

**CHAPTER 21**

**CIVIL PROCEDURE ACT**

SUBSIDIARY LEGISLATION

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**CIVIL PROCEDURE RULES, 2010**

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[Subsidiary]

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[Subsidiary]

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*APPENDIX*

*APPENDIX A*

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*Appendix E*

*(Title as in the pleadings)*

*TRIAL CONFERENCE MEMORANDUM*

*(Order 11 Rule 7(4)(a))*

*Appendix F*

*Appendix G*

*SCHEDULE*

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**CIVIL PROCEDURE RULES, 2010**

[Legal Notice 151 of 2010, Legal Notice 22 of 2020]

**RULES UNDER SECTION 81**

These Rules may be cited as the Civil Procedure Rules, 2010 and shall come into force ninety days after publication in the *Gazette*.

**ORDER 1 - PARTIES TO SUITS****1. Who may be joined as plaintiffs [Order 1, rule 1.]**

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 such persons brought separate suits, any common question of law or fact would arise.

**2. Power of court to order separate trial [Order 1, rule 2.]**

Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may either on the application of any party or of its own motion 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 [Order 1, rule 3.]**

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 such persons any common question of law or fact would arise.

**4. Court may give judgment for or against one or more of joint parties [Order 1, rule 4.]**

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 they may be entitled to;
- (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 relief claimed [Order 1, rule 5.]**

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

**6. Joinder of parties liable on same contract [Order 1, rule 6.]**

The plaintiff may at his 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 [Order 1, rule 7.]**

Where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he 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 [Order 1, rule 8.]**

(1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or

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against any one or more of them as representing all or as representing all except one or more of them.

(2) The parties shall in such case give notice 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.

(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit.

#### **9. Misjoinder and non-joinder [Order 1, rule 9.]**

No suit shall be defeated by reason of the misjoinder or non-joinder 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. Substitution and addition of parties [Order 1, rule 10.]**

(1) Where a suit has been instituted in the name of the wrong persons 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 consent in writing thereto.

(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.

#### **11. Government proceedings [Order 1, rule 11.]**

In respect of civil proceedings by or against the Government, this Order shall have effect subject to section 12 of the Government Proceedings Act (which relates to parties to such proceedings).

#### **12. Conduct of suit [Order 1, rule 12.]**

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

#### **13. Appearance of one of several plaintiffs or defendants for others [Order 1, rule 13.]**

(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.

#### **14. Practice [Order 1, rule 14.]**

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 chamber summons or at the trial of the suit in a summary manner.

**15. Notice to third and subsequent parties [Order 1, rule 15.]**

(1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—

- (a) that he is entitled to contribution or indemnity; or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,

he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers *ex parte* supported by affidavit.

(2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.

(3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed and served within fourteen days of leave, and shall be in or to the effect of Form No. 1 of Appendix A with such variations as circumstances require and a copy of the plaint shall be served therewith.

(4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in subrule (1), the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply *mutatis mutandis* as between the third party and such person, and the court may give leave to such third party to issue a third party notice, and the preceding rules of this Order shall apply *mutatis mutandis*, and the expressions “third party notice” and “third party” shall respectively apply to and include every notice so issued and every person served with such notice.

(5) Where a person served with a notice by a third party under subrule (4) makes such a claim as is mentioned in subrule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply *mutatis mutandis* with the provisions of this rule.

[L.N. 22/2020, r. 2.]

**16. Notice to Government as third party [Order 1, rule 16.]**

Notwithstanding anything in rule 15, leave to issue a third party notice for service on the Government shall not be granted unless the Court is satisfied that the Government is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the departments and officers of the Government concerned.

**17. Default of appearance by third party [Order 1, rule 17.]**

If a person not a party to the suit who is served as mentioned in rule 15 (hereinafter called the “third party”) desires to dispute the plaintiff’s claim in the suit as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the suit on or before the day specified in the notice; and in default of his so doing he shall be deemed to admit the validity of the decree obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice:

Provided 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.

**18. Default of appearance by Government as third party [Order 1, rule 18.]**

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In the case of third-party proceedings against the Government, rule 17 shall not apply unless the court so orders; and any application for such an order shall be made by chamber summons served not less than seven days before the return day.

#### **19. Judgment against third party in default [Order 1, rule 19.]**

Where a third party makes default in entering an appearance in the suit, or in delivering any pleading, and the defendant giving the notice suffers judgment by default, such defendant shall be entitled, after causing the satisfaction of the decree against himself to be entered upon the record, to judgment against the third party to the extent claimed in the third-party notice; the court may upon the application of the defendant pass such judgment against the third party before such defendant has satisfied the decree passed against him:

Provided that it shall be lawful for the court to set aside or vary any judgment passed under this rule upon such terms as may seem just.

#### **20. No judgment against Government without leave of the Court [Order 1, rule 20.]**

(1) A defendant shall not in any event be entitled to enter judgment against the Government under rule 19 without the leave of the court.

(2) Any application for leave to enter judgment against the Government under this rule shall be made by chamber summons served not less than seven days before the return day.

#### **21. Judgment after trial against third party in default [Order 1, rule 21.]**

(1) Where a third party makes default in entering an appearance in the suit, and 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:

Provided that execution thereof shall not be issued without leave of the court, until after satisfaction by such defendant of the decree against him.

(2) If the suit is finally decided in the plaintiff's 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.

#### **22. Appearance of third party and directions [Order 1, rule 22.]**

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 such application may, if satisfied that there is a proper question to be tried as to the liability of the third party, 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.

#### **23. Costs [Order 1, rule 23.]**

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.

#### **24. Defendant claiming against a co-defendant [Order 1, rule 24.]**

(1) Where a defendant desires to claim against another person who is already a party to the suit—

- (a) that he is entitled to contribution or indemnity; or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action which is substantially the same as some relief or remedy claimed by the plaintiff; or

- (c) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and such other person or between any or either of them,

the defendant may without leave issue and serve on such other person a notice making such claim or specifying such question or issue.

(2) No appearance to such notice shall be necessary but there shall be adopted for the determination of such claim, question or issue the same procedure as if such other person were a third party under this Order.

(3) Nothing contained in this rule shall operate or be construed so as to prejudice the rights of the plaintiff against any defendant to the action.

## **25. Procedure [Order 1, rule 25.]**

Applications under rules 10 and 19 may be made orally in Court or by summons in chamber.

## **26. Parties to provide contacts [Order 1, rule 26]**

(1) A party to a suit shall provide contact details to the Court when filing pleadings including the party's —

- (a) postal address;
- (b) telephone number;
- (c) email address; and
- (d) physical address.

(2) A party shall notify the Court of any changes to the contact details provided under subrule (1).

[L.N. 22/2020, r. 3.]

## ORDER 2 - PLEADINGS GENERALLY

### **1. Pleadings generally [Order 2, rule 1.]**

(1) Every pleading in civil proceedings including proceedings against the Government shall contain information as to the circumstances in which it is alleged that the liability has arisen and, in the case of the Government, the departments and officers concerned.

(2) In such proceedings if the defendant considers that the pleading does not contain sufficient information as aforesaid, the defendant may, at any time before the time limited by the summons for appearance has expired, by notice in writing to the plaintiff, request further information as specified in the notice.

(3) Where such a notice has been given, the time for appearance shall expire four days after the defendant has notified the plaintiff in writing that the defendant is satisfied or four days after the court has, on the application of the plaintiff by chamber summons served on the defendant not less than seven days before the return day, decided that no further information is reasonably required.

### **2. Formal requirements [Order 2, rule 2.]**

(1) Every pleading shall be divided into paragraphs numbered consecutively, each allegation being so far as appropriate contained in a separate paragraph.

(2) Dates, sums and other numbers shall be expressed in figures and not words.

### **3. Facts not evidence, to be pleaded [Order 2, rule 3.]**

(1) Subject to the provisions of this rule and rules 6, 7 and 8, every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which those facts are to be proved, and the statement shall be as brief as the nature of the case admits.

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[Subsidiary]

(2) Without prejudice to subrule (1), the effect of any document or the purport of any conversation referred to in the pleading shall, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or an event the doing or occurrence of which constitutes a condition precedent necessary for the case of a party shall be implied in his pleading.

#### **4. Matters which must be specifically pleaded [Order 2, rule 4.]**

(1) A party shall in any pleading subsequent to a plaint plead specifically any matter, for example performance, release, payment, fraud, inevitable accident, act of God, any relevant Statute of limitation or any fact showing illegality—

- (a) which he alleges makes any claim or defence of the opposite party not maintainable;
- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to subrule (1), a defendant to an action for the recovery of land shall plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant shall not be sufficient.

(3) In this rule “land” includes land covered with water, all things growing on land, and buildings and other things permanently affixed to land.

#### **5. Matter may be pleaded whenever arising [Order 2, rule 5.]**

Subject to rules 3 (1) and 6, a party may in any pleading plead any matter which has arisen at any time, whether before or since the filing of the plaint.

#### **6. Departure [Order 2, rule 6.]**

(1) No party may in any pleading make an allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his in the same suit.

(2) Subrule (1) shall not prejudice the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

#### **7. Particulars in defamation actions [Order 2, rule 7.]**

(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his plaint give particulars of the facts on which he relies in support of the allegation of malice; but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he shall file a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

### **8. Particulars of evidence in mitigation [Order 2, rule 8.]**

In an action for libel or slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled at the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the court, unless at least twenty-one days before the trial he has given the plaintiff particulars of the matters on which he intends to give evidence.

### **9. Points of law [Order 2, rule 9.]**

A party may by his pleading raise any point of law.

### **10. Particulars of pleading [Order 2, rule 10.]**

(1) Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—

- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) The court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the court thinks just.

(3) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of subrule (2), the court may, on such terms as it thinks just, order that party to serve on any other party—

- (a) where he alleges knowledge, particulars of the facts on which he relies; and
- (b) where he alleges notice, particulars of the notice.

(4) An order under this rule shall not be made before the filing of the defence unless the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(5) No order for costs shall be made in favour of a party applying for an order who has not first applied by notice in Form No. 2 of Appendix B which shall be served in duplicate.

(6) Particulars delivered shall be in Form No. 3 of Appendix A which shall be filed by the party delivering it together with the original notice and shall form part of the pleadings.

### **11. Admissions and denials [Order 2, rule 11.]**

(1) Subject to subrule (4), any allegation of fact made by a party in his pleading shall be deemed to be admitted by the opposing party unless it is traversed by that party in his pleading or a joinder of issue under rule 10 operates as a denial of it.

(2) A traverse may be made either by denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to subrule (4), every allegation of fact made in a plaint or counterclaim which the party on whom it is served does not intend to admit shall be specifically traversed by him in his defence or defence to counterclaim; and a general denial of such allegations, or a general statement of non-admission of them, shall not be a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages shall be deemed to have been traversed unless specifically admitted.

[Subsidiary]

**12. Denial by joinder of issue [Order 2, rule 12.]**

- (1) If there is no reply to a defence, there is a joinder of issue on that defence.
- (2) Subject to subrule (3)—
  - (a) there is at the close of pleadings a joinder of issue on the pleading last filed; and
  - (b) a party may in his pleading expressly join issue on the immediately preceding pleading.
- (3) There can be no joinder of issue on a plaint or counterclaim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is a joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

**13. Close of pleadings [Order 2, rule 13.]**

The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.

**14. Technical objection [Order 2, rule 14.]**

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

**15. Striking out pleadings [Order 2, rule 15.]**

(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

- (a) it discloses no reasonable cause of action or defence in law; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court,

and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.

(3) So far as applicable this rule shall apply to an originating summons and a petition.

**16. Pleading to be signed [Order 2, rule 16.]**

Every pleading shall be signed by an advocate, or recognised agent (as defined by Order 9, rule 2), or by the party if he sues or defends in person.

**17. Proceedings *in rem* [Order 2, rule 17.]**

An application under section 25(2) of the Government Proceedings Act (Cap. 40) may be made at any time before trial or during the trial.

## ORDER 3 - FRAME AND INSTITUTION OF SUIT

**1. Commencement of suit and case track allocation [Order 3, rule 1.]**

(1) Every suit shall be instituted by presenting a plaint to the Court, or in such other manner as may be prescribed.

(2) The claim shall indicate at the heading the choice of track; namely “small claims”, “fast track” or “multi-track”.

(3) For purposes of this rule—



- (a) "**small claim**" refers to a simple claim whose monetary value does not exceed two hundred thousand shillings.
- (b) "**Fast track**" refers to a case with undisputed facts and legal issues; relatively few parties; and would likely be concluded within one hundred and eighty days after the pre-trial directions under Order 11.
- (c) "**Multi-track**" refers to a case with complex facts and legal issues; or several parties and which would likely be concluded within two hundred and forty days from the date of the pre-trial directions under Order 11.

(4) In choosing a case track, the plaintiff shall have regard to all relevant considerations including the following—

- (a) the complexity of the issues of fact, law or evidence;
- (b) the financial value of the claim;
- (c) the likely expense to the parties;
- (d) the importance of issues of law or fact to the public;
- (e) the nature of the remedy sought;
- (f) the number of parties or prospective parties; and
- (g) the time required for pre-trial disclosures and for preparation for trial or hearing;

[L.N. 22/2020, r. 4.]

## 2. Documents to accompany suit [Order 3, rule 2.]

All suits filed under rule 1(1) including suits against the government, except small claims, shall be accompanied by—

- (a) the affidavit referred to under Order 4 rule1(2);
- (b) a list of witnesses to be called at the trial;
- (c) written statements signed by the witnesses excluding expert witnesses; and
- (d) copies of documents to be relied on at the trial including a demand letter before action:

Provided that statement under sub rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under Order 11.

## 3. Register of civil suits and filing [Order 3, rule 3.]

(1) A register of suits, to be called the register of civil suits, shall be kept at every registry; and the particulars of every suit filed in a registry shall be entered in the register and all such suits shall be numbered in each year according to the order in which they are instituted in that registry.

(2) Every plaint to be filed shall be presented to the registry during office hours together with any fee payable on its filing and each such plaint shall be date-stamped with the date on which it was so presented which shall be the date of filing the suit notwithstanding any dispute as to the amount of the fee payable.

## 4. Suit to include the whole claim [Order 3, rule 4.]

(1) 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 claim.

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

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

## 5. Joinder of causes of action [Order 3, rule 5.]

[Subsidiary]

(1) Save 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 such 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 of the subject-matters at the date of instituting the suit.

### **6. Only certain claims to be joined with a suit for recovery of immovable property [Order 3, rule 6.]**

No cause of action shall, except with 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 thereof;
- (b) claims for damages for breach of any contract under which the property or any part thereof 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:

Provided that nothing in this rule shall 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 this rule.

### **7. Claims by or against executor, administrator or heir [Order 3, rule 7.]**

No claim by or against an executor or administrator, as such, shall be joined with claims by or against him 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 was entitled to, or liable for, jointly with the deceased person whom he represents.

### **8. Power of court to order separate trials [Order 3, rule 8.]**

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 either on the application of any party or of its own motion order separate trials or may make such order as may be expedient.

### **9. Declaratory judgment [Order 3, rule 9.]**

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

## ORDER 4 - PLAINT

### **1. Particulars of plaint [Order 4, rule 1.]**

- (1) 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) the place where the cause of action arose;
  - (e) where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect; and
  - (f) an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the plaintiff and the defendant

over the same subject matter and that the cause of action relates to the plaintiff named in the plaint.

(2) The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in rule 1(1)(f) above.

(3) Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the verifying affidavit on behalf of the others.

(4) Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.

(5) The provisions of sub-rule (3) and (4) shall apply *mutatis mutandis* to counterclaims.

(6) The court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2) (3), (4) and (5) of this rule.

## **2. Money suit [Order 4, rule 2.]**

(1) Where the plaintiff seeks the recovery of money, the plaint 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 on taking unsettled accounts between him and the defendant.

(2) The provisions of this rule shall apply to counterclaims.

## **3. Where the subject-matter of the suit is immovable property [Order 4, rule 3.]**

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

## **4. Capacity of parties [Order 4, rule 4.]**

Where the plaintiff sues in a representative capacity the plaint shall state the capacity in which he sues and where the defendant is sued in a representative capacity the plaint shall state the capacity in which he is sued, and in both cases it shall be stated how that capacity arises.

## **5. Defendant's interest and liability to be shown [Order 4, rule 5.]**

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

## **6. Statement of relief claimed [Order 4, rule 6.]**

Every plaint shall state specifically the relief which the plaintiff claims, either specifically or in the alternative, and it shall not be necessary to ask for costs, interest or general or other relief which may always be given as the court deems just, whether or not it could have been asked for or granted when the suit was filed; and this rule shall apply also to a defence or counterclaim.

## **7. Relief founded on separate grounds [Order 4, rule 7.]**

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.

## **8. Copies of plaint [Order 4, rule 8.]**

The plaintiff shall present as many copies of the plaint as there are defendants.

## **9. Return of plaint [Order 4, rule 9.]**

(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 judge shall endorse thereon the date of its presentation and return, the name of the party presenting it and a brief statement of the reasons for returning it.

[Subsidiary]

## ORDER 5 - ISSUE AND SERVICE OF SUMMONS

**1. Issue of summons [Order 5, rule 1.]**

(1) When a suit has been filed a summons shall issue to the defendant ordering him to appear within the time specified therein.

(2) Every summons shall be signed by the judge or an officer appointed by the judge and shall be sealed with the seal of the court without delay, and in any event not more than thirty days from the date of filing suit.

(3) Every summons shall be accompanied by a copy of the plaint.

(4) The time for appearance shall be fixed with reference to the place of residence of the defendant so as to allow him sufficient time to appear:

Provided that the time for appearance shall not be less than ten days.

(5) Every summons shall be prepared by the plaintiff or his advocate and filed with the plaint to be signed in accordance with sub rule (2) of this rule.

(6) Every summons, except where the court is to effect service, shall be collected for service within thirty days of issue, failing which the suit shall abate.

[L.N. 22/2020, r. 5.]

**2. Duration and renewal of summons [Order 5, rule 2.]**

(1) A summons (other than a concurrent summons) shall be valid in the first instance for twelve months beginning with the date of its issue and a concurrent summons shall be valid in the first instance for the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.

(2) Where a summons has not been served on a defendant the court may extend the validity of the summons from time to time if satisfied it is just to do so

(3) Where the validity of a summons has been extended under sub-rule (2) before it may be served it shall be marked with an official stamp showing the period for which its validity has been extended.

(4) Where the validity of a summons is extended, the order shall operate in relation to any other summons (whether original or concurrent) issued in the same suit which has not been served so as to extend its validity until the period specified in the order.

(5) An application for an order under sub-rule (2) shall be made by filing an affidavit setting out the attempts made at service and their result, and the order may be made without the advocate or plaintiff in person being heard.

(6) As many attempts to serve the summons as are necessary may be made during the period of validity of the summons.

(7) Where no application has been made under subrule (2) the court may without notice dismiss the suit at the expiry of twenty-four months from the issue of the original summons.

**3. Service on a corporation [Order 5, rule 3.]**

Subject to any other written law, where the suit is against a corporation the summons may be served—

- (a) on the secretary, director or other principal officer of the corporation; or
- (b) if the process server is unable to find any of the officers of the corporation mentioned in rule 3(a)—
  - (i) by leaving it at the registered office of the corporation;
  - (ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation; or
  - (iii) if there is no registered office and no registered office or physical address of the corporation, by leaving it at the place where the corporation carries on business; or

- (iv) by sending it by registered post to the last known postal address of the corporation.

[L.N. 22/2020, r. 6.]

#### **4. Concurrent summons [Order 5, rule 4.]**

(1) One or more concurrent summonses may, at the request of the plaintiff, be issued at the time when the original summons is issued or at any time thereafter before the original summons ceases to be valid.

(2) A concurrent summons shall be valid only from the date of its own issue and shall remain valid so long as the original summons remains in force.

#### **5. Delivery or transmission of summons for service [Order 5, rule 5.]**

(1) Where the court has issued summons to a defendant, the summons may be delivered for service—

- (a) to any person for the time being duly authorized by the court;
- (b) to an advocate, or advocate's clerk approved by the court;
- (c) to any subordinate court having jurisdiction in the place where the defendant resides;
- (d) to a police officer appointed under the Police Act (Cap.84) or to an officer appointed under the Administration Police Act (Cap.85); or
- (e) to a licensed courier service provider approved by the court.

(2) A court to which a summons is sent under subrule (1)(c) shall upon receipt thereof proceed as if it had been issued by such court, and shall then return the summons to the court of issue, together with the record of any of its proceedings with regard thereto.

(3) No objection may be made to the service of a summons on the grounds that the person who served the summons either was not authorized so to do or that he exceeded or failed to comply with his authority in any way.

#### **6. Mode of service [Order 5, rule 6.]**

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

#### **7. Service on several defendants [Order 5, rule 7.]**

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

#### **8. Service to be on defendant in person or on his agent [Order 5, rule 8.]**

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

(2) A summons may be served upon an advocate who has instructions to accept service and to enter an appearance to the summons and judgment in default of appearance may be entered after such service.

#### **9. Mode of service on the Government [Order 5, rule 9.]**

(1) The provisions of this Order shall have effect subject to section 13 of the Government Proceedings Act (Cap. 40), which provides for the service of documents on the Government for the purpose of or in connection with civil proceedings by or against the Government.

(2) Service of a document in accordance with the said section 13 shall be effected—

- (a) by leaving the document within the prescribed hours at the office of the Attorney-General, or of any agent whom he has nominated for the purpose, but in either case with a person belonging to the office where the document is left; or

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- (b) by posting it in a prepaid registered envelope addressed to the Attorney-General or any such agent as aforesaid,

and where service under this rule is made by post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

(3) All documents to be served on the Government for the purpose of or in connection with any civil proceedings shall be treated for the purposes of these Rules as documents in respect of which personal service is not requisite.

(4) In this rule, "document" includes writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications.

**10. Service on agent by whom defendant carries on business [Order 5, rule 10.]**

(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 such business or work for such person within such 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.

**11. Service on agent in charge in suits for immovable property [Order 5, rule 11.]**

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.

**12. Service on agent or adult [Order 5, rule 12.]**

Where in any suit, after a reasonable number of attempts have been made to serve the defendant, and 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.

**13. Person served to sign acknowledgment [Order 5, rule 13.]**

Where a duplicate of the summons is duly delivered or tendered to the defendant personally or to an agent or other person on his behalf, the defendant or such agent or other person shall be required to endorse an acknowledgment of service on the original summons:

Provided that, if the court is satisfied that the defendant or such agent or other person has refused so to endorse, the court may declare the summons to have been duly served.

