be made without notice to the next friend.

#### **13. Where minor co-plaintiff attaining majority desires to repudiate suit**

- (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he or she shall apply to have his or her name struck out as co-plaintiff; and the court, if it finds that he or she is not a necessary party, shall dismiss him or her from the suit on such terms as to costs or otherwise as it thinks fit.
- (2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.
- (3) The costs of all parties to the application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the court directs.
- (4) Where the applicant is a necessary party to the suit, the court may direct him or her to be made a defendant.

#### 14. Unreasonable or improper suit

- (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his or her name by a next friend be dismissed on the ground that it was unreasonable or improper.
- (2) Notice of the application shall be served on all the parties concerned; and the court, upon being satisfied of the unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

#### 15. Application of rules to persons of unsound mind

The provisions contained in rules 1 to 14 of this Order, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interest when suing or being sued.

#### 16. Practice under this Order

Except as otherwise provided, any application under this Order shall be made by motion on notice.

### Order XXXIII – Suits by paupers

#### 1. Suits may be instituted *in forma pauperis*

- (1) Subject to the following provisions of this Order, any suit may be instituted by a pauper.
- (2) For the purposes of this Order a person is a “pauper” when he or she is not possessed of sufficient means to enable him or her to pay the fee prescribed by law for the plaint in the suit.

#### 2. Contents of application

Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits, together with a statement that the pauper is unable to pay the fee prescribed in the suit, and the whole shall be signed in the manner prescribed for the signing of pleadings.

#### 3. Presentation of application

Notwithstanding anything in these Rules, the application shall be presented to the court by the applicant in person unless the applicant is exempted from appearance in court by section 84 of the Act, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him or her might have been examined had that party attended in person.

#### 4. Examination of applicant

Where the application is in proper form and duly presented the court may, if it thinks fit, examine the applicant or his or her agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

#### 5. Rejection of application

- (1) The court shall reject an application for permission to sue as a pauper—
  - (a) where it is not framed and presented in the manner prescribed in rules 2 and 3 of this Order;
  - (b) where the applicant is not a pauper;

- (c) where the applicant has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper;
- (d) where the applicant's allegations do not show a cause of action; or
- (e) where the applicant has entered into any agreement with reference to the subject matter of the proposed suit under which any other person has obtained an interest in the subject matter.

## **6. Notice of day for receiving evidence of applicant's pauperism**

Where the court sees no reason to reject the application on any of the grounds stated in rule 5 of this Order, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Attorney General) for receiving such evidence as the applicant may adduce in proof of his or her pauperism and for hearing any evidence which may be adduced in disproof of it.

## **7. Procedure at hearing**

- (1) On the day so fixed, or as soon thereafter as may be convenient, the court shall examine the witnesses, if any, produced by either party, and may examine the applicant or his or her agent, and shall make a memorandum of the substance of their evidence.
- (2) The court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence, if any, taken by the court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5 of this Order.
- (3) The court shall then either allow or refuse to allow the applicant to sue as a pauper.

## **8. Procedure if application admitted**

Where the application is granted, it shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner except that the plaintiff shall not be liable to pay any court fee.

## **9. Dispaupering**

The court may, on the application of the defendant or of the Attorney General, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he or she is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his or her means are such that he or she ought not to continue to sue as a pauper;  
or
- (c) if he or she has entered into any agreement with reference to the subject matter of the suit under which any other person has obtained an interest in the subject matter.

## **10. Costs where pauper succeeds**

Where the plaintiff succeeds in the suit, the court shall calculate the amount of the court fees which would have been paid by the plaintiff if he or she had not been permitted to sue as a pauper; that amount shall be recoverable by the court from any party ordered by the decree to pay it, and shall be a first charge on the subject matter of the suit.

**11. Procedure where pauper fails**

Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed because the plaintiff does not appear when the suit is called on for hearing, the court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court fees which would have been paid by the plaintiff if he or she had not been permitted to sue as a pauper.

**12. Government may apply for payment of court fees**

The Government shall have the right at any time to apply to the court to make an order for the payment of court fees under rule 10 or 11 of this Order.

**13. Government to be deemed a party**

All matters arising between the Government and any party to the suit under rule 10, 11 or 12 of this Order shall be deemed to be questions arising between the parties to the suit within the meaning of section 34 of the Act.

**14. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature**

An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him or her in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of the right provided that he or she first pays the costs, if any, incurred by the Government and by the opposite party in opposing his or her application for leave to sue as a pauper.

**15. Costs**

The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

**16. Procedure under this Order**

Applications under this Order shall be in writing addressed to the court.

**Order XXXIV – Interpleader****1. Practice under this Order**

Interpleader proceedings may be instituted—

- (a) in a case where no suit is pending, by an originating summons; or
- (b) in a case where a suit is pending, by motion on notice in that action.

**2. Averments to be proved by applicant**

In every suit of or application by way of interpleader the applicant shall satisfy the court by way of affidavit or otherwise—

- (a) that the applicant claims no interest in the subject matter in dispute other than for charges or costs;
- (b) that there is no collusion between the applicant and any of the claimants;

- (c) that the applicant is willing to pay or transfer the subject matter into court or to dispose of it as the court may direct.

### 3. Stay of suit

If the application is made by a defendant in a suit the court may stay all further proceedings in the suit.

### 4. Order upon summons

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

### 5. Summary procedure

The court may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject matter in dispute, it seems desirable to do so, dispose of the merits of their claims, and decide them in a summary manner and on such terms as may be just.

### 6. Provision for applicant's costs

Where the application is properly made the court may provide for the costs of the applicant by giving him or her a charge on the thing claimed, or in some other effectual way.

### 7. Order upon a claimant's failure to appear

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

## Order XXXV – Proceedings by agreement of parties

### 1. Power to state case for court's opinion

- (1) Parties claiming to be interested in the decision of any question of law or fact may enter into an agreement in writing stating the question in the form of a case for the opinion of the court, and providing that, upon the finding of the court with respect to the question—
- (a) a sum of money fixed by the parties or to be determined by the court shall be paid by one of the parties to the other of them;
  - (b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or
  - (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.
- (2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the court to decide the question raised thereby.

## 2. Where value of subject matter must be stated

Where the agreement is for the delivery of any property, or for the doing or the refraining from doing any particular act, the estimated value of the property to be delivered, or to which the specified act has reference, shall be stated in the agreement.

## 3. Agreement to be filed and registered as suit

- (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the court which would have jurisdiction to entertain a suit, the amount or value of the subject matter of which is the same as the amount or value of the subject matter of the agreement.
- (2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it is presented.

## 4. Parties to be subject to court's jurisdiction

Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the court and shall be bound by the statements contained in it.

## 5. Hearing and disposal of case

- (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of the Act shall apply to the suit so far as they are applicable.
- (2) Where the court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit—
  - (a) that the agreement was duly executed by them;
  - (b) that they have a *bona fide* interest in the question stated in the agreement; and
  - (c) that the question is fit to be decided,

it shall proceed to pronounce judgment on the case, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

## Order XXXVI – Summary procedure on specially endorsed plaint

### 1. Application of this Order

This Order shall apply to—

- (a) the High Court; and
- (b) all magistrates courts.

### 2. Special endorsement on plaint

All suits—

- (a) where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
  - (i) upon a contract, expressed or implied (as, for instance, on a bill of exchange, hundi, promissory note or cheque, or other simple contract debt);

- (ii) on a bond or contract written for payment of a liquidated amount of money;
  - (iii) on a guaranty where the claim against the principal is in respect of a debt or liquidated amount only;
  - (iv) on a trust; or
  - (v) upon a debt to the Government for income tax; or
- (b) being actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for nonpayment of rent, or against persons claiming under the tenant,

may, at the option of the plaintiff, be instituted by presenting a plaint in the form prescribed endorsed "Summary Procedure Order XXXVI" and accompanied by an affidavit made by the plaintiff, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed, if any, and stating that in his or her belief there is no defence to the suit.

### **3. Judgment in default of application for leave to defend**

- (1) Upon the filing of an endorsed plaint and an affidavit as is provided in rule 2 of this Order, the court shall cause to be served upon the defendant a summons in Form 4 of Appendix A of these Rules, or in such other form as may be prescribed, and the defendant shall not appear and defend the suit except upon applying for and obtaining leave from the court.
- (2) In default of the application by the defendant or by any of the defendants (if more than one) within the period fixed by the summons served upon him or her, the plaintiff shall be entitled to a decree for an amount not exceeding the sum claimed in the plaint, together with interest, if any, or for the recovery of the land (with or without mesne profits), as the case may be, and costs against the defendant or such of the defendants as have failed to apply for leave to appear and defend the suit.

### **4. Application to be supported by affidavit and served on plaintiff**

An application by a defendant served with a summons in Form 4 of Appendix A for leave to appear and defend the suit shall be supported by affidavit, which shall state whether the defence alleged goes to the whole or to part only, and if so, to what part of the plaintiff's claim, and the court also may allow the defendant making the application to be examined on oath. For this purpose the court may order the defendant, or, in the case of a corporation, any officer of the corporation, to attend and be examined upon oath, or to produce any lease, deeds, books or documents, or copies of or extracts from them. The plaintiff shall be served with notice of the application and with a copy of the affidavit filed by a defendant.

### **5. Judgment upon refusal to give leave**

Where, after hearing an application by a defendant for leave to appear and defend the suit, the court refuses to grant such leave, the plaintiff shall be entitled as against the defendant to a decree such as is described in rule 3 of this Order.

### **6. Judgment for part of claim, defence as to residue**

If it appears that the defence set up by a defendant applies only to a part of the plaintiff's claim, or that any part of his or her claim is admitted, the plaintiff shall be entitled to a decree immediately for such part of his or her claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution or the payment of any amount realised by attachment into court, the taxation of costs or otherwise, as the court may think fit; and the defendant may be allowed to appear and defend as to the residue of the plaintiff's claim.

## 7. Judgment against one of several defendants

If it appears to the court that any defendant has a good defence to or ought to be permitted to appear and defend the suit, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to appear and defend, and the plaintiff shall be entitled to issue a decree against the latter, and may issue execution upon the decree without prejudice to his or her right to proceed with his or her suit against the former.

## 8. Leave to defend may be conditional

Leave to appear and defend the suit may be given unconditionally, or subject to such terms as to the payment of monies into court, giving security, or time or mode of trial or otherwise, as the court may think fit.

## 9. Summary hearing by consent

Upon the hearing of the application, with the consent of the parties, the suit may be finally disposed of without appeal in a summary manner.

## 10. Orders for further conduct of suit

Where leave, whether conditional or unconditional, is given to appear and defend, the court shall have power to give all directions and make all orders as to pleadings, issues, and any further steps in the suit as may then appear reasonable or necessary, or may order the suit to be immediately set down for hearing.

## 11. Setting aside decree

After the decree the court may, if satisfied that the service of the summons was not effective, or for any other good cause, which shall be recorded, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the court so to do, and on such terms as the court thinks fit.

# Order XXXVII – Originating summons

## 1. Who may take out originating summons and in respect of what matters

The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as *cestui que* trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course an originating summons, returnable before a judge sitting in chambers, for such relief of the nature or kind following, as may by the summons be specified, and the circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions—

- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or *cestui que* trust;
- (b) the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
- (c) the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
- (d) the payment into court of any money in the hands of the executors, administrators or trustees;
- (e) directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;

- (f) the approval of a sale, purchase, compromise, or other transaction; or
- (g) the determination of any question arising directly out of the administration of the estate or trust.

## 2. Order for administration of estate or trust

Any of the persons named in rule 1 of this Order may in like manner apply for and obtain an order for—

- (a) the administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased; or
- (c) the administration of the trust.

## 3. Summons by vendor or purchaser of land

A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before a judge sitting in chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation; or any other question arising out of or connected with the contract of sale, not being a question affecting the existence or validity of the contract.

## 4. Summons by a mortgagee or mortgagor, etc.

Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable before a judge in chambers, for such relief of the nature or kind following as may be by the summons specified, and as the circumstances of the case may require; that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance or delivery of possession by the mortgagee.

## 5. Summons by a member of a partnership

When the existence of a partnership, or the right to a partnership, or the fact of the dissolution of a partnership is not in dispute, any partner in a firm or his or her representatives may take out an originating summons returnable before a judge sitting in chambers against his or her partners or former partners or their representatives, if any, for the purpose of having the partnership dissolved (if it is still subsisting) and for the purpose of taking the accounts of and winding up the partnership.

## 6. Summons by persons interested in deeds or wills

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

## 7. Discretion upon summons for construction of document

The judge shall not be bound to determine any such question of construction if, in his or her opinion, it ought not to be determined on originating summons.

## 8. Practice upon application for summons

- (1) An originating summons shall be in Form 13 of Appendix B to these Rules, and shall specify the relief sought.
- (2) The person entitled to apply shall present it *ex parte* to a judge sitting in chambers with an affidavit setting forth concisely the facts upon which the right to the relief sought by the summons is founded, and the judge, if satisfied that the facts as alleged are sufficient and the case is a

proper one to be dealt with on an originating summons, shall sign the summons and give such directions for service upon persons or classes of persons and upon other matters as may then appear necessary.

#### 9. Summons to be filed and registered

The originating summons when so signed shall be filed, and entered in the register of suits, but after the serial number the letters “O.S.” shall be placed to distinguish it from complaints filed in ordinary suits.

#### 10. Evidence and directions upon hearing of summons

On the hearing of the summons, if the parties do not agree to the correctness and sufficiency of the facts set forth in the summons and affidavit, the judge may order the summons to be supported by such further evidence as he or she may deem necessary and may give such directions as he or she may think just for the trial of any issues arising upon the summons, and may make any amendments necessary to make the summons accord with existing facts, and to raise the matters in issue between the parties.

#### 11. Powers of court upon hearing of summons

The judge hearing an originating summons may, if he or she thinks fit, adjourn the hearing into court for taking evidence *viva voce* or hearing arguments; and, if it appears to him or her that the matters in respect of which relief is sought cannot properly be disposed of in a summary manner, may refuse to pass any order on the summons, and may dismiss it, referring the parties to a suit in the ordinary course, making such orders as to costs as may appear to be just.

#### 12. Court may make orders as to costs incurred by any party

If an originating summons is adjourned into court, the judge may, if he or she thinks the question to be determined is of sufficient importance, order that the costs be taxed on the scale applicable to suits. In all other cases the judge may make such orders as to the costs of the parties as he or she considers to be just.

### Order XXXVIII – Company matters

#### 1. Interpretation

In this Order, unless the context otherwise requires—

- (a) “**Act**” means the Companies Act;
- (b) “**application**” means an application to the court made in pursuance of the Act or of this Order;
- (c) “**company**” means the company to which an application relates;
- (d) “**court registrar**” means the chief registrar of the High Court, a deputy registrar of the High Court, or a district registrar of the High Court;
- (e) “**petition**”, “**motion**” and “**summons**” mean a petition, motion or summons presented, made or taken out pursuant to this Order; and,

expressions defined in the Act have the meanings so defined.

#### 2. Extent to which Order applies to company matters

This Order and, subject to it, the other provisions of these Rules shall apply to all applications except those to which the Companies (Winding Up) Rules apply.

### 3. Applications by petition

The following applications shall be made by petition—

- (a) applications to cancel an alteration of objects under section 7 of the Act;
- (b) applications to cancel an alteration in conditions in the memorandum under section 24 of the Act;
- (c) applications to confirm the reduction of any share premium account or any capital redemption reserve fund under section 58(1) or 60(1)(d) of the Act;
- (d) applications to sanction the issue of shares at a discount under section 59 of the Act;
- (e) applications to confirm a reduction of capital under section 69 of the Act;
- (f) applications to cancel any variation of the rights of holders of special classes of shares under section 74 of the Act.
- (g) applications to sanction a compromise or arrangement under section 207(2) of the Act;
- (h) applications to restore a company's name to the register under section 343(7) of the Act; and
- (i) applications for relief by officers of a company or by persons employed as auditors by a company under section 405(2) of the Act.