**14. Procedure when defendant refuses to accept service or cannot be found [Order 5, rule 14.]**

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, together with an affidavit of service.

**15. Affidavit of service [Order 5, rule 15.]**

(1) The serving officer in all cases in which summons has been served under any of the foregoing rules of this Order shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served

and witnessing the delivery or tender of summons. The affidavit of service shall be in Form No 4 of Appendix A with such variations as circumstances may require.

(2) Any person who knowingly makes a false affidavit of service shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or one month's imprisonment or both.

#### **16. Examination of serving officer [Order 5, rule 16.]**

On any allegation that a summons has not been properly served, the court may examine the serving officer on oath, or cause him to be so examined by another court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

#### **17. Substituted service [Order 5, rule 17.]**

(1) Where the court is satisfied that for any reason the summons cannot be served in accordance with any of the preceding rules of this Order, the court may on application order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, 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.

(4) Unless otherwise directed, where substituted service of a summons is ordered under this rule to be by advertisement, the advertisement shall be in Form No. 5 of Appendix A with such variations as the circumstances require.

#### **18. Service on defendant in prison [Order 5, rule 18.]**

Where the defendant is confined in a prison, the summons shall be served on him personally in the presence of the officer in charge of the prison.

#### **19. Service on public officers and soldiers [Order 5, rule 19.]**

(1) Where the defendant is a public officer or an officer of a 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 is employed, together with a copy to be retained by the defendant.

(2) Where the defendant is a soldier (but not an officer), the court shall send the summons for service to his commanding officer, together with a copy to be retained by the defendant.

#### **20. Duty on person to whom the summons is sent [Order 5, rule 20.]**

(1) Where a summons is delivered or sent to any person for service under rule 18 or rule 19, such person shall be bound to serve it, if possible, and to return it under his signature with a written acknowledgment of the defendant, and such 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 such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

#### **21. Service out of Kenya [Order 5, rule 21.]**

Service out of Kenya 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 situate in Kenya (with or without rents and profits);

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- (b) any act, deed, will, contract, obligation or liability affecting immovable property situate in Kenya 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 in Kenya;
- (d) the suit is for the administration of the personal estate of a deceased person who at the time of his death was domiciled in Kenya, or for the execution (as to property situate in Kenya) 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 Kenya;
- (e) the suit is one brought to enforce, rectify, rescind, dissolve, annul, or otherwise affect a contract or to recover damages or other relief for or in respect of the breach of a contract—
  - (i) made in Kenya; or
  - (ii) made by or through an agent trading or residing in Kenya on behalf of a principal trading or residing out of Kenya; or
  - (iii) by its terms or by its legislation to be governed by the Laws of Kenya; or
  - (iv) which contains a provision to the effect that any Kenya court has jurisdiction to hear and determine that suit in respect of that contract,
 or is brought in respect of a breach committed in Kenya, of a contract, wherever made, even though such a breach was preceded or accompanied by a breach out of Kenya which rendered impossible the performance of the part of the contract which ought to have been performed in Kenya; or
- (f) the suit is founded on a tort committed in Kenya;
- (g) any injunction is sought as to anything to be done in Kenya, or any nuisance in Kenya is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
- (h) any person out of Kenya is a necessary or proper party to a suit properly brought against some other person duly served in Kenya.

## **22. Service of other process out of the jurisdiction [Order 5, rule 22.]**

(1) Service out of Kenya of the following process or of notice thereof may be allowed by the court by—

- (a) an originating summons, originating notice of motion, petition, or other originating proceedings under any written law under which proceedings can be commenced otherwise than by plaint;
- (b) any summons, order or notice in any interpleader proceedings or for the appointment of an arbitrator or umpire, or to remit, set aside or enforce an award in an arbitration held or to be held within the jurisdiction;
- (c) any summons, order or notice in any proceedings duly instituted whether by plaint or other originating process mentioned in paragraph (a); or
- (d) where the person on whom the originating summons, originating notice of motion, petition or other originating proceedings, or a summons, order or notice, is to be served is not resident in Kenya, a copy of the originating summons, petition, notice of motion or other originating proceedings, or summons, order or notice shall be served instead of the original together with an intimation in writing that process in the form of the copy has been issued or otherwise launched.

(2) Rules 25, 26, 27, 28 and 30 shall apply *mutatis mutandis* to service of any process under subrule (1).

(3) Nothing in this rule shall affect any practice or power of the court under which, when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt



with or affected, the court may (without affecting to exercise jurisdiction over any person out of the jurisdiction) cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.

[L.N. 22/2020, r. 7,8.]

### **22A. Internationally registered and recognized courier services [Order 5, rule 22A]**

(1) Summons may be sent to the Defendant by way of registered courier service provider; service shall be effected only with the leave of the Court through an internationally registered and recognized courier service provider to the defendant's last known physical address.

(2) Service shall be deemed to have been effected when the person being served acknowledges receipt by affixing his signature on the document or on confirmation of delivery by the courier service provider.

(3) An officer of the court duly authorized to effect service shall file an Affidavit of Service attaching the way bill receipt or consignment note from the courier service provider confirming service.

(4) An affidavit of service shall be proof enough that service was effected, even if the person being served declines to acknowledge receipt.

[L.N. 22/2020, r. 11.]

### **22B. Electronic Mail Services (E-mail) [Order 5, rule 22B]**

(1) Summons sent by Electronic Mail Service shall be sent to the defendant's last confirmed and used E-mail address.

(2) Service shall be deemed to have been effected when the Sender receives a delivery receipt.

(3) Summons shall be deemed served on the day which it is sent; if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be considered to have been served on the business day subsequent.

(4) An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the Electronic Mail Service delivery receipt confirming service.

[L.N. 22/2020, r. 11.]

### **22C. Mobile-enabled messaging Applications [Order 5, rule 22C]**

(1) Summons may be sent by mobile-enabled messaging Applications to the defendant's last known and used telephone number.

(2) Summons shall be deemed served on the day which it is sent; if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be considered to have been served on the business day subsequent.

(3) Service shall be deemed to have been effected when mobile-enabled messaging services when the Sender receives a delivery receipt.

(4) An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the delivery receipt confirming service.

[L.N. 22/2020, r. 11.]

### **23. Service under contract [Order 5, rule 23.]**

Without prejudice to the other rules in this Order, where—

- (a) leave to serve a summons or notice of a summons or other process has been allowed under rule 21 or 22; and

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- (b) the contract provides that in the event of any suit in respect of the contract being begun, the process by which it is begun may be served on a defendant, or on such other person on his behalf as is specified in the contract, in such manner or at such place (whether in or outside Kenya) as is specified, then a summons or other process in that suit may be served as provided in the contract.

#### **24. Probate and marriage suits [Order 5, rule 24.]**

In probate, Mohammedan or Hindu marriage, divorce and succession suits, service of a summons or notice of a summons may by leave of the court be allowed out of Kenya.

#### **25. Application to be supported by evidence [Order 5, rule 25.]**

Every application for leave to serve such summons or notice on a defendant out of Kenya 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 such defendant is or probably may be found, and whether such defendant is not resident in Kenya 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 Kenya under this Order.

[L.N. 22/2020, r. 9.]

#### **26. Order to fix time for entering appearance [Order 5, rule 26.]**

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

#### **27. Service where defendant resides out of Kenya [Order 5, rule 27.]**

Where leave to serve a summons or notice of summons out of Kenya has been granted under rule 21, and the defendant is a Commonwealth citizen as defined in subsections (1) and (2) of section 95 of the Constitution or resides in any of the countries for the time being mentioned in subsection (3) of that section, the summons shall be served in such manner as the Court may direct.

#### **28. Notice in lieu of summons [Order 5, rule 28.]**

(1) *Deleted by L.N. 22/2020, r. 10.*

(2) Notice of summons shall be in Form No. 6 of Appendix A with such variations as the circumstances require.

[L.N. 22/2020, r. 10.]

#### **29. Service of notice of summons in a foreign country [Order 5, rule 29.]**

Where leave is given to serve notice of summons in a 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 Kenya, and shall be forwarded by the Registrar to the Minister for the time being responsible for Foreign Affairs together with a copy thereof translated into the language of the country in which service is to be effected, and with a request for the further transmission of the same through the diplomatic channel to the Government of the country in which leave to serve notice of the summons has been given; and such request shall be in Form No. 7 of Appendix A 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 same, file a praecipe in Form No. 8 of Appendix A;

- (c) an official certificate, or declaration upon oath, or otherwise, transmitted through the diplomatic channel 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 such foreign country, or words to that effect, be deemed to be sufficient proof of such service, and shall be filed on record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf;
- (d) where an official certificate or declaration, transmitted to the High Court in the manner provided in paragraph (c), 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 such notice; and such order shall be in Form No. 9 of Appendix A, with such variations as circumstances may require;
- (e) a request for substituted service of a notice of summons under this rule may be bespoken by the plaintiff at the department where summonses are issued upon filing a praecipe in Form No. 8 of Appendix A, and the notice of summons and copy of the same, and the order, shall be sealed and transmitted to the Minister in the manner aforesaid together with a request in Form No. 10 of Appendix A, with such variations as circumstances may require.

### **30. Extension of procedure to any order or notice [Order 5, rule 30.]**

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 27, with reference to service of notice of a summons, shall apply to service of any summons, order or notice so directed to be served.

### **31. Application to Government [Order 5, rule 31.]**

Rules 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 shall apply in the case of civil proceedings by the Government but shall not apply in the case of civil proceedings against the Government.

## SERVICE OF FOREIGN LEGAL PROCESS IN KENYA

### **32. Procedure [Order 5, rule 32.]**

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

- (a) the letter or request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process of citation to be served, and two copies thereof in the English language;
- (b) service shall be effected 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 thereof, in accordance with the rules and practice of the High Court of Kenya regulating service to persons;
- (c) after service has been effected 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 such service;
- (d) the particulars of charges for the cost of effecting service shall be submitted to the 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;

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- (e) the Registrar shall return the letter of request for service received from the foreign country, together with the evidence of service with a certificate appended thereto duly sealed with the seal of the High Court for use out of the jurisdiction; and such certificate shall be in Form No. 11 of Appendix A.

### **33. General powers of the court [Order 5, rule 33.]**

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 32.

### **34. Request for service from foreign country [Order 5, rule 34.]**

Where in any civil or commercial matter pending before a court or tribunal in any foreign country with which a Convention in that behalf has been or shall be made and applied to Kenya, a request for service of any document on a person in Kenya is received by the Registrar of the High Court from the consular or other authority of such country, the following procedure shall, subject to any special provisions contained in the Convention, be adopted—

- (a) the service shall be effected by the delivery of the original or a copy of the document, as indicated in the request, and the copy of the translation, to the party or person to be served in person by the process server;
- (b) no court fees shall be charged in respect of the service, and the particulars of charges of the officer or agent employed to effect service shall be submitted to the Registrar of the High Court, who shall certify the amount properly payable in respect thereof.

## ORDER 6 - APPEARANCE OF PARTIES

### **1. Time for appearance [Order 6, rule 1.]**

Where a defendant has been served with summons to appear, he shall unless some order be made by the court, file his appearance within the time prescribed in the summons.

### **2. Mode of appearance [Order 6, rule 2.]**

(1) Appearance shall be effected by delivering or sending by post to the proper officer a memorandum of appearance in triplicate in Form No. 12 Appendix A with such variation as the circumstances require, signed by the advocate by whom the defendant appears or, if the defendant appears in person, by the defendant or his recognised agent.

(2) On receipt of the memorandum of appearance as required under subrule (1) the proper officer shall stamp and file the original and stamp the copies thereof with the court stamp showing the date on which they were received and—

- (a) if they were delivered to the proper officer, he shall return the stamped copies to the person appearing, or
- (b) if they were sent by post, he shall send one copy by post to the plaintiff's address for service and one copy by post to the defendant's address for service.

(3) Where the defendant appears by delivering the memorandum of appearance as required under subrule (1) he shall within seven days from the date on which he appears serve a copy of the memorandum of appearance upon the plaintiff and file an affidavit of service.

(4) Where a defence contains the information required by rule 3 it shall where necessary be treated as an appearance.

### **3. Defendant's address for service [Order 6, rule 3.]**

(1) The advocates of the defendant shall state in the memorandum of appearance the addresses for service being the place of business within Kenya and postal address.

(2) A defendant appearing in person shall state in the memorandum of appearance his addresses for service being either his place of residence or his place of business and his

postal address, and if he has neither residence nor place of business in Kenya he shall state a place and postal address within Kenya which shall be his addresses for service.

(3) When a corporation appears without an advocate the memorandum of appearance shall state the addresses for service which may be either the registered office or a place of business of the corporation together with its postal address.

#### **4. Irregular memorandum, address fictitious [Order 6, rule 4.]**

If the memorandum of appearance does not contain an address for service within Kenya it shall not be filed; and if any address given is illusory or fictitious the appearance may be set aside on the application of the plaintiff.

#### **5. Defendants appearing by same advocate [Order 6, rule 5.]**

If two or more defendants appear in the same suit by the same advocate and at the same time, the names of all the defendants so appearing shall be inserted in the same memorandum of appearance.

#### **6. Delivery of documents to address for service [Order 6, rule 6.]**

(1) Documents may either be delivered by hand or by licensed courier service provider approved by the court to the address for service or may be posted to it.

(2) Where delivery is disputed a certificate of posting or other evidence of delivery shall be filed.

### ORDER 7 - DEFENCE AND COUNTERCLAIM

#### **1. Defence [Order 7, rule 1.]**

Where a defendant has been served with a summons to appear he shall, unless some other or further order be made by the court, file his defence within fourteen days after he has entered an appearance in the suit and serve it on the plaintiff within fourteen days from the date of filing the defence and file an affidavit of service.

#### **2. Defence of tender [Order 7, rule 2.]**

Where in any suit a defence of tender before action is pleaded the defendant shall pay into court, in accordance with Order 27, the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

#### **3. Set-off and counterclaim [Order 7, rule 3.]**

A defendant in a suit may set-off, or set-up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and whether it is for a liquidated or unliquidated amount, and such set-off or counterclaim shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit, 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 such set-off or counterclaim cannot be conveniently disposed of in the pending suit, or ought not to be allowed, refuse permission to defendant to avail himself thereof.

#### **4. Set-off or counterclaim in proceedings by Government [Order 7, rule 4.]**

Notwithstanding anything contained in rule 2, a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Government for the recovery of taxes, duties or penalties, or to avail himself in proceedings by the Government of any other nature of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

#### **5. Documents to accompany defence or counterclaim [Order 7, rule 5.]**

The defence and counterclaim filed under rule 1 and 2 shall be accompanied by—

- (a) an affidavit under Order 4 rule 1(2) where there is a counterclaim;

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- (b) a list of witnesses to be called at the trial;
- (c) written statements signed by the witnesses except expert witnesses; and
- (d) copies of documents to be relied on at the trial.

Provided that statements under sub-rule (c) may with leave of the court be furnished at least fifteen days prior to the trial conference under Order 11.

#### **6. Persons in representative capacity [Order 7, rule 6.]**

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 shall deny the same specifically.

#### **7. Pleading a counterclaim [Order 7, rule 7.]**

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

#### **8. Title of counterclaim [Order 7, rule 8.]**

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

#### **9. Claim against person not party [Order 7, rule 9.]**

Where any such person as is mentioned in rule 8 is not a party to the suit, he 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 summons.

#### **10. Appearance by added parties [Order 7, rule 10.]**

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

#### **11. Reply to counterclaim [Order 7, rule 11.]**

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 of the counterclaim and shall serve a copy thereof on all parties to the suit.

#### **12. Exclusion of counterclaim [Order 7, rule 12.]**

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

#### **13. Discontinuance, stay or dismissal of suit [Order 7, rule 13.]**

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 [Order 7, rule 14.]**

Where in any suit a set-off 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 such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

#### **15. Defence or set-off founded on separate grounds [Order 7, rule 15.]**

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

#### **16. New ground of defence [Order 7, rule 16.]**

(1) Any ground of defence which has arisen after action brought, but before the defendant has delivered his defence and before the time limited for his doing so has expired, may be raised by the defendant in his defence, either alone or together with other grounds of defence; and if, after a defence has been delivered, any ground of defence arises to any set-off or counterclaim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

(2) Where any ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after the time limited for delivering a reply has expired, the plaintiff may, within fourteen days after such ground of defence has arisen or at any subsequent time, by leave of the court, deliver a further reply, as the case may be, setting forth the same.

(3) Whenever any defendant in his defence, or in any further defence as mentioned in subrule (2), alleges any ground of defence which has arisen after the commencement of the suit, the plaintiff may deliver a confession of such defence, and may make application by summons for his costs up to the time of pleading of such defence.

#### **17. Subsequent pleadings [Order 7, rule 17.]**

(1) A plaintiff shall be entitled to file a reply within fourteen days after the defence or the last of the defences has been served on to him, unless the time is extended.

(2) No pleading subsequent to the reply shall be pleaded without leave of the court, and then shall be pleaded only upon such terms as the court thinks fit.

(3) Where a counterclaim is pleaded, a defence thereto shall be subject to the rules applicable to defence.

#### **18. Filing subsequent pleadings [Order 7, rule 18.]**

(1) Subject to rule 8 all pleadings (including amended pleadings) subsequent to the plaint shall be filed in duplicate.

(2) The court may return the duplicate to an advocate who shall deliver it to the address for service on the opposite party within seven days.

(3) Where the duplicate is not returned to an advocate for delivery the court shall deliver it to the address for service or to the opposite party or his advocate or representative if he attends at the registry before its delivery.

#### **19. Register of documents [Order 7, rule 19.]**

(1) A register of documents shall be kept at every registry in which the following particulars in respect of each such document shall be entered, namely—

- (a) the number of the document;
- (b) the number of the suit to which it relates;
- (c) the nature of the document;
- (d) the date of filing;

and each such entry shall be signed by the officer who receives the document.

(2) Every such document to be filed shall be presented to the registry during office hours together with any fee payable on its filing and each such document shall be date-stamped with the date on which it was so presented which shall be the date of filing.

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## **20. Service of documents [Order 7, rule 20.]**

Documents under this order shall be served in the manner prescribed under Order 5 of these Rules.

### ORDER 8 - AMENDMENT OF PLEADINGS

#### **1. Amendment of pleading without leave [Order 8, rule 1.]**

(1) A party may, without the leave of the court, amend any of his pleadings once at any time before the pleadings are closed.

(2) Where an amended plaintiff is served on a defendant—

- (a) if he has already filed a defence, the defendant may amend his defence; and
- (b) the defence or amended defence shall be filed either as provided by these rules for the filing of the defence or fourteen days after the service of the amended plaintiff whichever is later.

(3) Where an amended defence is served on a plaintiff—

- (a) if the plaintiff has already served a reply on that defendant, he may amend his reply; and
- (b) the period for service of his reply or amended reply is fourteen days after the service on him of the amended defence.

(4) References in subrule (2) and (3) to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.

(5) Where an amended counterclaim is served on a party (other than the plaintiff) against whom the counterclaim is made, subrule (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made were a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under subrule (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to rely on it in answer to the amended pleading, and Order 2 rule 12(2) shall have effect at the expiry of the period within which the pleading could have been amended.

#### **2. Application for disallowance of amendment [Order 8, rule 2.]**

(1) Within fourteen days after the service on a party of a pleading amended under rule 1(1), that party may apply to the court to disallow the amendment.

(2) When the court hearing an application under this rule is satisfied that if an application to make the amendment in question had been made under rule 3 at the date when the amendment was made under rule 1(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part of it to be struck out.

(3) Any order made on an application under this rule may include such terms as to costs or otherwise as the court thinks just.

#### **3. Amendment of pleading with leave [Order 8, rule 3.]**

(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.

(2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.

(3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new



party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.

(5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.

#### **4. Amendment of originating process [Order 8, rule 4.]**

Rule 3 shall have effect in relation to an originating summons, a petition and an originating notice of motion as it has effect in relation to a plaint.

#### **5. General power to amend [Order 8, rule 5.]**

(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.

(2) This rule shall not have effect in relation to a judgment or order.

#### **6. Failure to amend after order [Order 8, rule 6.]**

Where the court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period.

#### **7. Mode of amendment [Order 8, rule 7.]**

(1) Every pleading and other documents amended under this Order shall be endorsed with the date of the amendment and either the date of the order allowing the amendment or, if no order has been made, the number of the rule in pursuance of which the amendment was made.

(2) All amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words.

(3) Colours other than red shall be used for further amendments to the same document.

#### **8. Procedure [Order 8, rule 8.]**

The court may hear and determine an oral application made under this Order.

### ORDER 9 - RECOGNIZED AGENTS AND ADVOCATES

#### **1. Applications, appearances or acts in person, by recognized agent or by advocate [Order 9, rule 1.]**

Any application to or appearance or act in any court required or authorized 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 recognized agent, or by an advocate duly appointed to act on his behalf:

Provided that—

- (a) any such appearance shall, if the court so directs, be made by the party in person; and
- (b) where the party by whom the application, appearance or act is required or authorized to be made or done is the Attorney- General or an officer authorized by law to make or to do such application, appearance or act for

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and on behalf of the Government, the Attorney-General or such officer, as the case may be, may by writing under his hand depute an officer in the public service to make or to do any such application, appearance or act.

## **2. Recognized agents [Order 9, rule 2.]**

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

- (a) subject to approval by the court in any particular suit persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties;
- (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 authorized to make and do such appearances, applications and acts;
- (c) in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.

[L.N. 22/2020, r. 12.]

## **3. Service of process on recognized agent [Order 9, rule 3.]**

(1) Processes served on the recognized agent of a party shall be as effectual as if the same 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 recognized agent.

## **4. Agent to accept service [Order 9, rule 4.]**

(1) Besides the recognized agents described in rule 2, any person residing within the jurisdiction of the court may be appointed an agent to accept service of process.

(2) Such appointment may be special or general, and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in court.

## **5. Change of advocate [Order 9, rule 5.]**

A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.

## **6. Service of notice of change of advocate [Order 9, rule 6.]**

The party giving the notice shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former advocate a copy of the notice endorsed with a memorandum stating that the notice has been duly filed in the appropriate court (naming it).

## **7. Notice of appointment of advocate [Order 9, rule 7.]**

Where a party, after having sued or defended in person, appoints an advocate to act in the cause or matter on his behalf, he shall give notice of the appointment, and the provisions of this Order relating to a notice of change of advocate shall apply to a notice of appointment of an advocate with the necessary modifications.