### 4. Applications by motion or summons

Applications to rectify the register of members of a company under section 118 of the Act shall be made by motion or summons in chambers.

### 5. Applications by motion

The following applications shall be made by motion—

- (a) applications for relief in case of default by a private company in complying with the provisions of its articles under section 30 of the Act;
- (b) applications to inquire into the case of officers or agents of a company who have refused to produce any document or answer any question under section 168(3) of the Act;
- (c) applications that shares or debentures shall cease to be subject to restrictions imposed by the registrar under section 175(3) of the Act; and
- (d) applications not otherwise provided for in this Order.

### 6. Applications by summons

The following applications shall be made by summons in chambers—

- (a) applications to extend the time for registering documents under section 7(9) of the Act or under rule 11 of this Order;
- (b) applications to extend the time for the issue of shares at a discount under section 59(1)(a) of the Act;
- (c) applications in regard to delivery of certificates or debentures under section 82(4) of the Act;
- (d) applications to inspect any register of holders of debentures or to obtain copies thereof or of any trust deed for securing debentures under section 89(5) of the Act;
- (e) applications for summoning a meeting of debenture holders under section 90(4) of the Act;

- (f) applications to extend the time for registration of a charge or to rectify any omission or misstatement with respect to any charge or in a memorandum of satisfaction under section 102 of the Act;
- (g) applications to inspect the register of members or the index of names of members of a company or to obtain copies of the register under section 115(5) of the Act;
- (h) applications for and in regard to meetings of a company under section 135 of the Act;
- (i) applications that a company should not be bound to circulate a statement under section 140(5) of the Act;
- (j) applications to inspect the minutes of proceedings at general meetings of a company or to obtain copies of them under section 146(4) of the Act;
- (k) applications that an auditor's or a director's representations should not be sent out or read at a meeting under section 160(3) or 185(3) of the Act;
- (l) applications that a person should be examined on oath under section 168(4) of the Act;
- (m) applications for leave to be a director of or manage a company under section 189(1) of the Act;
- (n) applications to inspect the register of directors' holdings of share and debentures under section 196(10) of the Act or the register of directors and secretary under section 201(9) of the Act;
- (o) applications for meetings of creditors or members of a company under section 207(1) of the Act;
- (p) applications for facilitating reconstructions or amalgamations of companies under section 209 of the Act where the matters to which the applications relate have not been dealt with, or fully dealt with, on the hearing of the petition to sanction the compromise or arrangement to which they relate;
- (q) applications for the purpose of preventing or settling the terms of the acquisition of shares under section 210 of the Act;
- (r) applications for directions by a receiver or manager under section 352(1) of the Act;
- (s) applications for enforcing the duty of a company or of a receiver or manager to make returns or render accounts under section 358 or 389 of the Act; and
- (t) applications for inspection or production of the books of a company under section 399 of the Act.

## 7. Title of proceedings

Every petition, notice of motion and summons and all notices, affidavits and other proceedings connected with any petition, notice of motion or summons shall be entitled in the matter of the company and in the matter of the Companies Act, and otherwise as in Form 1 of Appendix H to these Rules, with such variations as circumstances may require; except that an application for leave under section 189(1) of the Act shall be entitled in the matter of the company in relation to which the applicant was convicted or was guilty of such an offence or of such conduct as is mentioned in that subsection, and otherwise in accordance with the provisions of this rule.

## 8. Petitions

Every petition shall—

- (a) be presented by being filed at the office of the court registrar;
- (b) be as in Form 2 of Appendix H to these Rules, with such variations as circumstances may require; and
- (c) be heard in open court.

## 9. Service of proceedings

- (1) Every petition, notice of motion or summons shall be served on all persons against whom an order is sought thereby and, if not presented, made or taken out by the company, on the company.
- (2) Notice of the date and time appointed for the hearing of a petition shall be served on every person on whom the petition was served and, if the petition was not served on the company, on the company.

## 10. Hearing dates

Subject to any directions which may be given under rule 11 of this Order and subject to rule 12(k) of this Order, the date and time at which petitions, motions and summonses are to be heard shall be fixed by the court registrar.

## 11. Directions

- (1) Where a petition has been presented pursuant to rule 3(a), (b), (c), (e), (f) or (i) of this Order, or where an order is sought under section 209 of the Act, an application shall in every case be made by summons in chambers to a judge for directions as to the proceedings to be taken.
- (2) Upon the hearing of the summons, or upon any adjourned hearing or hearings thereof or any subsequent application, the judge may make such order or orders and give such directions as he or she thinks fit as to all the proceedings to be taken, and more particularly with respect to the following matters—
  - (a) the publication of notices; and
  - (b) in cases where the court orders an inquiry as to the debts, claims or liabilities of or affecting a company or as to any such debts, claims or liabilities, the proceedings to be taken for settling the list of creditors entitled to object, including the dispensing with the observance of section 69(2) of the Act as regards any class or classes of creditors, fixing the date with reference to which the list of the creditors is to be made out, and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter whether expressly mentioned in any of the rules of this Order or not.
- (3) In cases of the kind mentioned in subrule (2)(b) of this rule the first order upon the summons for directions may be in Form 3 of Appendix H to these Rules, with such variations as the circumstances may require.

## 12. Procedure on inquiry

In cases where the court has ordered any such inquiry as is mentioned in rule 11(2)(b) of this Order, the following provisions shall apply—

- (a) the company shall, within seven days after the order or such further or other time as the judge may allow, file in the office of the court registrar an affidavit made by some officer or officers of the company competent to make it, verifying a list containing so far as possible the names and addresses of the creditors of the company to whom the inquiry extends. The list so verified shall also contain the amounts due to the creditors named in it respectively in respect of debts, claims or liabilities to which the inquiry extends, or in the case of any such debt payable on a contingency or not ascertained or any such claim admissible to proof in a winding up of the company the value, so far as can be justly estimated, of the debt or claim. Every such list and an office copy of every such affidavit shall be left at the office of the court registrar not later than one day after the filing of the affidavit;
- (b) the person making any such affidavit shall state in it his or her belief that the list verified by the affidavit is correct, and that there was not at the date fixed on the summons for directions as the date with reference to which the list of creditors is to be made out any debt, claim or liability which,

if that date were the commencement of the winding up of the company, would be admissible in proof against the company, except the debts, claims and liabilities set forth in the list and any debts, claims or liabilities to which the inquiry does not extend, and shall state his or her means of knowledge of the matters deposed to in the affidavit. The affidavit may be in Form 4 of Appendix H to these Rules with such variations as the circumstances of the case may require;