## **8. Notice of intention to act in person [Order 9, rule 8.]**

(1) Where a party, after having sued or defended by an advocate, intends to act in person in the cause or matter, he shall give a notice stating his intention to act in person and

giving an address for service within the jurisdiction of the court in which the cause or matter is proceeding, and the provisions of this Order relating to a notice of change of advocate shall apply to a notice of intention to act in person, with the necessary modifications.

(2) The address for service given under subrule (1) shall comply with Order 6, rule 3.

### **9. Change to be effected by order of court or consent of parties [Order 9, rule 9.]**

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

### **10. Procedure [Order 9, rule 10.]**

An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.

### **11. Power to act in person or through new advocate [Order 9, rule 11.]**

The party who gives notice under rule 8 or obtains an order under rule 9 may perform the duties prescribed under this Order in person or through his new advocate.

### **12. Removal of advocate from record at instance of another party [Order 9, rule 12.]**

(1) Where an advocate who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of advocates, or is otherwise unable to act as an advocate, and the party has not been given notice of change of advocate or notice of intention to act in person in accordance with this Order, any other party to the cause or matter may, on notice to be served on the first-named party personally or by prepaid post letter addressed to his last-known place of address, unless the Court otherwise directs, apply to the Court for an order declaring that the advocate has ceased to be the advocate acting for the first-named party in the cause or matter, and the Court may make an order accordingly.

(2) Where the order is made, the party applying for the order shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the said order and procure the order to be entered in the appropriate court, and also leave at the appropriate court a certificate signed by the applicant or his advocate that the order has been duly served as aforesaid; and thereafter, unless and until the first-named party either appoints another advocate or else gives such an address for service as is required of a party acting in person, and complies with this Order relating to notice of appointment of an advocate or notice of intention to act in person, any document may be served on the party so in default by being filed in the appropriate court.

(3) Any order made under this rule shall not affect the rights of the advocate and the party for whom he acted as between themselves.

### **13. Withdrawal of advocate who has ceased to act for a party [Order 9, rule 13.]**

(1) Where an advocate who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with this Order, the advocate may on notice to be served on the party personally or by prepaid post letter addressed to his last-known place of address, unless the court otherwise directs, apply to the court by summons in chambers for an order to the effect that the advocate has ceased to be the advocate acting for the party in the cause or matter, and the court may make an order accordingly:

Provided that, unless and until the advocate has—

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- (a) served on every party to the cause or matter (not being a party in default as to entry of appearance) or served on such parties as the court may direct a copy of the said order; and
- (b) procured the order to be entered in the appropriate court; and
- (c) left at the said court a certificate signed by him that the order has been duly served as aforesaid,

he shall (subject to this Order) be considered the advocate of the party to the final conclusion of the cause or matter including any review or appeal.

(2) From and after the time when the order has been entered in the appropriate court, any document may be served on the party to whom the order relates by being filed in the appropriate court, unless and until that party either appoints another advocate or else gives such an address for service as is required of a party acting in person, and also complies with this Order relating to notice of appointment of an advocate or notice of intention to act in person.

(3) Any order made under this rule shall not affect the rights of the advocate and the party as between themselves.

ORDER 10 - CONSEQUENCE OF NON-APPEARANCE,  
DEFAULT OF DEFENCE AND FAILURE TO SERVE

**1. Suits against infants and persons of unsound mind [Order 10, rule 1.]**

(1) Where no appearance has been entered for a defendant who is an infant or person of unsound mind, before proceeding further the plaintiff shall apply to the court for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the suit.

(2) No order may be made under sub-rule (1) unless the summons has been served and Order 32, rule 3(4) has been complied with, unless the court otherwise orders.

**2. Affidavit of service upon non-appearance [Order 10, rule 2.]**

Where any defendant fails to appear and the plaintiff wishes to proceed against such defendant he shall file an affidavit of service of the summons unless the summons has been served by a process-server appointed by the court.

**3. Failure to serve [Order 10, rule 3.]**

Where a defendant fails to serve either the memorandum of appearance or defence within the prescribed time, the court may on its own motion or on application by the plaintiff, strike out the memorandum of appearance or the defence as the case may be and make such order as it deems fit in the circumstances.

**4. Judgment upon a liquidated demand [Order 10, rule 4.]**

(1) Where the plaintiff makes a liquidated demand only and the defendant fails to appear on or before the day fixed in the summons or all the defendants fail so to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against the defendant or defendants for any sum not exceeding the liquidated demand together with interest thereon from the filing of the suit, at such rate as the court thinks reasonable, to the date of the judgment, and costs.

(2) Where the plaintiff makes a liquidated demand together with some other claim, and the defendant fails, or all the defendants fail, to appear as aforesaid, the Court shall, on request in Form No. 13 of Appendix A, enter judgment for the liquidated demand and interest thereon as provided by sub-rule (1) but the award of costs shall await judgment upon such other claim.

**5. Liquidated demand against several defendants [Order 10, rule 5.]**

Where the plaintiff makes a liquidated demand with or without some other claim, and there are several defendants of whom one or more appear and any other fails to appear, the

court shall, on request in Form No. 13 of Appendix A, enter judgment against any defendant failing to appear in accordance with rule 4, 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 appeared.

#### **6. Interlocutory judgment [Order 10, rule 6.]**

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 any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be.

#### **7. Interlocutory judgment where several defendants [Order 10, rule 7.]**

Where the plaint is drawn as mentioned in rule 6 and there are several defendants of whom one or more appear and any other fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against the defendant failing to appear, and the damages or the value of the goods and the damages, as the case may be, shall be assessed at the same time as the hearing of the suit against the other defendants, unless the court otherwise orders.

#### **8. Judgment in default against the Government [Order 10, rule 8.]**

No judgment in default of appearance or pleading may be entered against the Government without the leave of the court and any application for leave shall be served not less than seven days before the return day.

#### **9. General rule where no appearance entered [Order 10, rule 9.]**

Subject to rule 4, in all suits not otherwise specifically provided for by this Order, where any party served does not appear the plaintiff may set down the suit for hearing.

#### **10. Default of defence [Order 10, rule 10.]**

The provisions of rules 4 to 9 inclusive shall apply with any necessary modification where any defendant has failed to file a defence.

#### **11. Setting aside judgment [Order 10, rule 11.]**

Where judgment has been entered under this Order the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just.

### ORDER 11 - CASE MANAGEMENT AND CONFERENCES

#### **1. Application [Order 11, rule 1]**

This Order shall apply to all suits other than suits for small claims or such other suits as the Court may order to vary the whole or any part of this Order.

[L.N. 22/2020, r. 13.]

#### **2. Case Management Checklist [Order 11, rule 2]**

(1) Within fourteen days after the close of pleadings, the plaintiff shall file with the court a case management checklist in the form set out in Appendix B.

(2) The plaintiff shall complete the checklist with —

- (a) the name of the advocate or firm of advocates representing each party;
- (b) the postal address, telephone number, email address and physical address of the advocate or firm of advocates representing each party;
- (c) where a party is not represented by an advocate or a firm of advocates, the postal address, telephone number, email address and physical address of the party; and

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- (d) a list of all the pleadings which have been filed with the date on which each pleading was filed.

[L.N. 22/2020, r. 13.]

### **3. Case Management Conference [Order 11, Rule 3]**

(1) The purpose of a case management conference shall be to—

- (a) promote the expeditious disposal of cases;
- (b) afford the parties an opportunity to use alternative dispute resolution mechanisms to determine the case;
- (c) afford the parties an opportunity to settle the case;
- (d) determine any other matter relating to the management, hearing or disposal of the case;
- (e) deal with pre-trial applications at first instance or formulate a timetable to deal with them as the court may deem fit; and
- (f) identify the issues for determination.

(2) The judge or deputy registrar or magistrate or case management officer shall, at the case management conference, complete the case management checklist in the form set out in Appendix B.

(3) Parties to a suit shall sign the completed case management checklist which shall be certified by the judge or deputy registrar or magistrate or case management officer who shall also set out the issues for determination at the hearing.

(4) At a case management conference —

- (a) only the advocate or firm of advocates on record or a designated advocate, with instructions to deal with any matter that may be raised during the conference, shall be permitted to participate and by any order or direction given by the court shall be binding to the parties; or
- (b) where a party is not represented by an advocate or firm of advocates, only the named party or recognized agent of the party to the suit shall be permitted to participate.

(5) Where orders or directions are given at a case management conference —

- (a) The judge or deputy registrar or magistrate or case management officer shall record the orders or directions and inform the parties thereof; and
- (b) where necessary, the judge or deputy registrar or magistrate or case management officer shall allocate time within which the orders or directions shall be complied with by the parties and fix a date at which the judge or deputy registrar or magistrate or case management officer shall record compliance by the parties or make such other orders as may be just or necessary including the striking out of the suit.

(6) Where any pleadings have been amended, the case management checklist shall also contain —

- (a) the list of the original and amended pleadings with the date on which the original and amended pleadings were filed; and
- (b) the details of all bundles of documents, lists of witnesses and statements of witnesses where they have been filed with the court.

(7) Within fourteen days of filing the case management checklist, the plaintiff shall serve the checklist on the other party or all the other parties to the suit and invite the other party or parties, in writing, to meet at the registry with a view to fixing a date on which to hold a case management conference which shall—

- (a) take place within sixty days of the date of service of the checklist in the case of a fast-track case; or
- (b) take place within ninety days of the date of the service of the checklist in the case of a multi-track case.

(8) The parties shall, not less than seven days before the date of the case management conference, serve on the other party or parties —

- (a) a case management request in the form set out in Appendix B setting out any orders the parties may seek at the case management conference and to which all necessary documents including draft amended pleadings, request for particulars and request for interrogatories shall be attached; or
- (b) a request to refer the case to alternative dispute resolution or any other amicable settlement process.

[L.N. 22/2020, r. 13.]

#### **4. Case Management Order [Order 11 rule 4.]**

(1) The court shall sign a case management conference certificate in the form set out in Appendix C and make a case management order at the end of a case management conference in the form set out in Appendix D.

(2) Where the parties are able to settle the case or issues in the case, the judicial officer shall issue a case settlement order in relation to the case or the issues in the case.

(3) Where parties accept an alternative dispute resolution request —

- (a) where the plaintiff specified the form of alternative dispute resolution mechanism to be used, the court may make an order to stay proceedings for a specified period during which the parties will attempt to settle the case through that alternative mechanism; or
- (b) where the plaintiff did not specify the form of alternative dispute resolution mechanism, the judge or case management judge may make an order to stay proceedings for a specified period, and specify the alternative dispute resolution mechanism the parties shall use in an attempt to settle the case.

(4) Where the parties are able to settle the case or issues in the case through alternative dispute resolution, the judge, magistrate, deputy registrar or case management officer shall adopt the resolution by the parties as an order of the court.

(5) The judge, magistrate, deputy registrar or case management judge shall, where the parties have failed to settle the case or undergo alternative dispute resolution mechanism, direct that the case may be set down for hearing and may, in the circumstances, determine the date on which the case shall be set down for hearing.

[L.N. 22/2020, r. 13.]

#### **ORDER 12 - HEARING AND CONSEQUENCE OF NON-ATTENDANCE**

##### **1. When neither party attends [Order 12, rule 1.]**

If on the day fixed for hearing, after the suit has been called on for hearing outside the court, neither party attends, the court may dismiss the suit.

##### **2. When only plaintiff attends [Order 12, rule 2.]**

If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the plaintiff attends, if the court is satisfied—

- (a) that notice of hearing was duly served, it may proceed *ex parte*;
- (b) that notice of hearing was not duly served, it shall direct a second notice to be served; or
- (c) that notice was not served in sufficient time for the defendant to attend or that for other sufficient cause the defendant was unable to attend, it shall postpone the hearing.

##### **3. When only defendant attends [Order 12, rule 3.]**

(1) If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.

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(2) If the defendant admits any part of the claim, the court shall give judgment against the defendant upon such admission and shall dismiss the suit so far as it relates to the remainder except for good cause to be recorded by the court.

(3) If the defendant has counterclaimed, he may prove his counterclaim so far as the burden of proof lies on him.

#### **4. When some only of plaintiffs attend [Order 12, rule 4.]**

If only some of the plaintiffs attend, the court may either proceed with the suit or make such other order as may be just.

#### **5. When some only of defendants attend [Order 12, rule 5.]**

If only some of the defendants attend, the court may proceed with the suit and may give such judgment as is just in respect of the defendants who have not attended.

#### **6. Effect of dismissal [Order 12, rule 6.]**

(1) Subject to subrule (2) and to any law of limitation of actions, where a suit is dismissed under this Order the plaintiff may bring a fresh suit or may apply to the court to reinstate the suit.

(2) When a suit has been dismissed under rule 3 no fresh suit may be brought in respect of the same cause of action.

[L.N. 22/2020, r. 14.]

#### **7. Setting aside judgment or dismissal [Order 12, rule 7.]**

Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.

### ORDER 13 - ADMISSIONS

#### **1. Notice of admission of case [Order 13, rule 1.]**

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

#### **2. Judgment on admissions [Order 13, rule 2.]**

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

### ORDER 14 - PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

#### **1. Endorsements on documents admitted in evidence [Order 14, rule 1.]**

(1) Subject to subrule (2), 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;
- (c) the date on which it was produced; and

the endorsement shall be signed or initialed by an officer of the court.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under rule 2, the particulars aforesaid shall be endorsed on the copy, and the endorsement thereon shall be signed or initialed by the judge or by an officer of the court under his direction.



**2. Endorsements on copies of admitted entries in books, accounts, and records [Order 14, rule 2.]**

(1) Save in so far 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 such a document 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 on its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under subrules (1) and (2), 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:

Provided 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. Record of admitted and return of rejected documents [Order 14, rule 3.]**

(1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 2, 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), together with a statement of their having been rejected.

**4. Court may order any document to be impounded [Order 14, rule 4.]**

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 [Order 14, rule 5.]**

(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under rule 4, be entitled to receive back the same—

- (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:

Provided that—

- (i) a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor 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;
- (ii) 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 [Order 14, rule 6.]**

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[Subsidiary]

(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 same.

(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 thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained 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 [Order 14, rule 7.]**

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

### ORDER 15 - ISSUES

#### **1. Framing of issues [Order 15, rule 1.]**

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Issues are of two kinds—

- (a) issues of fact; and
- (b) issues of law.

(3) 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.

(4) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

#### **2. Materials from which issues may be framed [Order 15, rule 2.]**

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 such parties;
- (b) allegations made in the pleading or in answers to interrogatories delivered in the suit;
- (c) the contents of documents produced by either party.

### ORDER 16 - SUMMONING AND ATTENDANCE OF WITNESSES

#### **1. Summons to attend to give evidence or produce documents [Order 16, rule 1.]**

At any time before the trial conference under Order 11 the parties may obtain, on application to the court or to such officer as it appoints in this behalf, 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 summons [Order 16, rule 2.]**

(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 traveling and other expenses of the persons summoned in passing to and from the court in which he 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 [Order 16, rule 3.]**

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 on his attendance.

### **4. Procedure where insufficient sum paid in. Expenses of witnesses detained more than one day [Order 16, rule 4.]**

(1) Where it appears to the court or to such officer as it appoints in this behalf that the sum so paid into court is not sufficient to cover such 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 such 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 to give evidence; or may both order such levy and discharge such 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 was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such 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 to give evidence; or may both order such levy and discharge such person as aforesaid.

### **5. Time, place, and purpose of attendance to be specified in summons [Order 16, rule 5.]**

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 is required to attend, and whether his 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 [Order 16, rule 6.]**

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 causes such document to be produced instead of attending personally to produce the same.

### **7. Power to require persons present in court to give evidence or produce document [Order 16, rule 7.]**

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

### **8. Summons, how served [Order 16, rule 8.]**

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 5 as to proof of service shall apply in the case of all summonses served under this rule.

### **9. Time for serving summons [Order 16, rule 9.]**

(1) Service shall in all cases be made within sufficient time before the time specified in the summons for the attendance of the person summoned to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

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(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 [Order 16, rule 10.]**

(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 such 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 to be so examined by another court, touching the service or non-service of the summons.

(2) Where the court has reason to believe that such evidence or production is material, and that such 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 to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his 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.

**11. If witness appears attachment, may be withdrawn [Order 16, rule 11.]**

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

- (a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service; and
- (b) where he has failed to attend at the time and place named in a proclamation issued under rule 10, that he had no notice of such 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 [Order 16, rule 12.]**

The court may, where such person does not appear, or appears but fails so to satisfy the court, impose upon him such fine as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold, or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into the court the costs and fine aforesaid, the court shall order the property to be released from attachment.

**13. Mode of attachment [Order 16, rule 13.]**

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 [Order 16, rule 14.]**

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 such time and place.

**15. When summoned persons may depart [Order 16, rule 15.]**

(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) The court may upon the oral application of either party in court or upon application by summons in chambers and upon payment through the court of all necessary expenses require any person so summoned to furnish security for his attendance at the next hearing or any further hearing or until the suit is disposed of and in default of his furnishing such security may order him to be detained in prison.

**16. Application of rules 10 to 13 [Order 16, rule 16.]**

The provisions of rules 10 to 13 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.

**17. Procedure where witness apprehended cannot give evidence or produce document [Order 16, rule 17.]**

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 has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given may release him, and in default of his giving such bail or security may order him to be detained in prison.

**18. Consequence of refusal of a party to give evidence when called on by the Court [Order 16, rule 18.]**

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

**19. Rules as to witnesses to apply to parties summoned [Order 16, rule 19.]**

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 so far as they are applicable.

## ORDER 17 - PROSECUTION OF SUITS

**1. Hearing from day to day [Order 17, rule 1.]**

(1) Once the suit is set down for hearing, it shall not be adjourned unless a party applying for adjournment satisfies the court that it is just to grant the adjournment.

(2) When the court grants an adjournment it shall give a date for further hearing or directions.

**2. Notice to show cause why suit should not be dismissed [Order 17, rule 2.]**

(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.

(3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.

(4) The court may dismiss the suit for non-compliance with any direction given under this Order.

(5) A suit stands dismissed after two years where no step has been undertaken.

(6) A party may apply to court after dismissal of a suit under this Order.

[L.N. 22/2020, r. 15.]

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### **3. Procedure if parties fail to appear on day fixed [Order 17, rule 3.]**

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 in that behalf by Order 12, or make such other order as it thinks fit.

### **4. Court may proceed notwithstanding either party fails to produce evidence [Order 17, rule 4.]**

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his 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 such default, proceed to decide the suit forthwith.

## ORDER 18 - HEARING OF SUIT AND EXAMINATION OF WITNESSES

### **1. Right to begin [Order 18, rule 1.]**

The plaintiff shall have the right to begin unless the court otherwise orders.

### **2. Statement and production of evidence [Order 18, rule 2.]**

Unless the court otherwise orders—

(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 case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence, and may then address the court generally on the case. The party beginning may then reply.

(3) After the party beginning has produced his evidence then, if the other party has not produced and announces that he does not propose to produce evidence, the party beginning shall have the right to address the court generally on the case; the other party shall then have the right to address the court in reply, but if in the course of his address he cites a case or cases the party beginning shall have the right to address the court at the conclusion of the address of the other party for the purpose of observing on the case or cases cited.

(4) The court may in its discretion limit the time allowed for addresses by the parties or their advocates.

### **3. Witnesses to be examined in open court [Order 18, rule 3.]**

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.

### **4. How evidence to be recorded [Order 18, rule 4.]**

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:

Provided that—

- (i) the court may use such recording processes and technology as may from time to time be approved;
- (ii) the transcript of such evidence when checked and approved by the judge shall constitute the official record of the evidence.

### **5. Any particular question and answer may be taken down [Order 18, rule 5.]**

The court may, of its own motion or on the application of any party or his 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.

### **6. Questions objected to and allowed by court [Order 18, rule 6.]**

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

#### **7. Remarks on demeanour of witness [Order 18, rule 7.]**

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

#### **8. Power to deal with evidence taken before another judge [Order 18, rule 8.]**

(1) Where a judge is prevented by death, transfer, or other cause from concluding the trial of a suit or the hearing of any application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken down by him or under his direction under the said rules, and may proceed with the suit or application from the stage at which his predecessor left it.

(2) The provisions of subrule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Act.

#### **9. Power to examine witness immediately [Order 18, rule 9.]**

(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 evidence should be taken immediately, the court may, upon the application of any party or of the witness, at any time after institution of the suit, take the evidence of such witness in the manner hereinbefore provided.

(2) Where such evidence is not taken forthwith 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 signed by the judge and shall be evidence in the suit.

#### **10. Court may recall and examine witness [Order 18, rule 10.]**

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 as the court thinks fit.

#### **11. Power of court to inspect [Order 18, rule 11.]**

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

### ORDER 19 - AFFIDAVITS

#### **1. Power to order any point to be proved by affidavit [Order 19, rule 1.]**

Any court may at any time for sufficient reason order that any particular fact or facts 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:

Provided 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 such witness to be given by affidavit.

#### **2. Power to order attendance of deponent for cross-examination [Order 19, rule 2.]**

(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) Such 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 [Order 19, rule 3.]**

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(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove:

Provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.

(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 same.

#### **4. Deponent's particulars [Order 19, rule 4.]**

Every affidavit shall state the description, true place of abode and postal address of the deponent, and if the deponent is a minor shall state his age.

#### **5. Manner of drawing affidavit [Order 19, rule 5.]**

Every affidavit shall be drawn in the first person and divided into paragraphs numbered consecutively which shall be confined as nearly as may be to a distinct portion of the subject.

#### **6. Striking out matter [Order 19, rule 6.]**

The court may order to be struck out from any affidavit any matter which is scandalous, irrelevant or oppressive.

#### **7. Irregularity in form of affidavit [Order 19, rule 7.]**

The court may receive any affidavit sworn for the purpose of being used in any suit notwithstanding any defect by misdescription of the parties or otherwise in the title or other irregularity in the form thereof or on any technicality.

#### **8. Affidavit sworn before suit filed [Order 19, rule 8.]**

Unless otherwise directed by the court an affidavit shall not be rejected solely because it was sworn before the filing of the suit concerned.

#### **9. Procedure [Order 19, rule 9.]**

Applications under this Order may be by chamber summons or orally in court.

### ORDER 20 - APPLICATION FOR AN ACCOUNT

#### **1. Order for accounts [Order 20, rule 1.]**

Where a plaintiff prays for an account, or where the relief sought or the plaintiff involves the taking of an account, 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 the proper accounts with all necessary inquiries and directions usual in similar cases shall forthwith be made.