- (c) copies of the list containing the names and addresses of the creditors, and the total amount so due to them (including the value of any debts or claims estimated in accordance with paragraph (a) of this rule), but omitting the amounts due to them respectively, or (as the judge thinks fit) complete copies of the list, shall be kept at the registered office of the company and at the offices of the advocates of the company, if any, and any person desirous of inspecting them may at any time during the ordinary hours of business inspect and take extracts from them on payment of the sum of one shilling;
- (d) the company shall, within seven days after the filing of the affidavit, or such further or other time as the judge may allow, send to each creditor whose name is entered in the list a notice stating the amount of the proposed reduction of capital, the effect of the order directing the inquiry and the amount or estimated value of the debt or the contingent debt or claim or both for which the creditor is entered in the list, and the time (such time to be fixed by the judge) within which, if he or she claims to be entitled to be entered on the list as a creditor for a larger amount, he or she must send in his or her name and address, and the particulars of his or her debt or claim, and the name and address of his or her advocate, if any, to the company or its advocate; and the notice shall be sent through the post in a prepaid letter addressed to each such creditor at his or her last known address or place of abode, and may be in the form or to the effect of Form 5 of Appendix H to these Rules with such variations as the circumstances of the case may require;
- (e) notice of the presentation of the petition, of the effect of the order directing the inquiry and of the list of creditors shall, after the filing of the affidavit mentioned in paragraph (a) of this rule, be published by or on behalf of the company at such times, and in such newspapers as the judge directs. Every such notice shall state the amount of the proposed reduction of capital, and the places where the list of creditors may be inspected, and the time within which creditors of the company who are not but are entitled to be entered on the list, and are desirous of being entered in it, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their advocates, if any, to the company or its advocate. The notice may be in Form 6 of Appendix H to these Rules with such variations as the circumstances of the case may require;
- (f) the company shall, within such time as the judge directs, file in the office of the court registrar an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in paragraphs (d) and (e) of this rule required to be sent in, stating the result of the notices respectively and verifying a list containing the names and addresses of the persons, if any, who have sent in the particulars of their debts or claims in pursuance of the notices respectively, and the amounts of the debts or claims, and some competent officer or officers of the company shall join in the affidavit, and shall in the list distinguish which, if any, of the debts and claims are wholly, or as to any and what part of the debts and claims, admitted by the company, and which, if any, of the debts and claims are wholly, or as to any and what part of them, disputed by the company and which, if any, of the debts and claims are alleged by the company to be wholly, or as to any and what part of them, not included in the inquiry. The affidavit shall also state which of the persons who are entered in the list as creditors and which of the persons who have sent in particulars of their debts or claims in pursuance of the notices have been paid or have consented to the proposed reduction. The affidavit may be in Form 7 of Appendix H to these Rules with such variations as the circumstances of the case may require; and the list and an office copy of the affidavit shall be left at the office of the court registrar within such time as the judge directs;
- (g) if the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim whether admitted or not or if any debt or claim, the particulars of which are so sent in, is not admitted by the company at its full amount, then and in every such case, unless the company is willing to appropriate in such manner as the judge directs the full amount of the debt or claim, the company shall, if the judge thinks fit so to direct, send to the creditor a notice that he or

she is required to come in and establish his or her title to be entered on the list or as the case may be to come in and prove the debt or claim or such part of the debt or claim as is not admitted by the company, by a day to be named in the notice, being not less than four clear days after the notice, and being the time appointed by the judge for adjudicating upon the titles, debts and claims; and the notice shall be sent in the manner mentioned in paragraph (d) of this rule, and may be in Form 8 of Appendix H to these Rules with such variations as the circumstances of the case may require;

- (h) the result of the settlement of the list of creditors shall be stated in a certificate by the court registrar; and the certificate shall state what debts or claims, if any, have been disallowed, and shall distinguish the debts or claims the full amount of which the company is willing to appropriate, and the debts or claims, if any, the amount of which has been fixed by inquiry and adjudication in the manner provided by section 69(2) of the Act, and this Order, and the debts or claims, if any, the full amount of which the company does not admit or is not willing to appropriate or the amount of which has not been fixed by the inquiry and adjudication; and shall show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in the manner provided by section 69(2) of the Act and the persons to or by whom the debts or claims are due or claimed. The certificate shall also state what creditors have under paragraph (g) of this rule come in and sought to establish their title to be entered on the list and whether the claims have been allowed or not, but it shall not be necessary to make in the certificate any further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the inquiry does not extend or to show in the list the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured in the manner provided by section 69(2) of the Act;
- (i) the consent of any creditor, whether in respect of a debt due or presently due or a debt payable on a contingency or not ascertained or a claim admissible to proof in a winding up of the company, may be evidenced in any manner which the judge thinks reasonably sufficient having regard to the amount of his or her debt or claim and all the circumstances of the case;
- (j) the petition shall not be heard until the expiration of at least eight clear days from the filing of such certificate as is mentioned in paragraph (h) of this rule;
- (k) before the hearing of the petition, notices stating the day on which the petition is appointed to be heard shall be published by or on behalf of the company at such times and in such newspapers as the judge directs. The notices may be in Form 9 of Appendix H to these Rules with such variations as the circumstances of the case may require.

### **13. Delivery of office copy of order under section 59 of the Act to the registrar**

Unless in any particular case the court otherwise directs every order sanctioning the issue of shares at a discount shall contain a direction that an office copy of the order shall be delivered to the registrar for registration within ten days from the date of the order or within such further or other time as the court may allow and that the order shall not take effect until the office copy has been so delivered.

### **14. Form of order under section 209 of the Act**

Where an application is made under section 209 of the Act the order may be in Form 10 of Appendix H to these Rules with such variations as the circumstances of the case may require.

### **15. District registries**

Where a matter is pending in a district registry, affidavits shall be filed and proceedings shall be taken in the matter in the district registry.

## Order XXXIX – Selection of test suit

### 1. Staying several suits against the same defendant

Where two or more persons have instituted suits against the same defendant and those persons under the provisions of rule 1 of Order I of these Rules could have been joined as co-plaintiffs in one suit, upon the application of any of the parties the court may, if satisfied that the issues to be tried in each suit are precisely similar, make an order directing that one of the suits be tried as a test case, and staying all steps in the other suits until the selected suit shall have been determined, or shall have failed to be a real trial of the issues.

### 2. Staying similar suits upon application by defendant

Where a plaintiff has instituted two or more suits, and under the provisions of rule 3 of Order I of these Rules the several defendants could properly have been joined as co-defendants in one suit, the court, if satisfied upon the application of a defendant that the issues to be tried in the suit to which he or she is a party are precisely similar to the issues to be determined in another of the suits, may order that the suit to which the defendant is a party be stayed until the other suit shall have been determined or shall have failed to be a real trial of the issues.

## Order XL – Arrest and attachment before judgment

### 1. Where defendant may be called upon to furnish security for appearance

- (1) Where at any stage of a suit, other than a suit of the nature referred to in section 12(a) to (d) of the Act, the court is satisfied by affidavit or otherwise—
  - (a) that the defendant with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him or her—
    - (i) has absconded or left the local limits of the jurisdiction of the court;
    - (ii) is about to abscond or leave the local limits of the jurisdiction of the court; or
    - (iii) has disposed of or removed from the local limits of the jurisdiction of the court his or her property or any part of it; or
  - (b) that the defendant is about to leave Uganda in circumstances affording a reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security for his or her appearance.

- (2) Notwithstanding subrule (1) of this rule, the defendant shall not be arrested if he or she pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and the sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court.

### 2. Security

- (1) Where the defendant fails to show such cause, the court shall order him or her either to deposit in court money or other property sufficient to answer the claim against him or her, or to furnish security for his or her appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against him or her in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under rule 1(2) of this Order.

- (2) Every surety for the appearance of a defendant shall bind himself or herself, in default of the appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

### **3. Procedure on application by surety to be discharged**

- (1) A surety for the appearance of a defendant may at any time apply to the court in which he or she became a surety to be discharged from his or her obligation.
- (2) On the application being made the court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his or her arrest in the first instance.
- (3) On the appearance of the defendant in pursuance of the summons or warrant, or on his or her voluntary surrender, the court shall direct the surety to be discharged from his or her obligation and shall call upon the defendant to find fresh security.

### **4. Procedure where defendant fails to furnish security or find fresh security**

Where the defendant fails to comply with any order under rule 2 or 3 of this Order, the court may commit him or her to prison until the decision of the suit, or, where a decree is passed against the defendant, until the decree has been satisfied; except that—

- (a) no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject matter of the suit does not exceed one hundred shillings; and
- (b) no person shall be detained in prison under this rule after he or she has complied with the order.

### **5. Where defendant may be called upon to furnish security for production of property**

- (1) Where at any stage of a suit the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him or her—
  - (a) is about to dispose of the whole or any part of his or her property;
  - (b) is about to remove the whole or any part of his or her property from the local limits of the jurisdiction of the court; or
  - (c) has quitted the jurisdiction of the court leaving in that jurisdiction property belonging to him or her,

the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the property or the value of the property, or such portion of it as may be sufficient to satisfy the decree, or to appear and show cause why he or she should not furnish security.

- (2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value of the property.
- (3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

### **6. Attachment where cause not shown or security not furnished**

- (1) Where the defendant fails to show cause why he or she should not furnish security, or fails to furnish the security required, within the time fixed by the court, the court may order that the property specified, or such portion of it as appears sufficient to satisfy any decree which may be passed in the suit, be attached.
- (2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

**7. Mode of making attachment**

Except as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

**8. Investigation of claim to property attached before judgment**

Where any claim is preferred to property attached before judgment, the claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

**9. Removal of attachment when security furnished or suit dismissed**

Where an order is made for attachment before judgment, the court shall order the attachment to be withdrawn when the defendant furnishes the security required together with security for the costs of the attachment, or when the suit is dismissed.

**10. Attachment before judgment not to affect rights of strangers nor bar decree holder from applying for sale**

Attachment before judgment shall not affect the rights existing prior to the attachment of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of the decree.

**11. Property attached before judgment not to be reattached in execution of decree**

Where property is under attachment by virtue of the provisions of this Order, and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary, upon an application for execution of the decree, to apply for a reattachment of the property.

**12. Procedure under this Order**

Applications under this Order shall be by summons in chambers.

**Order XLI – Temporary injunctions and interlocutory orders****1. Cases in which temporary injunction may be granted**

Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

**2. Injunction to restrain repetition or continuance of breach**

- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary

injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

- (2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court thinks fit.
- (3) In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of the disobedience or breach to be attached, and may also order the person to be detained in a civil prison for a period not exceeding six months unless in the meantime the court directs his or her release.
- (4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled to it.

### **3. Before granting injunction court to direct notice to opposite party**

The court shall in all cases, before granting an injunction, direct notice of the application for the injunction to be given to the opposite party.

### **4. Order for injunction may be discharged, varied or set aside**

Any order for an injunction may be discharged, or varied, or set aside by the court on application made to the court by any party dissatisfied with the order.

### **5. Injunction to corporation binding on its officers**

An injunction directed to a corporation is binding not only on the corporation itself but also on all members and officers of the corporation whose personal action it seeks to restrain.

### **6. Power to order interim sale**

The court may, on the application of any party to a suit, order the sale, by any person named in the order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject matter of the suit, or attached before judgment in the suit, which is subject to speedy and natural decay, or which for other just and sufficient cause it may be desirable to have sold at once.

### **7. Detention, preservation, inspection, etc. of property**

- (1) The court may, on the application of any party to a suit, and on such terms as it thinks fit—
  - (a) make an order for the detention, preservation or inspection of any property which is the subject matter of the suit, or as to which any question may arise in the suit;
  - (b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to the suit; and
  - (c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.
- (2) The provisions as to execution of process shall apply *mutatis mutandis* to persons authorised to enter under this rule.

### **8. Deposit of money, etc. in court**

Where the subject matter of a suit is money or some other thing capable of delivery, and any party to the suit admits that he or she holds the money or other thing as a trustee for another party, or that it belongs

or is due to another party, the court may order it to be deposited in court or delivered to such last-named party, with or without security, subject to the further direction of the court.

## **9. Procedure under this Order**

Applications under rules 1 and 2 of this Order shall be by summons in chambers; all other applications under this Order shall be by motion on notice.

### **Order XLII – Appointment of receivers**

#### **1. Appointment of receivers**

- (1) Where it appears to the court to be just and convenient, the court may by order—
  - (a) appoint a receiver of any property, whether before or after decree;
  - (b) remove any person from the possession or custody of the property;
  - (c) commit the property to the possession, custody or management of the receiver; and
  - (d) confer upon the receiver all such powers as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits of the property, the application and disposal of those rents and profits, and the execution of such documents as the owner himself or herself has, or such of those powers as the court thinks fit.
- (2) Nothing in this rule shall authorise the court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

#### **2. Remuneration of receivers**

The court may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver.

#### **3. Duties of receivers**

Every receiver so appointed shall—

- (a) furnish such security, if any, as the court thinks fit, duly to account for what he or she shall receive in respect of the property;
- (b) submit his or her accounts at such periods and in such form as the court directs;
- (c) pay the amount due from him or her as the court directs; and (d) be responsible for any loss occasioned to the property by his or her wilful default or gross negligence.

#### **4. Enforcement of receiver's duties**

Where a receiver—

- (a) fails to submit his or her accounts at such period and in such form as the court directs;
- (b) fails to pay the amount due from him or her as the court directs; or
- (c) occasions loss to the property by his or her wilful default or gross negligence,

the court may direct his or her property to be attached, and may sell the property, and may apply the proceeds to make good any amount found to be due from him or her, or any loss occasioned by him or her, and shall pay the balance, if any, to the receiver.

## Order XLIII – Appeals to the High Court

### 1. Form of appeal

- (1) Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.
- (2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively.

### 2. Grounds which may be taken in appeal

The appellant shall not, except by leave of the court, urge, or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule; except that the High Court shall not rest its decision on any other ground unless the party who may be affected by the decision has had a sufficient opportunity of contesting the case on that ground.

### 3. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the High Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

### 4. Stay by High Court

- (1) An appeal to the High Court shall not operate as a stay of proceedings under a decree or order appealed from except so far as the High Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the High Court may for sufficient cause order stay of execution of the decree.
- (2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing from the decree, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.
- (3) No order for stay of execution shall be made under subrule (1) or (2) of this rule unless the court making it is satisfied—
  - (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
  - (b) that the application has been made without unreasonable delay; and
  - (c) that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.
- (4) Notwithstanding anything in subrule (3) of this rule, the court may make an *ex parte* order for stay of execution pending the hearing of the application.
- (5) Applications under subrules (1), (2) and (3) of this rule shall be by motion on notice; an *ex parte* order under subrule (4) of this rule may be made on a summons in chambers.

## **5. security in case of order for execution of decree appealed from**

- (1) Where an order is made for the execution of a decree from which an appeal is pending, the court which passed the decree or the High Court shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of the property and for the due performance of the decree or order of the High Court.
- (2) Where an order has been made for the sale of immovable property in execution of a decree and an appeal is pending from the decree, the sale shall, on the application of the judgment debtor to the court which made the order, or to the High Court, be stayed on such terms as to giving security or otherwise as the court thinks fit until the appeal is disposed of.

## **6. No security to be required from the Government**

No such security as is mentioned in rules 4 and 5 of this Order shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him or her in his or her official capacity.

## **7. Exercise of powers in appeal from order made in execution of decree**

The powers conferred by rules 4 and 5 of this Order shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of the decree.

## **8. Register of appeals**

Where a memorandum of appeal is lodged, the High Court then shall cause to be endorsed on it the date of presentation, and the appeal shall be entered in a book to be kept for that purpose, to be called the register of appeals.

## **9. High Court may require appellant to furnish security for costs**

- (1) The High Court may in its discretion, at any time after an appeal is lodged, demand from the appellant security for the costs of the appeal; except that the court shall demand the security in all cases in which the appellant is residing out of Uganda and is not possessed of any sufficient immovable property within Uganda other than the property, if any, to which the appeal relates.
- (2) Where the security is not furnished within such time as the court orders, the court shall dismiss the appeal.

## **10. High Court to give notice to court where decree appealed from**

- (1) When a memorandum of appeal is lodged, the High Court shall send notice of the appeal to the court from whose decree the appeal is preferred.
- (2) The court receiving the notice shall send with all practicable dispatch all material papers in the suit, or such papers as may be specially called for by the High Court.
- (3) Either party may apply in writing to the court from whose decree the appeal is preferred, specifying any of the papers of the court of which he or she requires copies to be made; and copies shall be made at the expense of, and given to, the applicant on payment of the requisite charges.