#### **2. Order for accounts on counterclaim [Order 20, rule 2.]**

A defendant to an action commenced by plaintiff, and who has filed a counterclaim which includes a claim for an account or a claim which necessarily involves taking an account, on—

- (a) the plaintiff;
- (b) any other party; or
- (c) any person who becomes a party by virtue of such service,

may apply for an order under this rule.

#### **3. Procedure [Order 20, rule 3.]**

An application for such order as is mentioned in rule 1 and 2 shall be made by chamber summons and be supported by an affidavit when necessary filed on behalf of the plaintiff stating concisely the grounds of his claim to an account; and such application may be made at any time after the time for entering an appearance has expired.



**4. Orders by court [Order 20, rule 4.]**

On hearing of the application, the court may, unless satisfied that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

## ORDER 21 - JUDGMENT AND DECREE

**1. Judgment, when pronounced [Order 21, rule 1.]**

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 within sixty days from the conclusion of the trial notice of which shall be given to the parties or their advocates.

Provided that where judgment is not given within sixty days the judge shall record reasons thereof copy of which shall be forwarded to the Chief Justice and shall immediately fix a date for judgment.

**2. Power to pronounce judgment written by another judge [Order 21, rule 2.]**

(1) A judge may pronounce a judgment written and signed but not pronounced by his 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. Judgment to be signed [Order 21, rule 3.]**

(1) A judgment pronounced by the judge who wrote it shall be dated and signed by him 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 in open court at the time of pronouncing it.

(3) A judgment once signed shall not afterwards be altered or added to save as provided by section 99 of the Act or on review.

**4. Contents of judgment [Order 21, rule 4.]**

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

**5. Court to state its decision on each issue [Order 21, rule 5.]**

In suits in which issues have been framed, the court shall state its finding or decision, with the reasons therefor, upon each separate issue.

**6. Judgment affecting registered title to land [Order 21, rule 6.]**

Where there is a prayer for a judgment the grant of which would result in some alteration to the title of land registered under any written law concerning the registration of title to land, a certified copy of the title shall be produced to the court before any such judgment is delivered.

**7. Contents of decree [Order 21, rule 7.]**

(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 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.

**8. Preparation and dating of decrees and orders [Order 21, rule 8.]**

(1) A decree shall bear the date of the day on which the judgment was delivered.

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(2) Any party in a suit in the High Court may prepare 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; and if the draft is approved by the parties, it shall be submitted to the registrar who, if satisfied that it is drawn up in accordance with the judgment, shall sign and seal the decree accordingly.

(3) If no approval of or disagreement with the draft decree is received within seven days after delivery thereof to the other parties, the registrar, on receipt of notice in writing to that effect, if satisfied that the draft decree is drawn up in accordance with the judgment, shall sign and seal the decree accordingly.

(4) On any disagreement with the draft decree any party may file the draft decree marked as “for settlement” and the registrar shall thereupon list the same in chambers before the judge who heard the case or, if he is not available, before any other judge, and shall give notice thereof to the parties.

(5) The provisions of sub-rules 2, 3 and 4 shall apply to a subordinate court and reference to the registrar and judge in the subrules shall refer to magistrate.

(6) Any order, whether in the High Court or in a subordinate court, which is required to be drawn up, shall be prepared and signed in like manner as a decree.

(7) Nothing in this rule shall limit the power of the court to approve a draft decree at the time of pronouncing judgment in the suit, or the power of the court to approve a draft order at the time of making the order.

### **9. Costs [Order 21, rule 9.]**

(1) Where the amount of costs has been—

- (a) agreed between the parties;
- (b) fixed by the judge or magistrate before the decree is drawn;
- (c) certified by the registrar (Sub. Leg. Cap. 16); or
- (d) taxed by the court,

the amount of costs may be stated in the decree or order.

(2) In all other cases, and where the costs have not in fact been stated in the decree or order in accordance with subrule (1), after the amount of the costs has been taxed or otherwise ascertained, it shall be stated in a separate certificate to be signed by the taxing officer, or, in a subordinate court, by the magistrate.

(3) In this rule, “*taxing officer*” means a taxing officer qualified under paragraph 10 of the Advocates (Remuneration) Order (Sub. Leg. Cap. 16).

[L.N. 22/2020, r. 16.]

### **9A. Party to file and serve letter as to costs [Order 21, rule 9A]**

(1) A party claiming costs at a Magistrates Court shall file a written request, statement of costs and supporting documents with the Court and serve it on the other parties with a breakdown of the costs sought.

[L.N. 22/2020, r. 17.]

### **9B. Respondent may admit, partially reject or wholly reject letter [Order 21, rule 9B]**

(2) Once served with the written request, a statement of costs and supporting documents under sub-rule 1, the Respondent may file a response with the Court within seven days of service.

[L.N. 22/2020, r. 17.]

### **9C. Court to make determination within 14 days [Order 21, rule 9C.]**

(3) The Court shall consider the written request, statement of costs and supporting documents filed by the parties within fourteen days of response by the respondent and make appropriate orders as to costs.

[L.N. 22/2020, r. 17.]

**9D. Court to be guided by Advocates (Remuneration) Order [Order 21, rule 9D]**

(4) In awarding costs, the Court shall be guided by the Advocates (Remuneration) Order.

[L.N. 22/2020, r. 17.]

**10. Decree for recovery of immovable property [Order 21, rule 10.]**

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

**11. Decree for delivery of movable property [Order 21, rule 11.]**

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

**12. Decree may direct payment by instalments [Order 21, rule 12.]**

(1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed 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 passing of any such judgment or decree, the court may on the application of the judgment-debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or 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 otherwise, as it thinks fit.

[L.N. 22/2020, r. 18.]

**13. Decree for possession and mesne profits [Order 21, rule 13.]**

(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 such 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 (1)(c), a final decree in respect of the rent and *mesne* profits shall be passed in accordance with the result of such inquiry.

**14. Decree in administration suit [Order 21, rule 14.]**

(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

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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 such property proves to be insufficient for the payment in full of his 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 such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

**15. Decree in suit for dissolution of partnership [Order 21, rule 15.]**

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 [Order 21, rule 16.]**

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 [Order 21, rule 17.]**

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 therein contained 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 [Order 21, rule 18.]**

Where a court passes a decree for the partition of property or for the separate possession of a share therein, 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 set-off is allowed [Order 21, rule 19.]**

(1) Where the defendant has been allowed a set-off 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 set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether or not the set-off is admissible under rule 3 of Order 7.

**20. Certified copies of judgment and decree to be furnished [Order 21, rule 20.]**

The registrar, or in the case of a subordinate court, the presiding magistrate shall upon written request made by the parties or any of them, and upon payment of requisite fees, furnish certified copies of the judgment and decree:

Provided that nothing in this rule shall preclude the registrar or the presiding magistrate from furnishing such copies to any person upon sufficient cause being shown for such request.

#### ORDER 22 - EXECUTION OF DECREES AND ORDERS

### 1. Modes of paying money under decree [Order 22, rule 1.]

- (1) All money payable under a decree or order 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), notice of such payment shall be sent by the court to the decree-holder and his advocate, if any.

### 2. Payment out of court to decree-holder [Order 22, rule 2.]

(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 may certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same 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 such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

### 3. Lands situate in more than one jurisdiction [Order 22, rule 3.]

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more courts, any one of such 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 [Order 22, rule 4.]

The 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 same without proof [Order 22, rule 5.]

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

### 6. Application for execution [Order 22, rule 6.]

Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore

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contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A:

Provided that, where judgment in default of appearance or defence has been entered against a defendant, no execution by payment, attachment or eviction shall issue unless not less than ten days notice of the entry of judgment has been given to him either at his address for service or served on him personally, and a copy of that notice shall be filed with the first application for execution.

### **7. Oral and written applications [Order 22, rule 7.]**

(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 thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant, if he is within the precincts of the court.

(2) Save as otherwise provided by subrule (1) or by any other enactment or rule, every application for the execution of a decree shall be in writing, signed by the applicant or his 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 subsequent to the decree;
- (f) whether any, and if any, what previous applications have been made for the execution of the decree, the dates of such applications, and their results;
- (g) the amount with interest, if any, due upon the decree, or other relief granted thereby, 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 of any immovable property, or by the sale without attachment or by proclamation and sale immovable property;
  - (iii) by the arrest and detention in prison of any person;
  - (iv) by the appointment of a receiver;
  - (v) otherwise, as the nature of the relief granted may require.

(3) The court to which an application is made under subrule (2) may require the applicant to produce a certified copy of the decree.

[L.N. 22/2020, r. 19.]

### **8. Application for attachment of movable property not in judgment-debtor's possession [Order 22, rule 8.]**

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

### **9. Application for attachment of immovable property to contain certain particulars [Order 22, rule 9.]**

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

#### **10. Power to require certified extract from Land Registries in certain cases [Order 22, rule 10.]**

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 such 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.

#### **11. Application for execution by joint decree-holders [Order 22, rule 11.]**

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such 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 is shown 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.

#### **12. Application for execution by transferee of decree [Order 22, rule 12.]**

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 such decree-holder:

Provided that—

- (a) where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such 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; or
- (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.

#### **13. Procedure on receiving an application for execution of decree [Order 22, rule 13.]**

(1) On receiving an application for the execution of a decree as provided by rule 7(2), the court shall ascertain whether such of the requirements of rules 7 to 9 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 there and then or within a time to be fixed by it.

(2) Where an application is amended under subrule (1), 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 and dated by a judge or registrar.

(4) When the application is admitted, the court shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

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[Subsidiary]

Provided 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.

**14. Execution in case of cross-decrees [Order 22, rule 14.]**

(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 such 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.

(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 singly in favour of one or more of such persons.

**15. Execution in case of cross-claims under same decree [Order 22, rule 15.]**

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.

**16. Cross-decrees and cross-claims in mortgage suits [Order 22, rule 16.]**

The provisions of rules 14 and 15 shall apply when one or both of the decrees for sale is in enforcement of a mortgage or charge.

**17. Simultaneous execution [Order 22, rule 17.]**

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

**18. Notice to show cause against execution in certain cases [Order 22, rule 18.]**

(1) Where an application for execution is made—

- (a) more than one year after the date of the decree;
- (b) against the legal representative of a party to the decree; or
- (c) for attachment of salary or allowance of any person under rule 43,

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:



Provided 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:

Provided further that no such notice shall be necessary on any application for the attachment of salary or allowance which is caused solely by reason of the judgment-debtor having changed his employment since a previous order for attachment.

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

(3) Except as provided in rule 6 and in this rule, no notice is required to be served on a judgment debtor before execution is issued against him.

### **19. Procedure after issue of notice [Order 22, rule 19.]**

(1) Where the person to whom notice is issued under rule 18 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 such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

### **20. Process for execution [Order 22, rule 20.]**

(1) When the preliminary measures (if any) required by the foregoing rules have been taken, the court shall, unless there is cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear the date and the day on which it is issued, and shall be signed by the judge or such officer as the court may appoint in this behalf, and shall be sealed with the seal of the court and delivered to the proper officer to be executed.

### **21. Endorsement on process [Order 22, rule 21.]**

(1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason for 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 such officer is unable to execute the process, the court may examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

### **22. When court may stay execution [Order 22, rule 22.]**

(1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such 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 thereof, 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 thereby, or if application for execution has been made thereto.

(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 such property or the discharge of such person pending the results of the application.

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(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.

**23. Liability of judgment-debtor discharged [Order 22, rule 23.]**

No order of restitution or discharge under rule 22 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

**24. Order of court which passed decree or of appellate court to be binding upon court applied to [Order 22, rule 24.]**

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

**25. Stay of execution pending suit between decree-holder and judgment-debtor [Order 22, rule 25.]**

Where a suit is pending in any court against the holder of a decree of such 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.

**26. Decree for payment of money [Order 22, rule 26.]**

Subject to the provisions of section 38 of the Act, 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 prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

**27. Decree for specific movable property [Order 22, rule 27.]**

(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under subrule (1) 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, such 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, such amount and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

**28. Decree for specific performance or for an injunction [Order 22, rule 28.]**

(1) Where any party against whom a decree for the specific performance of a contract, 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 detention in prison, or by the attachment of his property, or by both.

(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.

(3) Where any attachment under subrule (1) or (2) 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, such 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 application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he 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.

### **29. Decree for immovable property [Order 22, rule 29.]**

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his 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.

### **30. Decree for delivery of immovable property when in occupancy of tenant [Order 22, rule 30.]**

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such 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 the substance of the decree in regard to the property.

### **31. Discretionary power to permit judgment-debtor to show cause against detention in prison [Order 22, rule 31.]**

(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 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 arrest, issue a notice calling upon him to appear before the court on a day to be specified in the notice and show cause why he should not be committed to 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.

### **32. Warrant for arrest to direct judgment-debtor to be brought up [Order 22, rule 32.]**

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

### **33. Subsistence allowance [Order 22, rule 33.]**

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(1) No judgment-debtor shall be arrested in execution of a decree unless and 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 arrest until he can be brought before the court.

(2) Where a judgment-debtor is committed to prison in execution of a decree the court shall fix for his subsistence such monthly allowance as he 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.

(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 in this behalf in advance before the first day of each month.

(4) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in prison or arrested on account of any sum so disbursed.

#### **34. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest [Order 22, rule 34.]**

(1) Where a judgment-debtor appears before the court in obedience to a notice issued under rule 31, 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 thereof, the court may, upon such terms as it thinks fit, make an order disallowing the application for his arrest and detention or directing his release, as the case may be.

(2) Before making an order for the committal of the judgment-debtor to prison, the court, for reasons to be recorded in writing, shall be satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—
  - (i) is likely to abscond or leave the local limits of the jurisdiction of the court; or
  - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which is exempt from attachment in execution of the decree; or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

(3) While any of the matters mentioned in subrule (2) are being considered, the court may, in its discretion, order the judgment-debtor to be detained in prison, or leave him in the custody of an officer of the court, or release him on his furnishing security, to the satisfaction of the court, for his appearance when required by the court.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) Where the court does not make an order under subrule (1), it shall cause the judgment-debtor to be arrested, if he has not already been arrested, and, subject to the provisions of this Act, commit him to prison.

#### **35. Examination of judgment-debtor as to his property [Order 22, rule 35.]**

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;

- (b) in the case of a corporation, any officer thereof; 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 such judgment-debtor or officer, or other person, and for the production of any books or documents.

**36. Attachment in case of decree for rent, or mesne profits, or other matter [Order 22, rule 36.]**

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 has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

**37. Attachment of movable property other than agricultural produce, in possession of judgment-debtor [Order 22, rule 37.]**

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 own custody, or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when 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 that when the property seized is livestock the court may make such arrangement for the custody and maintenance thereof as it may deem sufficient.

**38. Attachment of agricultural produce [Order 22, rule 38.]**

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 such produce is a growing crop, on the land on which such crop is growing; or
- (b) where such 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 carries on business or personally works for gain, or in which he 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.

**39. Provisions as to agricultural produce under attachment [Order 22, rule 39.]**

(1) Where agricultural produce is attached, the court shall make such arrangements for the custody thereof 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 in this behalf, 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 by any person appointed by him in this behalf, 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.

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(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment 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.

#### **40. Attachment of share and other property not in possession of judgment-debtor [Order 22, rule 40.]**

(1) In the case of—

- (a) a share in the capital of a corporation; or
- (b) other movable property not in the possession of the judgment-debtor,

for the attachment of which specific provision is not made by these Rules the attachment shall be made by a written order prohibiting—

- (i) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon; or
- (ii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the precincts of the court, 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 same.

(3) If the person in possession of the movable property does not lay claim to such property under rule 51, the court may make an order for actual seizure of the property as if it were in the possession of the judgment-debtor.

#### **41. Attachment of share in movables [Order 22, rule 41.]**

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

#### **42. Attachment of salary or allowance [Order 22, rule 42.]**

(1) Where the property to be attached is any salary or periodical allowance payable to the judgment-debtor by any person, the court, whether the judgment-debtor or the person by whom such salary or allowance is payable is or is not within the local limits of the court's jurisdiction, may order that the amount shall, subject to the provisions of section 44 of the Act, be withheld from such salary or allowance either in one payment or by monthly instalments as the court may direct; and upon notice of the order to the person by whom such salary or allowance is payable such person shall withhold and remit to the court or, if the court by the order so directs, to the advocate for the judgment-creditor, the amount due under the order or each or any monthly instalment, as the case may be.

(2) Where the attachable proportion of such salary or allowance is already being withheld and remitted in pursuance of a previous and unsatisfied order of attachment the person by whom such salary or allowance is payable shall retain every subsequent order and, upon satisfaction of such previous and unsatisfied order, shall withhold and remit the attachable proportion of the salary or allowance in accordance with the terms of the order next received by him.

(3) Subject to subrule (2), every order made under this rule shall, without further notice or other process, be binding on the person by whom such salary or allowance is payable while the judgment-debtor is in Kenya and also while the judgment-debtor is outside Kenya if he is in receipt of any such salary or allowance payable by such person; and the person by

whom such salary or allowance is payable shall be liable for any sum paid in contravention of this rule.

#### **43. Attachment of partnership property [Order 22, rule 43.]**

(1) Save 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 such 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 such partner in the profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require. Applications under this subrule shall be in accordance with the provisions of section 27 of the Partnership Act (Cap. 29).

(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 same.

(4) Every application for an order under subrule (2) shall be served on the judgment-debtor and on his partners or such of them as are within Kenya.

(5) Every application made by any partner of the judgment-debtor under subrule (3) 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 Kenya.

(6) Service under subrule (4) or (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

#### **44. Execution of decree against firm [Order 22, rule 44.]**

(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 own name under rules 6 or 7 of Order 30 or who has admitted on the pleadings, that he is, or who has been adjudged to be, a partner; or
- (c) against any person other than an infant who has been individually served as a partner with the summons and has failed to appear.

(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 subrules (1) (b) and (1) (c) as being a partner in the firm, he may apply to the court which passed the decree for leave, and, where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such 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), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable, or otherwise affect any partner therein unless he has been served with a summons to appear.

#### **45. Attachment of negotiable instrument [Order 22, rule 45.]**

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.

#### **46. Attachment of property in custody of court [Order 22, rule 46.]**

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[Subsidiary]

Where the property to be attached is in the custody of any court, the attachment shall be made by a notice to such court requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the court from which the notice is issued:

Provided that, where such 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 such property by virtue of any assignment or otherwise, shall be determined by such court.

#### **47. Attachment of decree [Order 22, rule 47.]**

(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 such court; and
- (b) if the decree sought to be attached was passed by another court, then by the issue to such other court of a notice by the court which passed the decree sought to be executed, requesting such other court to stay the execution of its decree unless and 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 judgment-debtor applies to the court receiving such notice to execute its own decree.

(2) Where a court makes an order under subrule (1) (a), or receives an application under subrule (1) (b) (ii), it shall, on the application of the creditor who has attached the decree of his 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) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(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), 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 from transferring or charging the same in any way; and, where such decree has been passed by any other court, also by sending to such other court a notice to abstain from executing the decree sought to be attached until such 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 such 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 such order after receipt of notice thereof, either through the court or otherwise, shall be recognised by any court so long as the attachment remains in force.

#### **48. Attachment of immovable property [Order 22, rule 48.]**

(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 such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.

(2) A copy of the order shall be affixed on a conspicuous part of the property.

#### **49. Removal of attachment after satisfaction of decree [Order 22, rule 49.]**



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 expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 48 of this Order.

#### **50. Determination of attachment [Order 22, rule 50.]**

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 and upon the dismissal of such application the attachment shall cease.

#### **51. Objection to attachment [Order 22, rule 51.]**

(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.

(2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.

(3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.

#### **52. Stay of execution [Order 22, rule 52.]**

Upon receipt of a valid notice and application as provided under rule 51, the court may order a stay of the execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.

#### **53. Raising of attachment [Order 22, rule 53.]**

Should the attaching creditor in pursuance of a notice issued under rule 52 either fail to reply to the court and the objector within the period prescribed by the notice or intimate in writing to the court and the objector within the period prescribed by such notice that he does not propose to proceed with the execution of the attachment of the whole or of a portion of the property subject to the attachment, the court shall make an order raising the attachment as to the whole or a portion of the property subject to the attachment in accordance with the intimation received from the attaching creditor and shall make such order as to costs as it shall deem fit.

#### **54. Notice of intention to proceed [Order 22, rule 54.]**

If the attaching creditor proposes to proceed with the attachment pursuant to rule 52, the intimation shall be accompanied by a replying affidavit and the court shall proceed to hear the application expeditiously.

#### **55. Power to order property attached to be sold and proceeds to be paid to person entitled [Order 22, rule 55.]**

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

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[Subsidiary]

**56. Sale, by whom conducted and how made [Order 22, rule 56.]**

(1) Save 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 in this behalf, and shall be made by public auction in the manner prescribed.

(2) Any court executing a decree may make orders relating to the payment of the charges for attaching the property or conducting the sale of the property and for the enforcement of such payment.

**57. Notification of sale by public auction [Order 22, rule 57.]**

(1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause public notice and advertisement of the intended sale to be given in such manner as the court may direct.

(2) Such public notice shall be drawn up after notice to the decree-holder and the judgment-debtor, and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) any encumbrance to which the property is liable;
- (c) the amount for the recovery of which the sale is ordered; and
- (d) every other thing which the court considers material for a purchaser to know in order to judge the nature and value of the property:

Provided that notice to the judgment-debtor may be dispensed with, or substituted service thereof ordered, for reasons to be recorded by the court.

(3) 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) to be specified in the public notice.

(4) 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 in respect to any such matters and require him to produce any document in his possession or power relating thereto.

(5) Directions shall be given as to the mode and expense of advertising the sale, which expense shall be costs of the sale.

(6) The advertisement shall be in Form No. 15 of Appendix A.

**58. Time of sale [Order 22, rule 58.]**

Save in the case of property of the kind described in the proviso to rule 37, no sale hereunder shall without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the public notice has been affixed in the precincts of the court of the judge ordering the sale.

**59. Adjournment or stoppage of sale [Order 22, rule 59.]**

(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 discretion adjourn the sale, recording his reasons for such adjournment:

Provided that where the sale is made in, or within the precincts of the court, no such adjournment shall be made without leave of the court.

(2) Where a sale is adjourned under subrule (1) 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 satisfaction that the amount of such debt and costs has been paid into the court which ordered the sale.

**60. Defaulting purchaser answerable for loss on re-sale [Order 22, rule 60.]**

Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, 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.

**61. Decree-holder not to bid for or buy property without permission [Order 22, rule 61.]**

(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 such permission, the purchase money and the amount due on the decree may, subject to section 50 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 through another person, without such 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 such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

**62. Restriction on bidding or purchase by officers [Order 22, rule 62.]**

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.

**63. Negotiable instruments and shares in corporations [Order 22, rule 63.]**

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 such instrument or share through a broker.

**64. Sales by public auction [Order 22, rule 64.]**

(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 forthwith be re-sold.

(2) On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the same, 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 such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

**65. Irregularity not to vitiate sale, but any person injured may sue [Order 22, rule 65.]**

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

**66. Delivery of movable property, debts and shares [Order 22, rule 66.]**

(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

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[Subsidiary]

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession ordering him to deliver possession of the property to the purchaser.

(3) Where the property sold is a share in a company, the delivery thereof 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 thereon, and the manager, secretary or other proper officer of the company from permitting any such transfer or making any such payment to any person except the purchaser.

(4) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or share in a company is standing is required to transfer such negotiable instrument or share, the judge or registrar may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by that party.

(5) An execution or endorsement under subrule (4) may adopt the following forms of words—

A.B. by C.D. judge of the court of (or as the case may be) in suit No. of 20 by E.F. against A.B.

(6) Until the transfer of such negotiable instrument or share, the court may appoint in writing some person to receive any interest or dividend due thereon and to sign a receipt therefor, and any receipt so signed shall be valid and effective for all purposes.

#### **67. Vesting order in case of other property [Order 22, rule 67.]**

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

#### **68. Sale of immovable property [Order 22, rule 68.]**

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

#### **69. Deposit by purchaser and re-sale on default [Order 22, rule 69.]**

(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five *per centum* on the amount of his purchase-money to the officer or other person conducting the sale, and, in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser, and is entitled to set off the purchase-money under rule 61, the court may dispense with the requirements of this rule.

#### **70. Payment of purchase-money [Order 22, rule 70.]**

(1) Except as provided by rule 61, the full amount of the purchase-money shall be paid upon the delivery to the purchaser of an executed conveyance or transfer of the property.

(2) The purchase money shall be paid into court unless the court otherwise orders.

#### **71. Procedure in default of payment [Order 22, rule 71.]**

In default of payment within the period under rule 70, the deposit may, if the court thinks fit, after defraying the expenses of the sale, be forfeited and shall if forfeited be allocated towards satisfaction of the decree, and the property shall be re-sold, 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.

#### **72. Notification on re-sale [Order 22, rule 72.]**

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

**73. Bid of co-sharer to have preference [Order 22, rule 73.]**

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 such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

**74. Application to set aside sale on deposit [Order 22, rule 74.]**

(1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in court—

- (a) for payment to the purchaser, a sum equal to ten per cent of the purchase-money; and
- (b) for payment to the decree-holder, the amount specified in the public notification of sale as that for the recovery of which the sale was ordered, less any amount which may since the date of such public notification of sale have been received by the decree-holder.

(2) Where a person applies under rule 75 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the public notification of sale.

**75. Application to set aside sale on ground of irregularity or fraud [Order 22, rule 75.]**

Where any immovable property has been sold in execution of a decree, the decree-holder, or any person whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

**76. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest [Order 22, rule 76.]**

The purchaser at any such sale in execution of a decree may apply to the court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold.

**77. Sale, when to become absolute or be set aside [Order 22, rule 77.]**

(1) Where no application is made under rule 74, rule 75 or rule 76, or where such application is made and disallowed, the court shall make an order confirming the sale, and thereupon the sale shall become absolute in so far as the interest of the judgment-debtor in the property sold is concerned.

(2) Where such application is made and allowed and where, in the case of an application under rule 74, the deposit required by that rule is made within thirty days from the date of sale, the court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

**78. Return of purchase-money in certain cases [Order 22, rule 78.]**

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[Subsidiary]

Where a sale of immovable property is set aside under rule 75, the purchaser shall be entitled to an order for payment of his purchase-money, with or without interest as the court may direct, against any person to whom it has been paid.

**79. Certificate to purchaser [Order 22, rule 79.]**

Where a sale of immovable property has become absolute, the court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser, and such certificate shall bear the date and the day on which the sale became absolute.

**80. Delivery of property in occupancy of judgment-debtor [Order 22, rule 80.]**

Where the immovable property sold is in the occupancy of the judgment-debtor, or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under rule 79, the court shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

**81. Delivery of property in occupancy of tenant [Order 22, rule 81.]**

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under rule 79, the court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and notifying the occupant in such manner as the court may direct that the interest of the judgment-debtor has been transferred to the purchaser.

**82. Resistance or obstruction to possession of immovable property [Order 22, rule 82.]**

(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 may make an application to the court complaining of such 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 the same.

**83. Resistance or obstruction by judgment-debtor [Order 22, rule 83.]**

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 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 instigation, to be detained in prison for a period not exceeding thirty days.

**84. Resistance or obstruction by *bona fide* claimant [Order 22, rule 84.]**

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 own account or on account of some person other than the judgment-debtor, the court shall make such orders as it may deem just.

**85. Rules not applicable to transferee *pendente lite* [Order 22, rule 85.]**

Nothing in rule 84 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.

**86. Order conclusive subject to regular suit [Order 22, rule 86.]**

Any party not being a judgment-debtor against whom an order is made under rule 83 or rule 84, may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be conclusive.

## ORDER 23 - ATTACHMENT OF DEBTS

**1. Order for the attachment of debts [Order 23, rule 1.]**

(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 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 (other than the salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (hereinafter called the “garnishee”) to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree-holder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.

(2) 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.

(3) 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 advocate if he has appeared by advocate, or if there has been no appearance then by leaving the order at his usual residence or place of business or in such manner as the court may direct.

(4) An order *nisi* shall be in Form No. 16 of Appendix A.

**2. Attachment of deposits [Order 23, rule 2.]**

A credit in a deposit account with a bank or other financial institution shall for the purposes of this Order be a sum due or accruing and shall be attachable accordingly notwithstanding that any of the following requirements is applicable to the account and has not been complied with—

- (a) that notice is required before any money is withdrawn;
- (b) that a personal application must be made before any money is withdrawn;
- (c) that a deposit book must be produced before any money is withdrawn; or
- (d) that a receipt for money deposited in the account must be produced before any money is withdrawn.

**3. Effect of garnishee order [Order 23, rule 3.]**

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

**4. Execution against garnishee [Order 23, rule 4.]**

If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he 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 so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings; and the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.

**5. Trial of liability of garnishee [Order 23, rule 5.]**

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[Subsidiary]

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

#### **6. Claim of third person [Order 23, rule 6.]**

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 claim upon such debt.

#### **7. Trial of claim of third person [Order 23, rule 7.]**

After hearing the allegations of any third person under such order, as in rule 6 mentioned, 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 the preceding rules of this Order, and may bar the claim of such third person or make such other order as the court shall think fit.

#### **8. Payment by or execution on the garnishee is a valid discharge [Order 23, rule 8.]**

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

#### **9. Record of proceedings [Order 23, rule 9.]**

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

#### **10. Costs of proceedings [Order 23, rule 10.]**

The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such 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 under the garnishee order, and in priority to the amount due under the decree.

### ORDER 24 - DEATH AND BANKRUPTCY OF PARTIES

#### **1. No abatement by party's death if right survives [Order 24, rule 1.]**

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 [Order 24, rule 2.]**

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 [Order 24, rule 3.]**

(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 in that



behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no application is made under subrule (1), 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 the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:

Provided the court may, for good reason on application, extend the time.

#### **4. Procedure in case of death of one of several defendants or of sole defendant [Order 24, rule 4.]**

(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 in that behalf, 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 character as legal representative of the deceased defendant.

(3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.

#### **5. Determination of question as to legal representative [Order 24, rule 5.]**

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

#### **6. When plaintiff's bankruptcy bars suit [Order 24, rule 6.]**

(1) The bankruptcy of a plaintiff in any suit which the trustee or official receiver might maintain for the benefit of his creditors shall not cause the suit to abate, unless such trustee or official receiver declines to continue the suit or (unless for any special reason the court otherwise directs) to give security for the costs thereof within such time as the court may direct.

(2) Where the trustee or official receiver neglects or refuses to continue the suit, and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy, and the court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

#### **7. Effect of abatement or dismissal [Order 24, rule 7.]**

(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 trustee or official receiver in the case of a bankrupt 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 was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.

#### **8. Procedure in case of assignment before final order in suit [Order 24, rule 8.]**

(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 such 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 such attachment to the benefit of subrule (1).

#### **9. Application of Order to appeals [Order 24, rule 9.]**

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[Subsidiary]

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

#### **10. Application of Order to execution proceedings [Order 24, rule 10.]**

Nothing in rules 3, 4 and 7 shall apply to proceedings in execution of a decree or order.

#### **ORDER 25 - WITHDRAWAL, DISCONTINUANCE AND ADJUSTMENT OF SUITS**

##### **1. Withdrawal by plaintiff [Order 25, rule 1.]**

At any time before the setting down of the suit for hearing the plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.

##### **2. Discontinuance [Order 25, rule 2.]**

(1) Where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn, upon the filing of a written consent signed by all the parties.

(2) Where a suit has been set down for hearing the court may grant the plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit, and otherwise, as are just.

(3) The provisions of this rule and rule 1 shall apply to counterclaims.

##### **3. Costs [Order 25, rule 3.]**

Upon request in writing by any defendant the registrar shall sign judgment for the costs of a suit which has been wholly discontinued, and any defendant may apply at the hearing for the costs of any part of the claim against him which has been withdrawn.

##### **4. Stay of subsequent suit [Order 25, rule 4.]**

If any subsequent suit shall be 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 such subsequent suit until such costs shall have been paid.

##### **5. Compromise of a suit [Order 25, rule 5.]**

(1) Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, 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 shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.

(2) The Court, on the application of any party, may make any further order necessary for the implementation and execution of the terms of the decree.

#### **ORDER 26 - SECURITY FOR COSTS**

##### **1. Security for costs [Order 26, rule 1.]**

In any suit the court may order that security for the whole or any part of the costs of any defendant or third or subsequent party be given by any other party.

##### **2. Application before defence [Order 26, rule 2.]**

If an application for security for costs is made before a defence is filed, there shall be filed with the application an affidavit setting out the grounds of the defence together with a statement of the deponent's belief in the truth of the facts alleged.

##### **3. Where two or more defendants [Order 26, rule 3.]**

Where it appears to the court that the substantial issue is which of two or more defendants is liable or what proportion of liability two or more defendants should bear no order for security for costs may be made.

#### **4. Claims by non-resident plaintiff [Order 26, rule 4.]**

In any suit brought by a person not residing in Kenya, if the claim is founded on a bill of exchange or other negotiable instrument or on a judgment or order of a foreign court, any order for security for costs shall be in the discretion of the court.

#### **5. Effect of failure to give security [Order 26, rule 5.]**

(1) If security for costs is not given within the time ordered and if the plaintiff is not permitted to withdraw the suit, the court shall, upon application, dismiss the suit.

(2) If a suit is dismissed under subrule (1) and the plaintiff proves that he was prevented by sufficient cause from giving the required security for costs the court may set aside the order dismissing the suit and extend the time for giving the required security.

#### **6. Investment of security [Order 26, rule 6.]**

(1) Where security by payment has been ordered, the party ordered to pay may make payment to a bank or a reputable financial institution in the joint names of himself and the defendant or in the names of their respective advocates when advocates are acting.

### ORDER 27 - PAYMENT INTO COURT AND TENDER

#### **1. Payment into court [Order 27, rule 1.]**

(1) In any suit for a debt or damages any defendant may at any time after appearance upon notice to the plaintiff pay into court a sum of money in satisfaction of the claim or (where several causes of action are joined in one suit) in satisfaction of one or more of the causes of action.

(2) Where money is paid into court in satisfaction of one or more of several causes of action the notice shall specify the causes of action in respect of which payment is made and the sum paid in respect of each such cause of action unless the registrar or, in a subordinate court, presiding magistrate, otherwise orders.

(3) The notice shall be in Form No. 19 of Appendix A but may be modified or withdrawn or delivered in an amended form by leave of the registrar or, in a subordinate court, the presiding magistrate, upon such terms as are just except that the defendant may, without leave deliver a notice increasing the amount of any sum paid into court, which shall be in Form No. 20 of Appendix A.

#### **2. Acceptance of payment [Order 27, rule 2.]**

(1) Where money is paid into court under rule 1 the plaintiff may, within fourteen days of the receipt of notice thereof, or where more than one payment has been made, within fourteen days of the receipt of notice of the last payment, accept the whole sum or any one or more of any sums specified to be in satisfaction of different causes of action by giving notice to the defendant in Form No. 21 of Appendix A and thereupon he shall be entitled to receive payment accordingly.

(2) Payment shall be made to the plaintiff or to his advocate, and thereupon proceedings in the suit or in respect of the cause or causes of action to which the payment relates shall be stayed.

(3) The registrar shall, if so requested in writing not less than fourteen days after delivery to the defendant of the notice in Form No. 21 of Appendix A, give judgment for the plaintiff's costs incurred up to the time of payment into court unless the defendant has applied by summons for an order disallowing the plaintiff's costs or any part thereof.

(4) A plaintiff in an action for libel or slander who has accepted a payment into court may apply by summons for leave to make in open court a statement the terms of which shall have been approved by the court.

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[Subsidiary]

### **3. Money remaining in court [Order 27, rule 3.]**

If money paid into court is not accepted in accordance with rule 2 (1) the money remaining in court shall not be paid out except by consent or in pursuance of an order of the court, which may be made at any time before, at or after the hearing of the suit; and where such an order is made the money shall not be paid out except in satisfaction of the claim or cause or causes of action in respect of which it was paid in.

### **4. Payment into court where several defendants [Order 27, rule 4.]**

(1) Money may be paid into court under rule 1 by any of several defendants sued jointly or in the alternative upon notice to the other defendants.

(2) If within fourteen days after receipt of notice of payment into court the plaintiff elects to accept the sum or sums paid into court, he shall give notice in Form No. 21 of Appendix A to each defendant.

(3) Upon acceptance under subrule (2) all further proceedings in the suit or in respect of the cause of action to which the payment relates, as the case may be, shall be stayed, and the money shall not be paid out except in pursuance of an order of the court dealing with the whole costs of the suit or cause of action, as the case may be.

(4) If in an action for libel or slander against several defendants sued jointly any defendant pays money into court, the plaintiff may within fourteen days elect to accept the payment in satisfaction of his claim against the defendant making the payment and shall give notice to all defendants in Form No. 21 of Appendix A; and the plaintiff may proceed to judgment under rule 2 (3) against the defendant who has made such payment, and the action shall thereupon be stayed against that defendant.

(5) The plaintiff may continue with the suit against any other defendant, but the sum paid into court shall be set off against any damages ordered to be paid to the plaintiff by such defendant.

### **5. Payment into court on a counterclaim [Order 27, rule 5.]**

A plaintiff or other person made a defendant to a counterclaim may pay money into court in accordance with the provisions of this Order subject to any necessary modification.

### **6. Confidentiality of payments into court [Order 27, rule 6.]**

(1) Unless a defence of tender before action or a plea under section 12 of the Defamation Act (Cap. 36) is pleaded, the fact that a payment into court has been made under this Order shall not be mentioned in any pleading.

(2) Subject to rule 3, no communication of such fact may be made to the judge until all questions of liability and the amount of the debt or damages shall have been decided, whereupon the fact shall be mentioned to the judge who shall take into account the amount of such payment in exercising his discretion as to costs.

### **7. Register of payments to be kept [Order 27, rule 7.]**

The registrar of every court shall maintain a register containing details of every payment into court made under this Order.

### **8. Investment of payment [Order 27, rule 8.]**

(1) In place of payment into court as provided by the foregoing rules the defendant may make payment to a bank or a reputable financial institution in the joint names of himself and the plaintiff or in the names of their respective advocates when advocates are acting.

(2) Such payment shall in all respects be as effective as payment into court and the court may make orders for its disposal.

### **9. Money paid in under order of court [Order 27, rule 9.]**

Money paid into court under an order of the court shall not be paid out except in pursuance of an order of the court:

Provided that where before the filing of defence money has been paid into court by the defendant pursuant to an order under the provisions of Order 36, he may (unless the court shall order otherwise) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary to the whole or any specified portion of the plaintiff's claim, or if he 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 thereto.

#### **10. Moneys recovered by infants or persons of unsound mind [Order 27, rule 10.]**

(1) In any cause or matter in the High Court in which money or damages is claimed by or on behalf of an infant or a person of unsound mind but not found upon inquiry to be incapable of managing his own affairs, suing either alone or in conjunction with other parties, no settlement, 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 after the hearing, shall be paid to the next friend of the plaintiff or to the plaintiff's advocate, unless the court shall so direct.

(2) all money or damages recovered or awarded under subrule (1), unless the court shall otherwise direct, be paid to the Public Trustee, and shall, subject to any general or special directions of the court, be held and applied by him in such manner as he may think fit for the maintenance and education or otherwise for the benefit of such infant or person of unsound mind:

Provided always that the Public Trustee may pay out of the decretal amount such costs as the plaintiff infant or person of unsound mind may have incurred in the institution and conduct of the cause or matter in which the decree shall have been issued.

#### ORDER 28 - COMMISSION AND REFERENCES

#### **1. Cases in which court may issue commission to examine witnesses [Order 28, rule 1.]**

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. Where witness resides within court's jurisdiction [Order 28, rule 2.]**

A commission for the examination of a person who resides within the local limits of the jurisdiction of the court issuing the same may be issued to any person whom the court thinks fit.

#### **3. Persons for whose examination commission may issue [Order 28, rule 3.]**

- (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 such limits before the date on which he is required to be examined in court; or
  - (c) any civil or military officer of the Government who cannot in the opinion of the court attend without detriment to the public service.

#### **4. Request to examine witness abroad [Order 28, rule 4.]**

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 in Kenya is satisfied that the evidence of such person is necessary, the court may issue such commission or a letter of request.

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[Subsidiary]

**5. Court to examine witness pursuant to commission [Order 28, rule 5.]**

Every court in Kenya receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

**6. Return of commission with deposition of witness [Order 28, rule 6.]**

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 such order; and the commission and the return thereto and the evidence taken under it shall form part of the record of the suit.

**7. Commissions to make investigations [Order 28, rule 7.]**

On the application of any party or of its own motion in any suit, the court may issue a commission to any person to make an investigation and report to the court for the purpose of ascertaining—

- (a) any matter in dispute in the suit, whether or not the matter is substantially the whole matter in dispute between the parties; or
- (b) the value of any property or the extent of any damage thereto, or the amount of returns, profits, damages or *mesne* profits.

**8. Procedure of commissioner [Order 28, rule 8.]**

(1) The commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the court.

(2) The report of the commissioner and the evidence taken by him (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 mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the court is for any reason dissatisfied with the proceeding of the commissioner, it may direct such further inquiry to be made as it shall think fit.

**9. Examination of accounts by referee [Order 28, rule 9.]**

On the application of any party or of its own motion in any suit in which the examination of accounts is necessary or desirable, the court may refer the accounts for examination to such person as it thinks fit.

**10. Instructions to referee [Order 28, rule 10.]**

(1) The court shall furnish a referee appointed under rule 9 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 may hold on the inquiry, or also to report his own opinion on the point referred for his 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.

**11. Partition of immovable property [Order 28, rule 11.]**

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 such decree.

**12. Procedure upon partition [Order 28, rule 12.]**

(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 was appointed,

and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalising the value of the shares.

(2) He 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 said order) by measurements and boundaries. Such 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 same.

(3) Where the court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the court sets aside the report or reports it shall make such order as it thinks fit.

### **13. Expenses of commission to be paid into court [Order 28, rule 13.]**

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, within a time to be fixed, paid into court by the party at whose instance or for whose benefit the commission, reference or appointment is issued.

### **14. Powers of commissioner [Order 28, rule 14.]**

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;
- (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.

### **15. Attendance and examination of witnesses before commissioner [Order 28, rule 15.]**

(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 for the issue of any process which he may find it necessary to issue to or against any witness who resides within the local limits of the jurisdiction of such court, and such court may in its discretion issue such process as it considers reasonable and proper.

### **16. Parties to appear before commissioner [Order 28, rule 16.]**

(1) Where a commission is issued under the preceding rules, 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.

### **17. Commissions issued by foreign courts [Order 28, rule 17.]**

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 Kenya; or
- (b) courts of any foreign country for the time being in alliance with Kenya.

[Subsidiary]

**18. Evidence in proceedings by or against the Government [Order 28, rule 18.]**

For the avoidance of doubt it is hereby declared that any powers exercisable by the court in regard to the taking of evidence are exercisable in civil proceedings by or against the Government as they are exercisable in proceedings between subjects.

**ORDER 29 - PROCEEDINGS BY OR AGAINST THE GOVERNMENT****1. Interpretation [Order 29, rule 1.]**

(1) The expressions “civil proceedings by the Government”, “civil proceedings against the Government” and “civil proceedings by or against the Government” have the same respective meanings as in Part III of the Government Proceedings Act and do not include any of the proceedings specified in subsection (3) of section 19 of that Act—

“civil proceedings to which the Government is a party” has the same meaning as it has for the purposes of Parts IV and V of the Government Proceedings Act by virtue of subsection (3) of section 2 of that Act;

“order against the Government” means any order (including a judgment, decree, rule, award, declaration and an order for costs) made in civil proceedings brought by or against the Government, or in connection with any arbitration to which the Government is a party, in favour of any person against the Government or against a Government department or against a public officer as such.

(2) Except where the context otherwise requires, references to suits where the subject-matter is immovable or movable property shall be construed as including proceedings against the Government for an order declaring that the plaintiff is entitled as against the Government to such property or to the possession thereof.

**2. Rules to apply to proceedings by or against the Government [Order 29, rule 2.]**

(1) Except as provided by the Government Proceedings Act (Cap. 40) or by these Rules

- (a) these Rules shall apply to all civil proceedings by or against the Government; and
- (b) civil proceedings by or against the Government shall take the same form as civil proceedings between subjects and shall, if no special form is applicable, take the form of a suit instituted by a plaintiff.

(2) No order against the Government may be made under—

- (a) Order 14, rule 4 (Impounding of documents);
- (b) Order 22 (Execution of decrees and orders);
- (c) Order 23 (Attachment of debts);
- (d) Order 40 (Injunctions); and
- (e) Order 41 (Appointment of receiver).