## **11. Service of notice of day for hearing appeal**

Notice of the day fixed for hearing of the appeal shall be served on the respondent or on his or her advocate in the manner provided for the service on a defendant of a summons to enter appearance; and all the provisions applicable to that summons, and to proceedings with reference to the service of the summons, shall apply to the service of the notice.

**12. Contents of notice**

The notice to the respondent shall declare that if he or she does not appear in the High Court on the day so fixed, the appeal may be heard *ex parte*.

**13. Right to begin**

- (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.
- (2) The court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in that case the appellant shall be entitled to reply.

**14. Dismissal of appeal for appellant's default**

- (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.
- (2) Where the appellant appears, and the respondent does not appear, the appeal may be heard *ex parte*.

**15. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs**

Where on the day fixed or on any other day to which the hearing may be adjourned it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the court may make an order that the appeal be dismissed; except that no such order shall be made although the notice has not been served upon the respondent if on any such day the respondent appears when the appeal is called on for hearing.

**16. Readmission of appeal dismissed for default**

Where an appeal is dismissed under rule 14 or 15 of this Order, the appellant may apply to the High Court for the readmission of the appeal; and, where it is proved that he or she was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.

**17. Power to adjourn hearing and direct persons appearing interested to be made respondents**

Where it appears to the court at the hearing that any person who was a party to the suit in the court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the court may adjourn the hearing to a future day to be fixed by the court and direct that that person be made a respondent.

**18. Rehearing on application of respondent against whom *ex parte* decree made**

Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he or she may apply to the High Court to rehear the appeal; and if he or she satisfies the court that the notice was not duly served or that he or she was prevented by sufficient cause from appearing when the appeal was called on for hearing, the court shall rehear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him or her.

**19. Remand of cases by High Court**

Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point, and the decree is reversed on appeal, the High Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

**20. Where evidence on record sufficient High Court may determine case finally**

Where the evidence upon the record is sufficient to enable the High Court to pronounce judgment, the High Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the High Court proceeds.

**21. Power to order new trial**

If upon the hearing of an appeal it shall appear to the High Court that a new trial ought to be had, the High Court may, if it shall think fit, order that the judgment and decree shall be set aside, and that a new trial shall be had.

**22. Production of additional evidence in High Court**

- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the High Court; but if—
  - (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or
  - (b) the High Court requires any document to be produced of any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,the High Court may allow the evidence or document to be produced, or witness to be examined.
- (2) Wherever additional evidence is allowed to be produced by the High Court, the court shall record the reason for its admission.

**23. Mode of taking additional evidence**

Wherever additional evidence is allowed to be produced, the High Court may either take the evidence or direct the court from whose decree the appeal is preferred or any other magistrate's court to take the evidence and to send it when taken to the High Court.

**24. Points to be defined and recorded**

Where additional evidence is directed or allowed to be taken the High Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

**25. Where court consists of two or more judges**

- (1) When the court consists of more judges than one, the decree of the court shall be drawn in accordance with the findings of the majority.
- (2) When the court is equally divided in opinion the appeal shall be dismissed.

**26. What judgment may direct**

The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the High Court may pass a decree or make an order accordingly.

**27. Power of High Court on appeal**

The High Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents although the respondents may not have filed any appeal or cross appeal.

**28. Preparation and contents of decree**

The decree of the High Court shall be dated, drawn up, sealed and signed as directed by rules 6, 7, 8 and 9 of Order XXI of these Rules, with any necessary modifications.

**29. Copies of judgment and decree to be furnished to parties**

Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the High Court and on payment of the requisite charges.

**30. Certified copy of decree to be sent to court whose decree appealed from**

A copy of the judgment and of the decree, certified by the High Court, or such officer as it appoints for this purpose, shall be sent to the court which passed the decree appealed from, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the High Court shall be made in the register of civil suits.

**31. Dismissal for want of prosecution**

- (1) Where there has been undue delay in the hearing of an appeal, the registrar may obtain the directions of a judge for the listing of the appeal at the next ensuing sessions of the High Court.
- (2) Notice of the listing shall be served in such manner as the judge may think fit upon the appellant and respondent or their advocates, and upon the hearing thereof the court may order the dismissal of the appeal for want of prosecution or may make such other order as may seem just.

**Order XLIV – Appeal from orders****1. Appeals from orders**

- (1) An appeal shall lie as of right from the following orders under section 76 of the Act—
  - (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper court;
  - (b) an order made under rule 23 of Order IX rejecting an application for an order to set aside the dismissal of a suit;
  - (c) an order under rule 27 of Order IX rejecting an application for an order to set aside a decree passed *ex parte*;
  - (d) an order made under rule 21 of Order X;
  - (e) an order under rule 10 of Order XVI for the attachment of property;

- (f) an order under rule 19 of Order XVI pronouncing judgment against a party;
  - (g) an order under rule 31 of Order XXII on an objection to the draft of a document or of an endorsement;
  - (h) an order under rule 67 of Order XXII setting aside or refusing to set aside a sale;
  - (i) an order that execution be levied made under rule 6 of Order XXIII;
  - (j) an order under rule 8 of Order XXIV refusing to set aside the abatement or dismissal of a suit;
  - (k) an order under rule 9 of Order XXIV giving or refusing to give leave;
  - (l) an order under rule 6 of Order XXV recording or refusing to record an agreement, compromise, or satisfaction;
  - (m) an order under rule 2 of Order XXVI rejecting an application for an order to set aside the dismissal of a suit;
  - (n) orders in interpleader suits under rule 3, 6 or 7 of Order XXXIV;
  - (o) an order made upon the hearing of an originating summons under Order XXXVII;
  - (p) an order made under rule 2, 3 or 6 of Order XL;
  - (q) an order made under rule 1, 2, 4 or 8 of Order XLI;
  - (r) an order under rule 1 or 4 of Order XLII;
  - (s) an order of refusal under rule 16 of Order XLIII to readmit or under rule 18 of that Order to rehear an appeal;
  - (t) an order under rule 4 of Order XLVI granting an application for review;
  - (u) an order made in an interlocutory matter by a registrar.
- (2) An appeal under these Rules shall not lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.
- (3) Applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed from.
- (4) Application for leave to appeal shall be by motion on notice.

## 2. Procedure under this Order

The rules of Order XLIII shall apply, so far as may be, to appeals from orders.

### Order XLV – Pauper appeals

#### 1. Who may appeal as pauper; procedure on application for admission of appeal

Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject in all matters, including the presentation of the application, to the provisions relating to suits by paupers insofar as those provisions are applicable; except that the court shall dismiss the application unless, upon a perusal of the memorandum of appeal and of the record of the lower court, it sees reason to think that the decree is contrary to law, or against the weight of the evidence.

## 2. Inquiry into pauperism

The inquiry into the pauperism of the applicant may be made either by the High Court or under the orders of the High Court by the court from whose decision the appeal is preferred; except that if the applicant was allowed to sue or appeal as a pauper in the court from whose decree the appeal is preferred, no further inquiry in respect of his or her pauperism shall be necessary, unless the High Court sees cause to direct the inquiry.

## 3. Procedure under this Order

Applications under this Order shall be made *ex parte* by summons in chambers.

### Order XLVI – Review

#### 1. Application for review of judgment

- (1) Any person considering himself or herself aggrieved—
  - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate court the case on which he or she applies for the review.

#### 2. To whom applications for review may be made

An application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in rule 1 of this Order, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed.

#### 3. Application where rejected, where granted

- (1) Where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application.
- (2) Where the court is of opinion that the application for review should be granted, it shall grant it; except that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his or her knowledge, or could not be adduced by him or her when the decree or order was passed or made without strict proof of the allegation.

#### 4. Application for review to be to same judge or judges

Where the judge or judges, or any one of the judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, the judge

or judges or any of them shall hear the application, and no other judge or judges of the court shall hear the application.

#### **5. Application where rejected**

- (1) Where the application for a review is heard by more than one judge and the court is equally divided, the application shall be dismissed.
- (2) Where there is a majority, the decision shall be according to the opinion of the majority.