**3. Application for a certificate under section 21 of the Government Proceedings Act [Order 29, rule 3.]**

Any application for a certificate under section 21 of the Government Proceedings Act (Cap. 40) (which relates to satisfaction of orders against the Government) shall be made to a registrar or, in the case of a subordinate court, to the court; and any application under that section for a direction that a separate certificate be issued with respect to costs ordered to be paid to the applicant shall be made to the court and may be made *ex parte* without a summons, and such certificate shall be in one of Form Nos. 22 and 23 of Appendix A with such variations as circumstances may require.

**4. Attachment of debts or appointment of a receiver [Order 29, rule 4.]**



(1) No order for the attachment of debts under Order 23 or for the appointment of a receiver under Order 41 shall be made or have effect in respect of any money due or accruing or alleged to be due or accruing from the Government.

(2) In a case where it is alleged that such an order could have been obtained and would have had effect in respect of such money if it had been due or accruing from a subject the court may on the application by summons of the decree-holder make an order restraining the judgment-debtor from receiving such money and directing payment by the Government to the decree-holder or receiver; and the court may appoint a receiver for that purpose.

(3) No such order shall be made in respect of money which is subject to the provisions of any enactment prohibiting or restricting assigning or charging or taking in execution.

- (a) Any such summons under subrule (2) shall on the Government at least four days before the return day and, unless otherwise ordered, on the judgment-debtor or his advocate.
- (b) Service on the judgment-debtor or his advocate shall be in the manner provided for such service by Order 23 rule 1, and service on the Government shall be effected by service on the Attorney-General in accordance with Order 5, rule 9.

(5) If the Government disputes liability the court may order that any issue or question necessary for determining the liability of the Government shall be tried or determined in any manner in which any issue or question in a suit may be tried or determined; and where it is suggested by the Government that the debt with reference to which the proceedings are taken belongs to some third person, or that any third person has a claim upon it, the court may order such third person to appear and state the nature and particulars of his claim upon such debt; and after hearing any such third person as aforesaid, and any other person whom by the same or any subsequent order the court may require to appear, the court may bar the claim of the third person or make such order with regard to his claim as it deems fit upon such terms, in all cases, with regard to the third person's claim (if any) and to costs as it deems just and reasonable, and if the third person does not appear when ordered, the court may exercise any powers which it might have exercised if he had appeared.

(6) In this rule the expression "**judgment-holder**" means the person against whom the order for the attachment of debts or for the appointment of a receiver could have been obtained as aforesaid, and the expression "**decree-holder**" means the person in whose favour it could have been obtained.

ORDER 30 - SUITS BY OR AGAINST FIRMS AND OTHER PERSONS  
CARRYING OUT BUSINESS IN NAMES OTHER THAN THEIR OWN

**1. Suing of partners in name of firm [Order 30, rule 1.]**

Any two or more persons claiming or being liable as partners and carrying on business in Kenya may sue or be sued in the name of the firm (if any) in which such 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 such firm, to be furnished and verified in such manner as the court may direct.

**2. Disclosure of partners' names [Order 30, rule 2.]**

(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, within seven days, 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), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the court may direct.

[Subsidiary]

(3) Where the names of the partners are declared in the manner referred to in subrule (1), 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:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

### **3. Service [Order 30, rule 3.]**

(1) Where persons are sued as partners in the name of their firm, the service of the summons shall be effected either—

- (a) upon any one or more of the partners;
- (b) at the principal place at which the partnership business is carried on within Kenya 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) Such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without Kenya:

Provided 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 within Kenya whom it is sought to make liable.

### **4. Notice in what capacity served [Order 30, rule 4.]**

Where a summons is issued to a firm, and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he 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 such notice, the person served shall be deemed to be served as a partner.

### **5. Appearance of partners [Order 30, rule 5.]**

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.

### **6. No appearance except by partners [Order 30, rule 6.]**

Where a summons is served in the manner provided by rule 3, upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

### **7. Appearance in action against firms [Order 30, rule 7.]**

(1) Any person served as a partner under rule 3 but who denies that he was a partner or liable as such at any material time may enter an appearance stating therein that he does so as “a person served as a partner in the defendant firm, but who denies that he was a partner at any material time”; and such 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 on the ground that he was not a partner or liable as such; or he may at the proper time deliver a defence denying either or both—
  - (i) his liability as a partner;
  - (ii) the liability of the defendant firm in respect of 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.

### **8. Suits between firm and partners [Order 30, rule 8.]**

This Order shall apply to suits between a firm and one or more of the partners therein, and to suits between firms having one or more partners in common; but no execution shall be issued in such 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.

### **9. Suit against persons carrying on business in name other than his own [Order 30, rule 9.]**

Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

#### ORDER 31 - SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

### **1. Representation of beneficiaries in suits concerning property vested in trustees [Order 31, rule 1.]**

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such 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 [Order 31, rule 2.]**

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors, and administrators outside Kenya, need not be made parties.

#### ORDER 32 - SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

### **1. Minor to sue by next friend [Order 32, rule 1.]**

(1) Every suit by a minor shall be instituted in his name by a person who in such 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, such person shall sign a written authority to the advocate for that purpose, and the authority shall be filed.

### **2. Where suit is instituted without next friend [Order 32, rule 2.]**

(1) Where a suit is instituted by or on behalf of a minor without a next friend the defendant may apply to have the suit dismissed with costs to be paid by the advocate or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

### **3. Guardian *ad litem* [Order 32, rule 3.]**

(1) Where the defendant is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian *ad litem* of such minor.

(2) An order for the appointment of guardian *ad litem* may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

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[Subsidiary]

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in suit adverse to that of the minor and that he 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 in that behalf, or, where there is no such guardian, upon notice to the father or mother of the minor, or, where there is no father or mother of the minor, 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 [Order 32, rule 4.]**

(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian *ad litem*:

Provided that the interest of such person is not adverse to that of the minor, and that he 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 competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his 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 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 such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such 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. Representation of minor by next friend or guardian for the suit [Order 32, rule 5.]**

(1) Every application to the court on behalf of a minor, other than an application under rule 10(2), shall be made by his next friend or by his 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 such 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 such order was obtained, knew, or might reasonably have known, the fact of such minority, with costs to be paid by such advocate.

#### **6. Receipt of property or money on behalf of minor [Order 32, rule 6.]**

(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 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 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 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 of suit on behalf of minor [Order 32, rule 7.]**

(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 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 [Order 32, rule 8.]**

(1) Unless otherwise ordered by the court, a next friend shall not retire without first procuring a fit person to be put in his 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 has no interest adverse to that of the minor.

#### **9. Removal of next friend [Order 32, rule 9.]**

(1) Where the interest of the next friend of a minor is adverse to that of the minor, or where he 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 where he does not do his duty, or during the pendency of the suit ceases to reside within Kenya, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his 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 in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself 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 place upon such terms as to the costs already incurred in the suit as it thinks fit.

#### **10. Stay of proceedings [Order 32, rule 10.]**

(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 place.

(2) Where the advocate of such a 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 ad litem [Order 32, rule 11.]**

(1) Where the guardian *ad litem* desires to retire or does not do his duty, or where other sufficient ground is made to appear, the court may permit such guardian to retire or may remove him, 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 place.

#### **12. Procedure where minor attains majority [Order 32, rule 12.]**

(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 will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read thenceforth thus—

“A.B., late a minor, by C.D., his next friend, but now having attained majority.”

(4) Where he elects to abandon the suit or application he 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 next friend.

(5) Any application under this rule may be made *ex parte* by chamber summons; but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

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### **13. Where minor co-plaintiff attaining majority desires to repudiate suit [Order 32, rule 13.]**

(1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the court, if it finds that he is not a necessary party, shall dismiss him 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 such 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 to be made a defendant.

### **14. Unreasonable or improper suit [Order 32, rule 14.]**

(1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his 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 such 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 [Order 32, rule 15.]**

The provisions contained in rules 1 to 14, 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 interests when suing or being sued.

## ORDER 33 - SUITS BY PAUPERS

### **1. Suits may be instituted by a pauper [Order 33, rule 1.]**

(1) Subject to the following rules, any suit may be instituted by a pauper.

(2) For the purposes of this Order a person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the institutions of such suit.

### **2. Contents of application [Order 33, rule 2.]**

Every application for permission to sue as a pauper shall contain the particulars required in regard pleadings, together with a statement that the pauper is unable to pay the fee prescribed in such suit, and the whole shall be signed in the manner prescribed for the signing of pleadings.

### **3. Presentation of application [Order 33, rule 3.]**

Notwithstanding anything contained 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 82 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 might have been examined had such party attended in person.

### **4. Examination of applicant [Order 33, rule 4.]**

Where the application is in proper form and duly presented the court may, if it deems fit, examine the applicant or his 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 [Order 33, rule 5.]**

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;
- (b) where the applicant is not a pauper;
- (c) where he 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 his allegations do not show a cause of action; or
- (e) where he 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 such subject-matter.

#### **6. Notice of day for receiving evidence of applicant's pauperism [Order 33, rule 6.]**

Where the court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party) for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof.

#### **7. Procedure at hearing [Order 33, rule 7.]**

(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 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.

(3) The court shall then either allow or refuse to allow the applicant to sue as a pauper.

#### **8. Procedure if application admitted [Order 33, rule 8.]**

Where the application is granted, it shall be deemed the pleading 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 [Order 33, rule 9.]**

The court may, on the application of the defendant, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or
- (c) if he has entered into any agreement, with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

#### **10. Costs where pauper succeeds [Order 33, rule 10.]**

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 had not been permitted to sue as a pauper; such amount shall be recoverable by the court from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

#### **11. Procedure where pauper fails [Order 33, rule 11.]**

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

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court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

**12. Government may apply for payment of court fees [Order 33, rule 12.]**

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 rule 11.

**13. Government to be deemed a party [Order 33, rule 13.]**

All matters arising between the Government and any party to the suit under rule 10, rule 11 or rule 12 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 [Order 33, rule 14.]**

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 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 such right provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

**15. Costs [Order 33, rule 15.]**

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. Court fees [Order 33, rule 16.]**

(1) If any defendant alleges that he is unable to pay court fees the registrar, upon application being made for that purpose, shall inquire into the question of his poverty and, if he is satisfied on oath that the allegation of poverty is true, shall record on the record the result of his investigation and a statement of the proportion of the fees (if any) which the defendant is able to pay; and no fees other than the amount which the registrar is satisfied that the defendant is able to pay shall be payable.

(2) If the registrar is not so satisfied as aforesaid as to the inability of the defendant to pay court fees, he shall so certify and advise the defendant as to the fees payable by him.

(3) An appeal shall lie from the decision of the registrar to a judge in chambers.

**17. Recovery of court fees from pauper [Order 33, rule 17.]**

In the event of a pauper plaintiff or defendant succeeding in any suit which results in a decree or order for payment to him of any sum of money from the other side, whether by way of costs or otherwise, the court may order that the court fees remitted as aforesaid or otherwise under this Order shall be a first charge on any moneys recovered or to be recovered under such decree or order.

**18. Procedure [Order 33, rule 18.]**

Applications under this Order shall be in writing addressed to the court.

ORDER 34 - INTERPLEADER

**1. Practice under this Order [Order 34, rule 1.]**

An application for relief under this Order shall be made by originating summons unless made in a pending suit in which case it shall be made by summons in the suit.

**2. Averments to be proved by applicant [Order 34, rule 2.]**

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 [Order 34, rule 3.]**

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 [Order 34, rule 4.]**

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 claimants is to be plaintiff and which defendant.

### **5. Summary procedure [Order 34, rule 5.]**

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 the same in a summary manner and on such terms as may be just.

### **6. Costs and other orders [Order 34, rule 6.]**

The court may make all such orders as are just and reasonable as to costs and all other matters including, where appropriate, orders for the sale or disposal of the subject-matter of the dispute, and where an order for costs is in favour of the applicant the court may give him a charge over the subject-matter.

### **7. Order upon a claimant's failure to appear [Order 34, rule 7.]**

If a claimant, having been duly served with a summons calling him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or having appeared neglects or refuses to comply with any order made after his appearance, the court may make an order declaring him and all persons claiming under him forever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves:

Provided that no order shall be made against the Government under this rule except upon an application by summons served not less than seven days before the return day.

### **8. Questions of law [Order 34, rule 8.]**

Where the question in issue is a question of law and no facts are disputed the court may decide the question without the trial of an issue.

### **9. Adverse title of claimants [Order 34, rule 9.]**

The applicant may be granted relief notwithstanding the fact that the titles of the claimants have not a common origin but are adverse to and independent of one another.

## ORDER 35 - PROCEEDINGS BY AGREEMENT OF PARTIES

### **1. Power to state case for court's opinion [Order 35, rule 1.]**

(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such 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 such 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; or

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- (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 [Order 35, rule 2.]**

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 [Order 35, rule 3.]**

(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 [Order 35, rule 4.]**

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 therein.

## **5. Hearing and disposal of case [Order 35, rule 5.]**

(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of Order 11 shall apply to such suit so far as the same 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 therein; and
- (c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

[L.N. 22/2020, r. 20.]

### ORDER 36 - SUMMARY PROCEDURE

## **1. Summary judgment [Order 36, rule 1.]**

(1) In all suits where a plaintiff seeks judgment for—

- (a) a liquidated demand with or without interest; or
- (b) the recovery of land, with or without a claim for rent or *mesne* profits, by a landlord from a tenant whose term has expired or been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser,

where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for the amount claimed, or part thereof, and interest, or for recovery of the land and rent or *mesne* profits.

(2) The application shall be supported by an affidavit either of the plaintiff or of some other person who can swear positively to the facts verifying the cause of action and any amount claimed.

(3) Sufficient notice of the application shall be given to the defendant which notice shall in no case be less than seven days.

## **2. Defendant may show cause [Order 36, rule 2.]**

The defendant may show either by affidavit, or by oral evidence, or otherwise that he should have leave to defend the suit.

## **3. Application by Government [Order 36, rule 3.]**

(1) An application under rule 1 by the Government may be verified by an affidavit of the Attorney-General stating that to the best of his knowledge and belief the plaintiff is entitled to the relief claimed and there is no defence to the action.

(2) No application under rule 1 shall be made against the Government.

## **4. Time for defence [Order 36, rule 4.]**

If a defendant is granted leave to defend he shall file his defence within fourteen days of the grant of leave unless the court otherwise orders.

## **5. Judgment for part of claim [Order 36, rule 5.]**

If it appears that the defence set up in the affidavit by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his 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 the amount realised or any part thereof into court, the taxation of costs, or otherwise as the court thinks fit, and the defendant may be allowed to defend as to the residue of the plaintiff's claim.

## **6. Procedure where more than one defendant [Order 36, rule 6.]**

If it appears to the court that any defendant has a good defence to, or ought to be permitted to defend the suit, and that any other defendant has not a good defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to judgment against the latter and may obtain execution of the decree thereon, without prejudice to his right to proceed with his suit against the former.

## **7. Leave to defend [Order 36, rule 7.]**

Leave to defend may be given unconditionally, or subject to such terms as to giving security or time of trial or otherwise, as the court thinks fit.

## **8. Costs [Order 36, rule 8.]**

(1) The costs of and incidental to all applications under this Order shall be dealt with by the court on the hearing of the application, and the court shall order by and to whom, and when the same shall be paid, or may reserve them to be dealt with at the trial:

Provided that in case no trial afterwards takes place, or no order as to costs is made, the costs are to be costs in the cause.

(2) If the plaintiff makes an application under this Order where the case is not within the Order, or where the plaintiff in the opinion of the court, knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the application may be dismissed with costs to be paid forthwith by the plaintiff.

## **9. Forms [Order 36, rule 9.]**

Form Nos. 24 and 25 of Appendix A, adapted to circumstances, shall be utilised for the respective purposes for which they are designed.

## **10. Setting aside of judgment [Order 36, rule 10.]**

Any judgment, given against any party who did not attend at the hearing of an application under this Order, may, on application be set aside or varied on such terms as are just.

ORDER 37 - ORIGINATING SUMMONS

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[Subsidiary]

### **1. Who may take out originating summons and in respect of what matters [Order 37, rule 1.]**

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 as 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;
- (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 [Order 37, rule 2.]**

Any of the persons named in rule 1 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;
- (c) the administration of the trust.

### **3. Summons by vendor or purchaser of land [Order 37, rule 3.]**

A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before the 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, mortgagor and others [Order 37, rule 4.]**

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 the 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, delivery of possession by the mortgagee.

### **5. Caveats [Order 37, rule 5.]**

An application under section 116 of the Government Lands Act (Cap. 280) or section 57 of the Registration of Titles Act (Cap. 281) shall be made by originating summons unless there is pending a suit involving the same lands when the application may be made by summons in that suit.

**6. Extension of limitation period [Order 37, rule 6.]**

(1) An application under section 27 of the Limitation of Actions Act made before filing a suit shall be made *ex parte* by originating summons supported by affidavit.

(2) Any such application made after the filing of a suit shall be made *ex parte* in that suit.

**7. Adverse possession [Order 37, rule 7.]**

(1) An application under section 38 of the Limitation of Actions Act shall be made by originating summons.

(2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.

(3) The court shall direct on whom and in what manner the summons shall be served.

**8. Application under the Registered Land Act [Order 37, rule 8.]**

An application under the Land Registration Act, 2012 other than under Part VII and Part VIII thereof shall be made by originating summons unless there is pending a suit involving the same lands when the application may be made in that suit.

[L.N. 22/2020, r. 21.]

**9. Application under Chattels Transfer Act [Order 37, rule 9.]**

An application under section 9 of the Chattels Transfer Act (Cap. 28) shall be made by originating summons *ex parte* supported by an affidavit setting out the grounds relied upon.

**10. Summons by a member of a partnership [Order 37, rule 10.]**

When the existence of a partnership, or the right to a partnership, or the fact of the dissolution thereof, is not in dispute, any partner in a firm or his representatives may take out an originating summons returnable before the judge sitting in chambers against his partners or former partners or their representatives (if any) for the purpose of having the partnership dissolved (if it be still subsisting) and for the purpose of taking the accounts of and winding up such partnership.

**11. Summons by persons interested in deeds or wills [Order 37, rule 11.]**

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.

**12. Variation of trusts [Order 37, rule 12.]**

An application for an order under the Trustee Act shall be made by originating summons returnable before the judge sitting in chambers; and the settler and any other person who provided property for the purposes of the trusts in question shall, if still alive and not an applicant and unless a judge for special reasons otherwise directs, be made a respondent to summons in addition to any other persons who are necessary and proper respondents thereto.

**13. Discretion upon summons for construction of document [Order 37, rule 13.]**

The judge shall not be bound to determine any such question of construction if, in his opinion, it ought not to be determined on originating summons.

**14. Forms [Order 37, rule 14.]**

An originating summons shall be in Form No. 26 or No. 27 of Appendix A with such variations as circumstances may require, and shall be prepared by the applicant or his advocate and shall be filed in court; service where necessary shall be effected in accordance with Order 5.

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**15. Summons to be filed and registered [Order 37, rule 15.]**

The originating summons when filed 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.

**16. Directions [Order 37, rule 16.]**

The registrar shall, within thirty days of filing of the Originating Summons and with notice to the parties list it for directions before a judge in chambers.

**17. Procedure [Order 37, rule 17.]**

The day and hour of attendance under an originating summons to which an appearance is required to be entered shall after appearance be fixed for hearing in chambers of the judge to whom such summons is assigned.

**18. Evidence and directions upon hearing of summons [Order 37, rule 18.]**

At the time of directions, 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 may deem necessary, and may give such directions as he may think just for the trial of any issues arising thereupon, and may make any amendments necessary to make the summons accord with existing facts, and to raise the matters in issue between the parties.

**19. Powers of court upon hearing of summons [Order 37, rule 19.]**

(1) Where, on an originating summons under this Order, it appears to the court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause had been begun by filing a complaint, it may order the proceedings to continue as if the cause had been so begun and may, in particular, order that any affidavits filed shall stand as pleadings, with or without liberty to any of the parties to add to, or to apply for particulars of, those affidavits.

(2) Where the court makes an order under subrule (1), Order 11 shall apply.

(3) This rule applies notwithstanding that the cause could not have been begun by filing a complaint.

(4) Any reference in these Rules to proceedings begun by a complaint shall, unless the context otherwise requires, be construed as including a reference to a cause proceeding under an order made under subrule (1).

**20. Court may make orders as to costs incurred by any party [Order 37, rule 20.]**

If an originating summons is adjourned into court, the judge may, if he deems 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 considers just.

**ORDER 38 - SELECTION OF TEST SUIT****1. Staying several suits against the same defendant [Order 38, rule 1.]**

Where two or more persons have instituted suits against the same defendant and such persons under rule 1 of Order I could have been joined as co-plaintiffs in one suit, upon the application of any of the parties with notice to all affected 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 [Order 38, rule 2.]**

Where a plaintiff has instituted two or more suits, and under rule 3 of Order 1 the several dependants 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 is a party are precisely similar to the issues to be determined in another of such suits, may order that the suit to which such defendant is a party be stayed until such other suit shall have been determined or shall have failed to be a real trial of the issues.

#### ORDER 39 - ARREST AND ATTACHMENT BEFORE JUDGMENT

### **1. Where defendant may be called upon to furnish security for appearance [Order 39, rule 1.]**

Where at any stage of a suit, other than a suit of the nature referred to in paragraphs (a) to (d) of section 12 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—
  - (i) has absconded or left the local limits of the jurisdiction of the court; or
  - (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 property or any part thereof; or
- (b) that the defendant is about to leave Kenya under circumstances affording 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 before the court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he 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 such 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 [Order 39, rule 2.]**

(1) Where the defendant fails to show such cause the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against him 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 the proviso to rule 1.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such 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 [Order 39, rule 3.]**

(1) A surety for the appearance of a defendant may at any time apply to the court in which he became a surety to be discharged from his obligation.

(2) On such application being made the court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the court shall direct the surety to be discharged from his obligation and shall call upon the defendant to find fresh security.

### **4. Procedure where defendant fails to furnish security or find fresh security [Order 39, rule 4.]**

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[Subsidiary]

Where the defendant fails to comply with any order under rule 2 or rule 3, the court may commit him to prison until the decision of the suit, or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided 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 Kenya Shillings ten thousand; and
- (b) no person shall be detained in prison under this rule after he has complied with such order.

**5. Where defendant may be called upon to furnish security for production of property [Order 39, rule 5.]**

(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—

- (a) is about to dispose of the whole or any part of his property;
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court,

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 said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(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 [Order 39, rule 6.]**

(1) Where the defendant fails to show cause why he 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 thereof 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 [Order 39, rule 7.]**

Save 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 or claim to property attached before judgment [Order 39, rule 8.]**

Where any claim is preferred to property attached before judgment, such 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 [Order 39, rule 9.]**

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 [Order 39, rule 10.]**

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 such decree.

**11. Property attached before judgment not to be re-attached in execution of decree [Order 39, rule 11.]**

Where property is under attachment by virtue 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 such decree, to apply for a re-attachment of the property.

## ORDER 40 - TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

**1. Cases in which temporary injunction may be granted [Order 40, rule 1.]**

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 property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

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 breach of contract or other injury [Order 40, rule 2.]**

(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 deems fit.

**3. Consequence of breach [Order 40, rule 3.]**

(1) 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 such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.

(2) 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 thereto.

(3) An application under this rule shall be made by notice of motion in the same suit.

**4. Notice of application [Order 40, rule 4.]**

(1) Where the court is satisfied for reasons to be recorded that the object of granting the injunction would be defeated by the delay, it may hear the application *ex parte*.

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[Subsidiary]

(2) An *ex parte* injunction may be granted only once for not more than fourteen days and shall not be extended thereafter except once by consent of parties or by the order of the court for a period not exceeding fourteen days.

(3) In any case where the court grants an *ex parte* injunction the applicant shall within three days from the date of issue of the order serve the order, the application and pleading on the party sought to be restrained. In default of service of any of the documents specified under this rule, the injunction shall automatically lapse.

(4) All applications under this order shall be heard expeditiously and in any event within sixty days from the date of filing unless the court for good reason extends the time.

#### **5. Ruling of the court [Order 40, rule 5.]**

In all applications for injunction, the court shall, after *inter-partes* hearing deliver its ruling either at once or within thirty days of the conclusion of the hearing with notice to the parties or their advocates;

Provided where the ruling is not delivered within thirty days, the judge shall record the reason therefor and immediately fix a date for ruling.

#### **6. Lapse of injunction [Order 40, rule 6.]**

Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.

#### **7. Order for injunction may be discharged, varied, or set aside [Order 40, rule 7.]**

Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.

#### **8. Injunction against corporation binding on its officers [Order 40, rule 8.]**

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.

#### **9. Power to order interim sale [Order 40, rule 9.]**

The court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such 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.

#### **10. Detention, preservation, inspection of property [Order 40, rule 10.]**

(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 such suit, or as to which any question may arise therein;
- (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 such suit; or
- (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.

#### **11. Deposit of money and other deliverables [Order 40, rule 11.]**

Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the court may order the same to be deposited in court or delivered to such last named party, with or without security, subject to the further direction of the court.

#### ORDER 41 - APPOINTMENT OF RECEIVERS

### 1. Appointment of receivers [Order 41, rule 1.]

(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 same 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 thereof, the application and disposal of such rents and profits, and the execution of such documents as the owner himself 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 any person property whom any party to the suit has not a present right so to remove.

### 2. Remuneration [Order 41, rule 2.]

The court may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver.

### 3. Duties [Order 41, rule 3.]

Every receiver so appointed shall—

- (a) furnish such security (if any) as the court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the court directs;
- (c) pay the amount due from him as the court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

### 4. Enforcement of receiver's duties [Order 41, rule 4.]

Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the court directs; or
- (b) fails to pay the amount due from him as the court directs; or
- (c) occasions loss to the property by his wilful default or gross negligence,

the court may direct his property to be attached, and may sell such property, and may apply the proceeds to make good any amount found to be due from him, or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

### 5. Removal [Order 41, rule 5.]

The court may either on its own motion or on application by any interested party, remove a receiver appointed pursuant to this order on such terms as it thinks fit.

#### ORDER 42 - APPEALS

### 1. Form of appeal [Order 42, rule 1.]

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[Subsidiary]

(1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.

(2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

## **2. Filing of decree or order [Order 42, rule 2.]**

Where no certified copy of the decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible and in any event within such time as the court may order, and the court need not consider whether to reject the appeal summarily under section 79B of the Act until such certified copy is filed.

## **3. Amendment of memorandum of appeal [Order 42, rule 3.]**

(1) The appellant may amend his memorandum of appeal without leave at any time before the court gives directions under rule 13.

(2) After the time limited by subrule (1) the court may, on application, permit the appellant to amend his memorandum of appeal.

## **4. Grounds which may be taken in appeal [Order 42, rule 4.]**

The appellant shall not, except with 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:

Provided that the High Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

## **5. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all [Order 42, rule 5.]**

Where there is more than one plaintiffs or 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.

## **6. Stay in case of appeal [Order 42, rule 6.]**

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under subrule (1) unless—

- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

(3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.

(4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.

(5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.

(6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.

#### **7. Security in case of order for execution of decree appealed from [Order 42, rule 7.]**

(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 court to which an appeal is pending in terms of rule 6 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 such property and for the due performance of the decree or order of the court from whose decree or order such appeal shall have been brought.

(2) Where an order has been made for the sale of immovable property in execution of a decree and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the court which made the order, or to any court to which such appeal or second appeal shall have been made, be stayed on such terms as to giving security or otherwise as the court thinks fit until the appeal is disposed of.

#### **8. No security to be required from the Government [Order 42, rule 8.]**

No such security as is mentioned in rules 6 and 7 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 in his official capacity.

#### **9. Exercise of powers in appeal from order made in execution of decree [Order 42, rule 9.]**

The powers conferred by rules 6 and 7 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

#### **10. Register and filing of appeals [Order 42, rule 10.]**

(1) A register of appeals, to be called the register of appeals, shall be kept at every registry at which appeals are filed, and the particulars of every appeal shall be entered in such register and all appeals shall be numbered in each year according to the order in which the appeals are filed.

(2) Every memorandum of appeal to be filed shall be presented to the registry during office hours together with any fee payable on its filing and each such memorandum shall be date-stamped with the date on which it was so presented, which shall be the date of filing the appeal notwithstanding any dispute as to the amount of the fee payable.

#### **11. Directions under section 79B [Order 42, rule 11.]**

A judge of the High Court shall, within thirty days of the filing of an appeal under section 79B of the Act, peruse the appeal and give directions in accordance with the provisions of section 79B of the Act.

[L.N. 22/2020, r. 22(a).]

#### **12. Service of memorandum [Order 42, rule 12.]**

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[Subsidiary]

Where the judge admits the appeal under section 79B of the Act, the registrar shall notify the appellant who shall serve the memorandum of appeal on every respondent within seven days of receipt of the notice from the registrar.

[L.N. 22/2020, r. 22(b).]

### **13. Directions before hearing [Order 42, rule 13.]**

(1) Upon notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the registrar shall cause the appeal to be listed for the giving of directions by a judge in chambers.

(2) Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule.

(3) The judge in chambers may give directions concerning the appeal generally and in particular directions as to the manner in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof and any exhibits or other necessary documents and the payment of the costs of such typing whether in advance or otherwise.

(4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—

- (a) the memorandum of appeal;
- (b) the pleadings;
- (c) the notes of the trial magistrate made at the hearing;
- (d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
- (e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate;
- (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:

Provided that—

- (i) a translation into English shall be provided of any document not in that language;
- (ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).

[L.N. 22/2020, r. 22(c).]

### **14. Security for costs [Order 42, rule 14.]**

(1) At any time after the memorandum of appeal has been served the court, in its discretion, may order the appellant to give security for the whole or any part of the costs of such appeal.

(2) If the appellant is not ordinarily resident in Kenya and has no sufficient property in Kenya (other than property to which the appeal relates) the court shall order the giving of security for the whole or part of the costs of the appeal within a time to be limited in the order.

(3) If security for costs is not given within the time ordered the court may dismiss the appeal.

### **15. Notice to be given where decree appealed from [Order 42, rule 15.]**

(1) When a memorandum of appeal is lodged the court to which such appeal is preferred shall send notice of the appeal to the court from whose decree the appeal is preferred.

(2) The court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the court to which such appeal is preferred.

(3) Either party may on application and upon payment of the requisite charges obtain copies of any such papers as aforesaid.

**16. Filing declaration and written submissions [Order 42, rule 16.]**

(1) Any party to an appeal who does not intend to appear in person or by advocate at the hearing of the appeal may file a declaration in writing to that effect and lodge written submissions of the arguments in support of or in opposition to the appeal, as the case may be and shall, within seven days after lodging the submission serve a copy thereof on the other party or on each other party appearing in person or separately represented.

(2) A party who has lodged written submissions under this rule may, with leave of the court, address the court at the hearing of the appeal.

**17. Service of hearing notice [Order 42, rule 17.]**

Notice of the day fixed for hearing of the appeal shall be served on the respondent or on his advocate in the manner provided for under Order 5.

**18. Contents of notice [Order 42, rule 18.]**

The notice to the respondent shall declare that, if he does not appear in the court to which such appeal is preferred on the day so fixed, the appeal may be heard *ex parte*.

**19. Right to begin [Order 42, rule 19.]**

(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 such case the appellant shall be entitled to reply.

**20. Dismissal of appeal for appellant's default [Order 42, rule 20.]**

(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, and has not filed a declaration under rule 16, the court may make an order that the appeal be dismissed.

(2) Where the appellant appears, and the respondent does not appear and has not filed a declaration under rule 16(3), the appeal may be heard *ex parte*.

**21. Re-admission of appeal dismissed for default [Order 42, rule 21.]**

Where an appeal is dismissed under rule 20, the appellant may apply to the court to which such appeal is preferred for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

**22. Power to adjourn hearing and direct interested persons to be made respondents [Order 42, rule 22.]**

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 such person be made a respondent.

**23. Re-hearing on application of respondent against whom *ex parte* decree made [Order 42, rule 23.]**

Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the court to which the appeal is preferred to re-hear the appeal; and if he satisfies the court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the court shall re-hear the appeal on such terms as to costs or otherwise as it deems fit.

**24. Remand of cases [Order 42, rule 24.]**

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 court to which the appeal is

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preferred may, if it deems 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 re-admit 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.

**25. Where evidence on record sufficient appellate court may determine case finally [Order 42, rule 25.]**

Where the evidence upon the record is sufficient to enable the court to which the appeal is preferred to pronounce judgment, the court to which the appeal is preferred 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 court to which the appeal is preferred proceeds.

**26. Power to order new trial [Order 42, rule 26.]**

If upon the hearing of an appeal it shall appear to the court to which the appeal is preferred that a new trial ought to be had, it shall be lawful for the said court, if it shall think fit, to order that the judgment and decree shall be set aside, and that a new trial shall be had.

**27. Production of additional evidence in appellate court [Order 42, rule 27.]**

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the court to which the appeal is preferred; 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 court to which the appeal is preferred requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the court to which the appeal is preferred may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by the court to which the appeal is preferred the court shall record the reason for its admission.

**28. Mode of taking additional evidence [Order 42, rule 28.]**

Wherever additional evidence is allowed to be produced, the court to which the appeal is preferred may either take such evidence or direct the court from whose decree the appeal is preferred or any other subordinate court to take such evidence and to send it when taken to the court to which the appeal is preferred.

**29. Limits to be defined and recorded [Order 42, rule 29.]**

Where additional evidence is directed or allowed to be taken the court to which the appeal is preferred shall specify the limits to which the evidence is to be confined and record on its proceedings the points so specified.

**30. Where court consists of more than one judge [Order 42, rule 30.]**

Where the court consists of more than one judge, the decree of the court shall be drawn in accordance with the findings of the majority.

**31. What judgment may direct [Order 42, rule 31.]**

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 court to which the appeal is preferred may pass a decree or make an order accordingly.

**32. Power of appellate court on appeal [Order 42, rule 32.]**



The court to which the appeal is preferred 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 such respondents may not have filed any appeal or cross-appeal.

### **33. Preparation and contents of decree [Order 42, rule 33.]**

The decree of the court to which the appeal is preferred shall be dated, drawn up, sealed and signed as directed by rules 7, 8 and 9 of Order 21 with any necessary modifications.

### **34. Certified copy of decree to be sent to court whose decree appealed from [Order 42, rule 34.]**

A copy of the judgment and of the decree, certified by the High Court, or such officer as it appoints in this behalf, 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 court to which the appeal is preferred shall be made in the register of civil suits.

### **35. Dismissal for want of prosecution [Order 42, rule 35.]**

(1) Unless within three months after the giving of directions under rule 13 the appeal shall have been set down for hearing by the appellant, the respondent shall be at liberty either to set down the appeal for hearing or to apply by summons for its dismissal for want of prosecution.

(2) If, within one year after the service of the memorandum of appeal, the appeal shall not have been set down for hearing, the registrar shall on notice to the parties list the appeal before a judge in chambers for dismissal.

## ORDER 43 - APPEALS FROM ORDERS

### **1. Appeals from Orders [Order 43, rule 1.]**

(1) An appeal shall lie as of right from the following Orders and rules under the provisions of section 75(1)(h) of the Act—

- (a) Order 1 (parties to suits);
- (b) Order 2 (pleadings generally);
- (c) Order 3 (frame and institution of suit);
- (d) Order 4, rule 9 (return of plaint);
- (e) Order 7, rule 12 (exclusion of counterclaim);
- (f) Order 8 (amendment of pleadings);
- (g) Order 10, rule 11 (setting aside judgment in default of appearance);
- (h) Order 12, rule 7 (setting aside judgment or dismissal for non-attendance);
- (i) Order 15, rules 10, 12 and 18 (sanctions against witnesses and parties in certain cases);
- (j) Order 19 (affidavits);
- (k) Order 22, rules 25, 57, 61(3) and 73 (orders in execution);
- (l) Order 23, rule 7 (trial of claim of third person in attachment of debts );
- (m) Order 24, rules 5, 6 and 7 (legal representatives);
- (n) Order 25, rule 5 (compromise of a suit);
- (o) Order 26, rules 1 and 5(2) (security for costs);
- (p) Order 27, rules 3 and 10 (payment into court and tender);
- (q) Order 28, rule 4 (orders in proceedings against the Government);
- (r) Order 34 (interpleader);
- (s) Order 36, rules 5, 7 and 10 (summary procedure);

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- (t) Order 39, rules 2, 4 and 6 (furnishing security);
- (u) Order 40, rules 1, 2, 3,7 and 11 (temporary injunctions);
- (v) Order 41, rules 1 and 4 (receivers);
- (w) Order 42, rules 3, 14, 21, 23 and 35 (appeals);
- (x) Order 45, rule 3 (application for review);
- (y) Order 50, rule 6 (enlargement of time);
- (z) Order 52, rules 4, 5, 6 and 7 (advocates);
- (aa) Order 53 (judicial review orders).

(2) An appeal shall lie with the leave of the court from any other order made under these Rules.

(3) An applications for leave to appeal under section 75 of the Act shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order.

(4) Save where otherwise expressly provided in this rule, "order" includes both an order granting the relief applied for and an order refusing such relief.

## **2. Procedure [Order 43, rule 2.]**

The rules of Order 42 shall apply, so far as may be, to appeals from orders.

## **3. Saving [Order 43, rule 3.]**

Nothing in this Order shall apply to any adjudication which, as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.

### ORDER 44 - PAUPER APPEALS

## **1. Who may appeal as a pauper [Order 44, rule 1.]**

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 such application, to the provisions relating to suits by paupers in so far as those provisions are applicable:

Provided 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 [Order 44, rule 2.]**

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:

Provided 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 pauperism shall be necessary, unless the High Court sees cause to direct such inquiry.

### ORDER 45 - REVIEW

## **1. Application for review of decree or order [Order 45, rule 1.]**

(1) Any person considering himself 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 or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him 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 or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(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 such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

## **2. To whom applications for review may be made [Order 45, rule 2.]**

(1) An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, 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.

(2) If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing.

(3) If the judge who passed the decree or made the order is still attached to the court but is precluded by absence or other cause for a period of 3 months next after the application for review is lodged, the application may be heard by such other judge as the Chief Justice may designate.

## **3. When court may grant or reject application [Order 45, rule 3.]**

(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 the same:

Provided 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 knowledge, or could not be adduced by him when the decree or order was passed or made without strict proof of such allegation.

## **4. Application where more than one judge hears [Order 45, rule 4.]**

(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.

## **5. Re-hearing upon application granted [Order 45, rule 5.]**

When an application for review is granted, a note thereof shall be made in the register, and the court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

## **6. Bar of subsequent applications [Order 45, rule 6.]**

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.

### ORDER 46 - ARBITRATION UNDER ORDER OF A COURT AND OTHER ALTERNATIVE DISPUTE RESOLUTION

## **1. Parties to a suit may apply for arbitration [Order 46, rule 1.]**

Where in any suit all the parties interested who are not under disability agree that any matter in difference between them in such 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. Appointment of arbitrator [Order 46, rule 2.]**

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The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

### **3. Form of order [Order 46, rule 3.]**

(1) The court shall, by order, refer to the arbitrator the matter in difference which he 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, save in the manner and to the extent provided in this Order, deal with such matter in the suit.

### **4. Provisions where two or more arbitrators [Order 46, rule 4.]**

(1) Where the 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; or
- (b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or
- (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 award in case he is required to act.

### **5. Power to appoint arbitrator [Order 46, rule 5.]**

(1) In any of the following cases, namely—

- (a) where the parties cannot agree within thirty days with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator; or
- (b) where the arbitrator or umpire—
  - (i) dies; or
  - (ii) refuses or neglects to act or becomes incapable of acting; or
  - (iii) leaves Kenya in circumstances showing that he will probably not return at an 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 such notice has been served or such further time 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 [Order 46, rule 6.]**

Every arbitrator or umpire appointed under rule 4 or rule 5 shall have the like powers as if his name had been inserted in the order of reference.

### **7. Summoning witnesses and default [Order 46, rule 7.]**

(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 such process or making any other default, or refusing to give their evidence, or are 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 [Order 46, rule 8.]**

(1) The parties may, by filing an agreement in writing, extend the time for the making of the award, whether or not at the date of the agreement time has expired, and whether or not an award has been made since the expiry of the time allowed.

(2) On application made by a party, arbitrator or umpire on notice, the court may either extend the time for the making of the award, whether or not at the date of the application time has expired, and whether or not an award has been made since the expiry of the time allowed, or make an order superseding the arbitration in which case it shall proceed with the suit.

**9. Where umpire may arbitrate in lieu of arbitrators [Order 46, rule 9.]**

Where an umpire has been appointed he 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, dated and filed [Order 46, rule 10.]**

Where an award in a suit has been made, the persons who made it shall sign it, date it and cause it to be filed in court within fourteen days together with any depositions and documents which have been taken and proved before them.

**11. Time for reading award may be fixed [Order 46, rule 11.]**

(1) The registrar shall within fourteen days of filing of the award notify the parties of such filing and the notice shall specify a date and time for reading the award.

(2) The award shall be read within thirty days of the notice.

(3) On the date and at the time fixed by the notice the award shall be read by the registrar to such of the parties as are present.

**12. Statement of special case by arbitrators or umpire [Order 46, rule 12.]**

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 thereof in the form of a special case for the opinion of the court, and the court shall deliver its opinion thereon, and shall order such opinion to be added to and form part of the award.

**13. Costs of arbitration [Order 46, rule 13.]**

The court may make such order as it thinks fit in respect of the costs of an arbitration save to the extent to which an award of costs has been properly made by the arbitrator.

**14. Power to modify or correct award [Order 46, rule 14.]**

The court may modify or correct an award—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such 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 an obvious error which can be amended without affecting such decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

**15. Power to remit for reconsideration [Order 46, rule 15.]**

(1) The court may remit an award, or any other matter referred to arbitration, for reconsideration by 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

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such matter can be separated without affecting the determination of the matters referred;

- (b) where the award is so indefinite as to be incapable of taking effect; or
- (c) where an objection to the legality of the award is apparent on the face of it.

(2) The order remitting the award shall state the time within which it shall be reconsidered, and rule 8 shall apply to such reconsideration as it applies to an award.

#### **16. Grounds for setting aside award [Order 46, rule 16.]**

(1) The court may set aside an award on the following grounds only—

- (a) corruption or misconduct of the arbitrator or umpire; or
- (b) that either party has fraudulently concealed any matter which he ought to have disclosed, or has wilfully misled or deceived the arbitrator or umpire.

(2) An Application under this rule shall be served on the arbitrator or umpire.

(3) Where an award is set aside under this rule the court shall supersede the arbitration and shall proceed with the suit.

#### **17. Time for application [Order 46, rule 17.]**

An application may be made under rules 13, 14, 15 and 16 within thirty days of receipt by the applicant of notice of the filing of the award under rule 10 or, where a date for reading the award has been fixed by the court under rule 11 within thirty days of that date.

#### **18. Judgment on award [Order 46, rule 18.]**

(1) The court shall on request by any party with due notice to other parties enter judgment according to the award—

- (a) when no application has been made within the time allowed by rule 17; or
- (b) when an application under rules 13, 14 or 16 has been heard and determined and no other application has been made within the time allowed by rule 17; or
- (c) when an application under rules 14, 15 and 16 has been heard and refused and no leave to appeal against such refusal has been granted within fourteen days of that refusal.

(2) Upon the judgment so entered a decree shall follow and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with the award.

(3) Order 49, rule 2 shall apply to the entry of judgment under subrule (1).

#### **19. Forms [Order 46, rule 19.]**

Form Nos. 28 to 32 of Appendix A shall be used for the respective purposes therein mentioned.

#### **20. Alternative dispute resolution [Order 46, rule 20.]**

(1) Nothing under this order may be construed as precluding the court from adopting and implementing, of its own motion or at the request of the parties, any other appropriate means of dispute resolution (including mediation) for the attainment of the overriding objective envisaged under sections 1A and 1B of the Act.

(2) The court may adopt an alternative dispute resolution and shall make such orders or issue such directions as may be necessary to facilitate such means of dispute resolution.

(3) Where a court mandated mediation adopted pursuant to this rule fails, the court shall forthwith set the matter down for hearing and determination in accordance with the Rules.

#### ORDER 47 - DISTRICT REGISTRIES

#### **1. Institution of suits in High Court [Order 47, rule 1.]**

Every suit in the High Court may be instituted at the central office of that court situate in Nairobi or in a District Registry.

**2. Schedule of District Registries and areas [Order 47, rule 2.]**

(1) There shall be District Registries and Deputy Registrars of the High Court at the places and for the areas set out in the Schedule in Appendix G.

(2) The Chief Justice may by notice in the *Gazette* amend the Schedule to subrule (1) by the addition or deletion of any area, place of Registry or District Registrar or by the variation of any area.

**3. Title of suits filed in a District Registry [Order 47, rule 3.]**

Suits filed in a District Registry shall be intitled as suits in “The High Court of Kenya 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 [Order 47, rule 4.]**

Where the defendant resides or carries on business, or all the defendants (if more than one) reside or carry on business within the area in the District Registry whereof a suit has been instituted, all proceedings shall be taken in such registry subject to any order fixing the place of trial made by the court under rule 8.