#### **6. Rehearing upon application granted**

When an application for review is granted, a note of the application shall be made in the register, and the court may at once rehear the case or make such order in regard to the rehearing as it thinks fit.

#### **7. Bar of subsequent applications**

No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.

#### **8. Procedure under this Order**

Applications under this Order shall be by motion on notice.

### **Order XLVII – Arbitration under order of a court**

#### **1. Parties to a suit may apply for arbitration**

- (1) Where in any suit all the parties interested who are not under disability agree that any matter in difference between them in the suit shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the court for an order of reference.
- (2) Every such application shall be in writing and shall state the matter sought to be referred.

#### **2. Appointment of arbitrator**

The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

#### **3. Form of order**

- (1) The court shall, by order, refer to the arbitrator the matter in difference which he or she is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.
- (2) Where a matter is referred to arbitration, the court shall not, except in the manner and to the extent provided in this Order, deal with the matter in the suit.

#### **4. Provisions where two or more arbitrators**

- (1) Where a reference is to two or more arbitrators provision shall be made in the order for a difference of opinion among the arbitrators—
  - (a) by the appointment of an umpire;
  - (b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail;
  - (c) by empowering the arbitrators to appoint an umpire; or

- (d) otherwise as may be agreed between the parties, or, if they cannot agree, as the court may determine.
- (2) Where an umpire is appointed, the court shall fix such time as it thinks reasonable for the making of his or her award in case he or she is required to act.

## 5. Power to appoint arbitrator

- (1) In any of the following cases, namely—
  - (a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator;
  - (b) where the arbitrator or umpire—
    - (i) dies;
    - (ii) refuses or neglects to act or becomes incapable of acting; or
    - (iii) leaves Uganda in circumstances showing that he or she will probably not return at any early date; or
  - (c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

- (2) If, within seven clear days after the notice has been served or such further times as the court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the court may, on application by the party who gave the notice and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire, or make an order superseding the arbitration, and in such case shall proceed with the suit.

## 6. Power of arbitrator or umpire appointed by court

Every arbitrator or umpire appointed under rule 4 or 5 of this Order shall have the like powers as if his or her name had been inserted in the order of reference.

## 7. Summoning witnesses and default

- (1) The court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the court may issue in suits tried before it.
- (2) Persons not attending in accordance with the process or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the court.

## 8. Extension of time for making award

Where the arbitrators or umpire cannot complete the award within the period specified in the order, the court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge the period; or may make an order superseding the arbitration, and in that case shall proceed with the suit.

### **9. Where umpire may arbitrate *in lieu* of arbitrators**

When an umpire has been appointed, he or she may enter on the reference in the place of the arbitrators—

- (a) if they have allowed the appointed time to expire without making an award; or
- (b) if they have delivered to the court or to the umpire a notice in writing stating that they cannot agree.

### **10. Award to be signed and filed**

Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

### **11. Statement of special case by arbitrators or umpire**

Upon any reference by an order of the court, the arbitrator or umpire may, and shall if so directed by the court, state the award as to the whole or any part of it in the form of a special case for the opinion of the court, and the court shall deliver its opinion on it, and shall order the opinion to be added to and form part of the award.

### **12. Power to modify or correct award**

The court may, by order, modify or correct an award—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration, and that part can be separated from the other part and does not affect the decision on the matter referred;
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting the decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

### **13. Order as to costs of arbitration**

The court may make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting the costs and whether the award purports to contain a sufficient provision concerning them or not.

### **14. Where award or matter referred to arbitration may be remitted**

The court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire upon such terms as it thinks fit—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless the matter can be separated without affecting the determination of the matters referred;
- (b) where the award is so indefinite as to be incapable of execution; or
- (c) where an objection to the legality of the award is apparent upon the face of it.

### **15. Grounds for setting aside award**

- (1) An award remitted under rule 14 of this Order becomes void on failure of the arbitrator or umpire to reconsider it, but no award shall be set aside except on one of the following grounds, namely—
  - (a) corruption or misconduct of the arbitrator or umpire;

- (b) either party having been found guilty of fraudulent concealment of any matter which he or she ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire; or
  - (c) the award having been made after the issue of an order by the court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the court, or being otherwise invalid.
- (2) Where an award becomes void, or is set aside under subrule (1) of this rule, the court shall make an order superseding the arbitration and, in such case, shall proceed with the suit.
  - (3) Proceedings under this rule shall be by motion on notice.

## 16. Judgment to be according to award

- (1) Where the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or the court has refused the application, the court shall, after the time for making the application has expired, proceed to pronounce judgment according to the award.
- (2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from the decree except insofar as the decree is in excess of, or not in accordance with, the award.

## 17. Forms

Forms 12 to 16 set forth in Appendix G, with such variations as the circumstances of each case require, shall be issued for the respective purposes mentioned in those forms.

## 18. Procedure under this Order

Applications under rule 8 of this Order shall be by summons in chambers.

# Order XLVIII – District registries

## 1. Institution of suits in High Court

Every suit in the High Court may be instituted at the central office of that court situate in Kampala or in a district registry.

## 2. Establishment of district registries and district registrars

There shall be district registries and district registrars of the High Court at such places and for such areas as the Chief Justice may from time to time by statutory order appoint.

## 3. Title of suits filed in a district registry

Suits filed in a district registry shall be entitled as suits in “The High Court of Uganda at \_\_\_\_\_ District Registry” and shall be serially numbered in that registry.

## 4. Suits filed in a registry remain there when all defendants reside within that area

Where the defendant, or all the defendants (if more than one) reside and carry on business within the area in the district registry in which a suit has been instituted, all proceedings shall be taken in that registry subject to any order fixing the place of trial made by the court under rule 8 of this Order.

## **5. A defendant not resident in the area may cause the removal of the suit to the central office**

- (1) Where a defendant neither resides nor carries on business within the area in the district registry in which the suit has been instituted, there shall be a statement endorsed on the face of the summons served upon the defendant that he or she may, during the time allowed to him or her for filing his or her defence, cause the suit to be removed from the district registry in which the suit has been instituted to the central office of the High Court at Kampala, by filing with the district registrar a notice requiring him or her to transfer the record of the suit to the registrar of the High Court and by causing all other parties to the suit to be served with a copy of the notice.
- (2) Where no such notice is filed by the defendant with the district registrar, all proceedings in the suit shall be taken in that registry subject to any order fixing the place of trial made by the court under rule 8 of this Order.
- (3) Where the defendant files a notice pursuant to the provisions of this rule, the district registrar shall transfer the record of the suit to the registrar of the High Court, and thereafter all proceedings in the suit shall be taken as though the suit had been instituted at the central office.

## **6. All preliminary steps taken before the district registrar**

In a suit proceeding in a district registry all formal steps preliminary to the trial and all interlocutory applications shall, in the absence of a judge, be made and taken before the district registrar; and when the suit is ready for trial it may be set down for hearing before a judge sitting at the place of the registry.

## **7. Appeal from decision of district registrar**

- (1) Any person affected by any order or decision of a district registrar made in any preliminary step or upon an interlocutory application may appeal to a judge.
- (2) The appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent.
- (3) The appeal shall be by way of endorsement upon the record by the district registrar at the request of any party within fourteen days from the making of the order or decision.
- (4) The record bearing the endorsement shall immediately be sent to the registrar of the High Court, who shall give such directions for the hearing of the appeal as he or she may consider reasonable. The hearing shall be before a judge sitting in chambers.

## **8. Place of trial fixed by the court**

- (1) There shall be no local venue for the trial of any suit, cause or issue, except where expressly provided by written law, but in every suit, cause or issue the place of trial shall be fixed by the court.
- (2) In fixing the place for trial the court may move upon its own motion or upon the application of any party to the suit, cause or issue, and shall have regard to the convenience of the parties and their witnesses, and the date at which the trial can take place, and, when a view may be desirable, the locality of the object to be viewed, and to the other circumstances of the case, including the wishes of and the expense to the parties and the relative facilities for persons attending the trial.

## **9. Taxation in district registries**

A district registrar with regard to suits entered in his or her registry shall have the same power of taxing costs as the registrar has as a taxing officer under any rules of court, and all such rules shall apply to the taxation of costs by a district registrar.

## 10. Appeals from magistrates courts

- (1) An appeal from a decree or order of a magistrate's court to the High Court may be filed in the district registry within the area of which the magistrate's court is situate; and the district registrar shall (upon the payment to him or her of all fees) endorse the date of filing upon the memorandum of appeal, and send forward the papers to the chief registrar of the High Court.
- (2) The registrar will give such directions for the hearing and disposal of the appeal as he or she may consider reasonable, having regard to the convenience of the parties and the date at which a hearing can take place.

## Order XLIX – Miscellaneous

### 1. Process to be served at expense of party issuing; costs of service

- (1) Every process issued under the Act shall be served at the expense of the party on whose behalf it is issued unless the court otherwise directs.
- (2) The court fee chargeable for the service shall be paid within a time to be fixed before the process is issued.

### 2. Orders and notices, how served

All orders, notices and documents required by the Act to be given to or served on any person shall be served in the manner provided for the service of summons.

### 3. Use of forms

The forms used for the purposes of the Act shall, with such variation as the circumstances of each case may require, be those to be found in the Appendices and such other forms as may be from time to time approved by the High Court.

### 4. Rules of procedure not contained in these Rules

Any special rules of procedure not contained in these Rules which may have been or may be made by the High Court shall, where they conflict with these Rules, prevail and be deemed to govern the procedure in the matter mentioned in those special rules.

### 5. Land values

In suits for the recovery of possession of land, the value of the subject matter of the suit shall be deemed not to exceed—

- (a) two thousand shillings if neither the annual rent nor the annual rental value of the property nor the mesne profits claimed in the suit exceed two thousand shillings;
- (b) one thousand shillings if neither the annual rent nor the annual rental value of the property nor the mesne profits claimed in the suit exceed one thousand shillings; and
- (c) five hundred shillings if neither the annual rent nor the annual rental value of the property nor the mesne profits claimed in the suit exceed five hundred shillings.

## Order L – Powers of registrars

### 1. General powers

Wherever in the Act or in the rules under the Act it is provided that any act or thing may be done by such officer as the court may appoint, that act or thing may be done by the registrar.

### 2. Judgment in uncontested cases

In uncontested cases and cases in which the parties consent to judgment being entered in agreed terms, judgment may be entered by the registrar.

### 3. Formal and interlocutory matters

All formal steps preliminary to the trial, and all interlocutory applications, may be made and taken before the registrar.

### 4. Execution

Formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court may be made by the registrar.

### 5. Performance of undertakings, inspections, etc.

Whenever by or under any Act of Parliament or law for the time being in force any act, undertaking, inspection, proceeding or thing is to be carried out to the satisfaction of or in accordance with the directions of a judge or the High Court or a commissioner appointed to examine and adjust accounts, then and in any such case that act, undertaking, inspection, proceeding or thing may be carried out or done before or by the registrar or such other officer of the court as the judge or the High Court, as the case may be, shall generally or specially direct.

### 6. Registrar deemed a civil court

For the purposes of rules 1, 2, 3 and 4 of this Order a registrar shall be deemed to be a civil court.

### 7. Reference to High Court

If any matter appears to the registrar to be proper for the decision of the High Court the registrar may refer the matter to the High Court and a judge of the High Court may either dispose of the matter or refer it back to the registrar with such directions as he or she may think fit.

### 8. Appeals

Any person aggrieved by any order of a registrar may appeal from the order to the High Court. The appeal shall be by motion on notice.

### 9. Registers and accounts

The registrar shall register all orders and judgments and shall keep a record of all proceedings of the court, and shall have custody and keep an account of all fees and fines payable or paid into court, and of all monies paid into or out of court, and shall enter an account of all such fees, fines and monies as and when received in a book belonging to the court, to be kept by him or her for that purpose, and shall from time to time, as required by the Auditor General or as may be directed by the court, submit his or her accounts to be audited and settled by the Auditor General, and shall pay to the secretary to the Treasury the amount

of fines, fees and other monies in his or her custody at such intervals as the secretary to the Treasury may direct.

## **Order LI – Time**

### **1. Month means calendar month**

Whereby these Rules or by any judgment or order given or made the time for doing any act or taking any proceedings is limited by months, and where the word “month” occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months unless otherwise expressed.

### **2. Exclusion of Sundays, etc.**

Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day, Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of the limited time.

### **3. Time expiring on Sunday or close day**

Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, that act or proceeding shall, so far as regards the time of doing or taking the act or proceeding, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

### **4. Time expiring between 24th December and 15th January**

Unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleading or for doing any other act; except that this rule shall not apply to any application for an interim injunction, or to any business classified by the registrar or by a magistrate’s court as urgent.

### **5. Time for giving security for costs—when not to be reckoned**

The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceedings in the cause or matter.

### **6. Power to enlarge time**

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by order of the court, the court shall have power to enlarge the time upon such terms, if any, as the justice of the case may require, and the enlargement may be ordered although the application for it is not made until after the expiration of the time appointed or allowed; except that the costs of any application to extend the time and of any order made on the application shall be borne by the parties making the application, unless the court shall otherwise order.

### **7. Enlargement of time by consent**

The time for delivering, amending or filing any pleading, answer or other document may be enlarged by consent in writing of the parties or their advocates without application to the court.

## 8. Number of days—how computed

In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the days shall be reckoned exclusively of the first day and inclusively of the last day.

## 9. Time of day of service

- (1) Service of pleadings, notices, summonses, other than summonses on plaintiffs, orders, rules and other proceedings shall normally be effected before the hour of six in the afternoon, except on Saturdays when it shall normally be effected before the hour of one in the afternoon.
- (2) Service effected after the hour of six in the afternoon on any weekday except Saturday shall, for the purpose of computing any period of time subsequent to the service, be deemed to have been effected on the following day; service effected after the hour of one in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

## Order LII – Motions and other applications

### 1. Procedure under this Order

All applications to the court, except where otherwise expressly provided for under these Rules, shall be by motion and shall be heard in open court.

### 2. Notice to parties

No motion shall be made without notice to the parties affected by the motion; except that the court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as to the court may seem just, and any party affected by the order may move to set it aside.

### 3. Contents of notice

Every notice of motion shall state in general terms the grounds of the application, and, where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

### 4. Dismissal or adjournment for want of notice

If upon the hearing of any motion or other application, the court is of opinion that sufficient notice has not been given or that any person to whom notice has not been given ought to have had the notice, the court may either dismiss the motion or application or adjourn the hearing of it in order that the notice may be given upon such terms, if any, as the court may think fit to impose.

### 5. Adjournment of hearing

The hearing of any motion or application may from time to time be adjourned upon such terms as the court shall think fit.

**6. Service of notice on defendant served with summons to enter appearance but not appearing**

A plaintiff may, without special leave, cause to be served any notice of motion or notice of any petition or summons upon any defendant who, having been duly served with a summons to enter an appearance, has failed to appear within the time limited for that purpose.

**7. Summons to be heard in chambers**

All applications by summons shall be in chambers and, if supported by affidavit, a copy of any affidavit or affidavits relied upon shall be attached to each copy of the summons directed to be served.

**8. Transfer from court to chambers**

Notwithstanding anything in these Rules, the court may in any case direct that any business be disposed of in chambers which it shall think may be more conveniently disposed of in chambers than in court.

**9. Costs**

Where any application which by these Rules is authorised to be made in chambers is made in court, any additional costs occasioned thereby shall be borne and paid by the party making the application, unless the court shall otherwise order.

**10. Transfer from chambers to court**

Any judge may adjourn into court any application made to him or her in chambers which he or she shall deem more convenient to be considered in court.

## Appendices

### Forms

*[Editorial note: The forms have not been reproduced.]*