**5. Proceedings against the Government [Order 47, rule 5.]**

Notwithstanding anything in rule 4, in any civil proceedings against the Government the defendant shall for the purposes of this Order be deemed neither to reside nor to carry on business within the district of any District Registry.

**6. Place of trial [Order 47, rule 6.]**

(1) Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.

(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case.

**7. All preliminary steps taken before the District Registrar [Order 47, rule 7.]**

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 such suit is ready for trial it may be set down for hearing before a judge sitting at the place of the Registry.

**8. Appeal from decision of District Registrar [Order 47, rule 8.]**

(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; and such 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.

(2) Such 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 such order or decision, and the record bearing such endorsement shall forthwith be sent to the registrar of the High Court who shall give such directions for the hearing of the appeal as he may consider reasonable.

(3) The hearing of an appeal under this rule shall be before a judge in chambers.

**9. Taxations in District Registries [Order 47, rule 9.]**

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[Subsidiary]

A District Registrar with regard to suits tried in his area 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 subordinate courts. [Order 47, rule 10.]**

An appeal from a decree or order of a subordinate court to the High Court may be filed in the District Registry within the area of which such subordinate court is situate; and the District Registrar shall, upon the payment to him of all fees, endorse the date of filing upon the memorandum of appeal, and forward the papers to the High Court Registry in that area for hearing and disposal.

#### ORDER 48 - MISCELLANEOUS

##### **1. Process to be served at expense of party issuing [Order 48, rule 1.]**

(1) Every process issued under these Rules 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 such service shall be paid within a time to be fixed before the process is issued.

##### **2. Service of Orders, notices and documents [Order 48, rule 2.]**

All orders, notices and documents required by these Rules to be given to or served on any person shall, save where other provision is made, be served in the manner provided for the service of summons.

##### **3. Use of forms [Order 48, rule 3.]**

Forms used for the purposes of this Act shall, with such variation as the circumstances of each case may require, be those to be found in the Appendices to these Rules, and such other forms as may from time to time approved by the High Court.

##### **4. Special rules of procedure [Order 48, rule 4.]**

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 therein mentioned.

#### ORDER 49 - SPECIAL POWERS OF REGISTRARS

##### **1. Registrar to be ministerial officer [Order 49, rule 1.]**

Wherever in these Rules it is provided that any ministerial act or thing may be done by the court, that act or thing may be done by the registrar or by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand.

##### **1A. Signing summons [Order 49, rule 1A]**

The Registrar has power to sign summons to enter appearance.

[L.N. 22/2020, r. 23.]

##### **2. When Judgment may be entered by Registrar [Order 49, rule 2.]**

Judgment may, on application in writing, be entered by the registrar or, in a subordinate court, by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand, in the following cases:

- (a) under Order 10: (consequence of non-appearance, default of defence and failure to serve);
- (b) in all other cases in which the parties consent to judgment being entered in agreed terms; or
- (c) under Order 25, rule 3 (costs, where suit withdrawn or discontinued).

##### **3. Consent orders [Order 49, rule 3.]**



Any order may, by consent of the parties evidenced in writing, be entered by the registrar or, in a subordinate court, by an executive officer so authorised in writing by the Chief Justice.

#### **4. No judgment against Government in default of pleading without leave of court [Order 49, rule 4.]**

Notwithstanding anything contained in rule 2, in any proceedings against the Government no judgment for the plaintiff shall be entered in default of appearance or pleading without the leave of the court, and any application for such leave shall be served by notice of motion served not less than seven days before the return day.

#### **5. Execution may be ordered by Registrar [Order 49, rule 5.]**

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 or, in a subordinate court, by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand, but in the event of any objection being taken to the proceedings thereunder, all further proceedings shall be before a judge.

#### **6. Registrar a Civil Court [Order 49, rule 6.]**

For the purposes of rules 2, 3 and 4 a registrar or, in a subordinate court, an executive officer empowered as aforesaid, shall be deemed to be a Civil Court.

#### **7. Hearing of applications [Order 49, rule 7.]**

(1) The Registrar may—

- (a) give directions under Order 42 rule 12 and Order 51 rule 8;
- (b) hear and determine an application made under the following Orders and rules

- (i) Order 1, rules 2, 8, 10, 17 and 22;
- (ii) Order 2, rules 1 and 10;
- (iii) Order 3, 5 and 9;
- (iv) Order 6;
- (v) Order 7, rules 16 and 17(2);
- (vi) Order 8;
- (vii) Order 10, rules 1 and 8;
- (viii) Order 20;
- (ix) Order 21, rule 12;
- (x) Order 22 other than under rules 28, and 75;
- (xi) Order 23, 24, 25, 26, 27, 28, 30, 31 and 33; and
- (xii) Order 42, rule 14.

(2) An appeal from a decision of the registrar under the Orders referred to in subrule (1) shall be to a judge in chambers.

(3) The memorandum of the appeal, setting out the grounds of the appeal shall be filed within seven days of the decision of the registrar.

#### ORDER 50 - TIME

#### **1. Month means calendar month [Order 50, rule 1.]**

Where by these Rules or by any judgment or order given or made, 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 and public holidays [Order 50, rule 2.]**

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[Subsidiary]

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 and Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time.

### **3. Time expiring on Sunday or day offices closed [Order 50, rule 3.]**

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, such act or proceeding cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

### **4. When time does not run [Order 50, rule 4.]**

Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:

Provided that this rule shall not apply to any application in respect of a temporary injunction.

### **5. Time for giving security for costs, when not to be reckoned [Order 50, rule 5.]**

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, or take any other proceeding in the cause or matter.

### **6. Power to enlarge time [Order 50, rule 6.]**

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.

### **7. Enlargement of time by consent [Order 50, rule 7.]**

The time for delivering, amending, or filing any pleading, answer or other document of any kind whatsoever may be enlarged by consent in writing of the parties or their advocates without application to the court.

### **8. Computation of days [Order 50, rule 8.]**

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 same shall be reckoned exclusively of the first day and inclusively of the last day.

### **9. Time of day of service [Order 50, rule 9.]**

(1) This rule applies to pleadings, notices, summonses (other than summonses on complaints), orders, rules and other proceedings.

(2) Service shall normally be effected on a weekday other than Saturday and before the hour of five in the afternoon.

(3) For the purpose of computing any period of time subsequent to service outside the times specified in subrule (2)—

- (a) service effected after five in the afternoon on a weekday other than Friday or Saturday is deemed to have been effected on the following day;
- (b) service effected after five in the afternoon on Friday is deemed to have been effected on the following Monday.

## ORDER 51 - APPLICATIONS

**1. Procedure [Order 51, rule 1.]**

All applications to the court shall be by motion and shall be heard in open court unless the court directs the hearing to be conducted in chambers or unless the rules expressly provide.

**2. Applications under section 25(2) of the Government Proceedings Act [Order 51, rule 2.]**

Any application such as is referred to in section 25(2) of the Government Proceedings Act (Cap. 40), shall be made in the manner prescribed in rule 1.

**3. Notice to parties [Order 51, rule 3.]**

No motion shall be made without notice to the parties affected thereby:

Provided, however, 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 seems just, and any party affected by such order may move to set it aside.

**4. Contents of notice [Order 51, rule 4.]**

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.

**5. Dismissal or adjournments for want of notice [Order 51, rule 5.]**

If upon the hearing of any 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 such notice, the court may adjourn the hearing thereof in order that such notice may be given upon such terms, if any, as the court may think fit to impose.

**6. Adjournment of hearing [Order 51, rule 6.]**

The hearing of any application may from time to time be adjourned upon such terms as the court thinks fit.

**7. Service of notice on defendant served with summons to enter appearance but not appearing [Order 51, rule 7.]**

A plaintiff may, without special leave, cause to be served any application 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.

**8. Transfer from court to chambers [Order 51, rule 8.]**

Notwithstanding anything contained in these Rules, the court may in any case direct that any business be disposed of in chambers which it thinks may be more conveniently disposed of in chambers than in court.

**9. Transfer from chambers to court [Order 51, rule 9.]**

Any judge may adjourn into court any application made to him at chambers which he deems more convenient to be considered in court.

**10. Provision under which application is made to be stated [Order 51, rule 10.]**

[Subsidiary]

(1) Every order, rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.

(2) No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.

#### **11. Costs and other relief [Order 51, rule 11.]**

(1) It shall not be necessary in an originating summons, application or other process to ask for costs, or for general or other relief, which may be granted by the court as it thinks just.

(2) Unless the court otherwise orders for special reasons to be recorded, costs awarded upon an originating summons, applications or other process shall be taxed only at the conclusion of the suit.

#### **12. When application are deemed to be made [Order 51, rule 12.]**

All applications or other process shall be deemed to have been made when filed in court.

#### **13. Signature on application and service [Order 51, rule 13.]**

(1) An application taken out in any proceedings need only be signed by the advocate representing the applicant, or the applicant himself if acting in person, and need not be signed by or on behalf of the court.

(2) Every application shall bear at the foot the words—

“If any party served does not appear at the time and place above-mentioned such order will be made and proceedings taken as the court may think just and expedient.”

(3) The application shall be served on respondent together with the list of authorities, if any not less than seven clear days before the date of hearing.

#### **14. Grounds of opposition to application in High Court [Order 51, rule 14.]**

(1) Any respondent who wishes to oppose any application may file any one or a combination of the following documents —

- (a) a notice preliminary objection: and/or;
- (b) replying affidavit; and/or
- (c) a statement of grounds of opposition;

(2) the said documents in subrule (1) and a list of authorities, if any shall be filed and served on the applicant not less than three clear days before the date of hearing.

(3) Any applicant upon whom a replying affidavit or statement of grounds of opposition has been served under subrule (1) may, with the leave of the court, file a supplementary affidavit.

(4) If a respondent fails to file to comply with subrule (1) and (2), the application may be heard *ex parte*.

[L.N. 22/2020, r. 24.]

#### **15. Setting aside *ex parte* order [Order 51, rule 15.]**

The court may set aside an order made *ex parte*.

#### **16. Court may limit time for submissions [Order 51, rule 16.]**

The court may, in its discretion, limit the time for oral submissions by the parties or their advocates or allow written submissions.

### ORDER 52 - THE ADVOCATES ACT

#### **1. Interpretation [Order 52, rule 1.]**

In this Order—

“**the Act**” means the Advocates Act (Cap. 16);

“the Disciplinary Committee” means the Disciplinary Committee established under section 57 of the Advocates Act;

“the Society” means the Society established and incorporated by section 3 of the Law Society of Kenya Act (Cap.18).

## **2. Appeals to the Chief Justice [Order 52, rule 2.]**

(1) A petition of appeal to the Chief Justice under section 26(2) of the Act shall have annexed to it a copy of the decision of the registrar appealed from.

(2) Every petition of appeal shall be served on the Society which shall have the right to be heard.

(3) A petition of appeal to the Chief Justice under section 28(6) or 41(2) of the Act shall be presented within one month after the applicant has been notified of the decision, and sub-rules (1) and (2) shall apply to such an appeal.

## **3. Applications with respect to remuneration [Order 52, rule 3.]**

(1) Any application under section 45 of the Act shall be intitled in the matter of the Act and shall be supported by affidavit.

(2) An application under section 45(2) of the Act shall be served on the advocate.

(3) An application under section 45(4) of the Act shall be served on the guardian, committee or trustee as the case may be.

(4) An application under section 45(5) of the Act shall be served on the party and on the advocate or the advocate’s legal personal representatives as the case may be.

(5) Any person served with an application under this rule may file an affidavit in reply but no further affidavit may be filed without leave.

## **4. Power to order advocate to deliver accounts and documents [Order 52, rule 4.]**

(1) Where the relationship of advocate and client exists or has existed the court may, on the application of the client or his legal personal representative, make an order for—

- (a) the delivery by the advocate of a cash account;
- (b) the payment or delivery up by the advocate of money or securities;
- (c) the delivery to the applicant of a list of the money or securities which the advocate has in his possession or control on behalf of the applicant;
- (d) the payment into or lodging in court of any such money or securities;
- (e) the delivery up of papers and documents to which the client is entitled.

(2) Applications under this rule shall be by originating summons, supported by affidavit, and shall be served on the advocate.

(3) If the advocate alleges that he has a claim for costs the court may make such order for the taxation and payment, or securing the payment, thereof and the protection of the advocate’s lien, if any, as the court deems fit.

## **5. Application for taxation by third parties [Order 52, rule 5.]**

(1) An application under section 50(1) of the Act shall be by originating summons supported by affidavit.

(2) The summons shall be served on the advocate and on the party chargeable with the bill.

## **6. Application for charging order [Order 52, rule 6.]**

(1) An application for a charging order under section 52 of the Act shall be made in the suit or matter by summons in chambers supported by affidavit.

(2) The application shall be served on the client.

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[Subsidiary]

**7. Application for order for enforcement of an undertaking [Order 52, rule 7.]**

(1) An application for an order for the enforcement of an undertaking given by an advocate shall be made—

- (a) if the undertaking was given in a suit in the High Court, by summons in chambers in that suit; or
- (b) in any other case, by originating summons in the High Court.

(2) Save for special reasons to be recorded by the judge, the order shall in the first instance be that the advocate shall honour his undertaking within a time fixed by the order, and only thereafter may an order in enforcement be made.

**8. Title and service of appeal [Order 52, rule 8.]**

(1) A memorandum of appeal under section 62(1) or section 73(1) of the Act shall be intitled “in the matter of the Act”, and “in the matter of an advocate”, or, as the case may be, an advocate’s clerk, without naming him.

(2) Unless the court otherwise orders, the persons to be served with the memorandum of appeal shall be the society and every party to the proceedings before the Disciplinary Committee.

(3) A person who has not been served with the memorandum of appeal but who desires to be heard in opposition to the appeal may be heard if the court considers him a proper person to be heard.

**9. Discontinuance of appeal [Order 52, rule 9.]**

(1) An appellant under section 62(1) or section 73(1) of the Act may at any time discontinue his appeal by filing a notice of discontinuance and serving it on every party to the appeal and on the society.

(2) Where an appeal has been discontinued under sub-rule (1) it shall be treated as having been dismissed with an order for the payment by the appellant of the costs of and incidental to the appeal.

**10. Procedure [Order 52, rule 10.]**

(1) An originating summons under this Order shall be made returnable for a fixed date before a judge in chambers and, unless otherwise directed, shall be served on all parties at least seven clear days before the return date.

(2) No appearance need be entered to the summons and no affidavit in reply need be filed and all parties may be heard without entering an appearance.

**ORDER 53 - APPLICATIONS FOR JUDICIAL REVIEW****1. Applications for mandamus, prohibition and certiorari to be made only with leave [Order 53, rule 1.]**

(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave shall be made *ex parte* to a judge in chambers, and shall be accompanied by —

- (a) a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and
- (b) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.

[L.N. 22/2020, r. 25.]

(3) The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.

[L.N. 22/2020, r. 26.]

(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing *inter partes* before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.

## **2. Time for applying for certiorari in certain cases [Order 53, rule 2.]**

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

## **3. Application to be by notice of motion [Order 53, rule 3.]**

(1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.

(2) The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served on the presiding officer of the court and on all parties to the proceedings.

(3) An affidavit giving the names and addresses of, and the place and date of service on, all persons who have been served with the notice of motion shall be filed before the notice is set down for hearing, and, if any person who ought to be served under the provisions of this rule has not been served, the affidavit shall state that fact and the reason why service has not been effected, and the affidavit shall be before the High Court on the hearing of the motion.

(4) If on the hearing of the motion the High Court is of the opinion that any person who ought to have been served therewith has not been served, whether or not he is a person who ought to have been served under the foregoing provisions of this rule, the High Court may adjourn the hearing, in order that the notice may be served on that person, upon such terms (if any) as the court may direct.

## **4. Statements and affidavits [Order 53, rule 4.]**

(1) Copies of the statement accompanying the application for leave shall be served with the notice of motion, and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement.

(2) The High Court may on the hearing of the motion allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of the affidavits of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he shall give notice of his intention and of any proposed amendment of his statement, and shall supply on demand copies of any such further affidavits.

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[Subsidiary]

(3) Every party to the proceedings shall supply to any other party, on demand, copies of the affidavits which he proposes to use at the hearing.

**5. Applicant to have right to begin [Order 53, rule 5.]**

On the hearing of any such motion as aforesaid, the applicant shall have the right to begin.

**6. Right to be heard in opposition [Order 53, rule 6.]**

On the hearing of any such motion as aforesaid, any person who desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice or summons, and shall be liable to costs in the discretion of the court if the order should be made.

**7. Provisions as to orders of certiorari for the purpose of quashing proceedings [Order 53, rule 7.]**

(1) In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the motion he has lodged a copy thereof verified by affidavit with the registrar, or accounts for his failure to do so to the satisfaction of the High Court.

(2) Where an order of certiorari is made in any such case as aforesaid, the order shall direct that the proceedings shall be quashed forthwith on their removal into the High Court.

ORDER 54 - REVOCATION AND TRANSITIONAL PROVISIONS

**1. Revocation of Civil Procedure Rules. Sub. leg. [Order 54, rule 1.]**

The Civil Procedure Rules are revoked.

**2. Transitional provisions**

In all proceedings pending whether preparatory or incidental to, or consequential upon any proceedings in court at the time of the coming into force of these rules, the provisions of these rules shall thereafter apply, but without prejudice to the validity of anything previously done:

Provided that:

- (a) If, and in so far as it is impracticable in any such proceedings to apply the provisions of these Rules, the practice and procedure heretofore obtaining shall be followed;
- (b) In any case of difficulty or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted.

**APPENDIX**

**APPENDIX A**

**PROCESS**



FORM No. 1

THIRD PARTY NOTICE

[Order 1, rule 15.]

In the ..... Court  
 CIVIL CASE No. .... OF 20.....  
 Between A.B. ...., *Plaintiff*  
 and  
 C.D. ...., *Defendant*  
 and  
 E.F. ...., *Third Party*

THIRD PARTY NOTICE

(Issued pursuant to the order of the court dated ....., 20.....)

APPENDIX A—continued

To: E.F of ..... (address)

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant in accordance with the attached plaint.

The defendant claims against you (*here state nature of claim against third party, for instance "for indemnity", "contribution" or " the following relief or remedy namely .....*) on the grounds that (*state the grounds of the claim*).

(\* And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, you must appear within ..... days after the service this notice on you, inclusive of the day of service, otherwise you will be taken to admit the plaintiff's claim against the defendant and the defendant's claim against you and you will be bound any judgment given in the suit.

Dated the ..... day of ....., 20 .....

(Signed) G.H.,  
Advocate for the Defendant C.D.

Note.-\* Delete this paragraph if the notice is served on a party who has already appeared in the suit.

FORM No. 2

REQUEST FOR PARTICULARS

[Order 2, rule 10.]

(Title)

The plaintiff (or defendant) in this suit requires the following particulars of the defence (plaint, or other pleading) dated the ..... day of ....., 20.....

1. Of paragraph .....- (*specify particulars required*)
  2. Of paragraph .....- (*specify particulars required*)
  3. Of paragraph .....- (*specify particulars required*)
- etc. ....

This notice is delivered in duplicate, and you are required to file the original with the particulars supplied.

G.H., Advocate for the plaintiff (or defendant).  
To E.F., Advocate for the defendant (or plaintiff).

Civil Procedure

[Subsidiary]

FORM No. 3

PARTICULARS

[Order 2, rule 10(6).]

(Title)

The defendant (or plaintiff) in answer to the Request for Particulars dated the ..... day of ....., 20....., gives particulars as follows—

- 1. Of paragraph ..... - (specify particulars given)
- 2. Of paragraph ..... - (specify particulars given)
- 3. Of paragraph ..... - (specify particulars given)
- etc. ....

E.F., Advocate for the defendant (or plaintiff).

To G.H., Advocate for the plaintiff (or defendant).

APPENDIX A—continued

FORM No. 4

AFFIDAVIT OF SERVICE

[Order 5, rule 15.]

(Title)

I ..... of ..... an advocate/a police officer/a process server of the court make oath and say as follows:

(1) On ....., 20..... at ..... (time)

I served the summons in this case on at (place) by tendering a copy thereof to him/her and requiring a signature on the original. He/She signed/refused to sign the summons. He/She was personally known to me/was identified to me by ..... and admitted that he/she was the defendant

(2) Not being able to find the defendant on ....., 20.....

at ..... (time) I served the summons on ..... (name) an adult member of the family of the defendant who is residing with him/her.

(3) Not being able to find the defendant or any person on whom service could be made, on .....

....., 20..... at ..... (time), I affixed a copy of the summons to the outer door of ..... being the house in which he/she ordinarily resides/carries on business/personally works for gain. I was accompanied by ..... who identified the house to me.

(4) (Otherwise specify the manner in which the summons was served).

SWORN by the said ..... this .....

day ..... of ....., 20.....

Before me .....

A Commissioner of Oaths/Magistrate.

FORM No. 5

SUBSTITUTED SERVICE BY ADVERTISEMENT

[Order 5, rule 17.]

To: .....  
of .....

Take notice that a plaint has been filed in the ..... Court at ..... in Civil Suit No. .... of 20 ....., in which you are named as defendant. Service of the summons on you has been ordered by means of this advertisement. A copy of the summons and the plaint may be obtained from the court at ..... (insert postal address of registry).

And further take notice that, unless you enter an appearance within ..... days, the case will be heard in your absence.

APPENDIX A—continued

FORM No. 6

NOTICE OF SUMMONS

[Order 5, rule 26(2).]

To ..... (name)  
of ..... (address)

Take notice that a plaint has been filed in the ..... Court at ..... in Civil Case No. .... of 20..... in which you are named as defendant. Service of the summons on you was ordered to be by this notice.

A copy of the summons and the plaint may be obtained from the court at (insert postal address of registry).

Unless you enter an appearance within ..... days, the case will be heard in your absence.

FORM No. 7

LETTER FORWARDING REQUEST FOR SERVICE ABROAD

[Order 5, rule 29(a).]

The Chief Justice of the High Court of Kenya presents his compliments to the Minister for Foreign Affairs and begs to enclose a notice of a writ of summons issued in an action ..... versus .....

..... pursuant to order, out of the High Court for transmission to the Ministry of Foreign Affairs in (name of country) with the request that the same may be served personally upon (name of defendant to be served) against whom proceedings have been taken in the High Court of Kenya, and with the further request that such evidence of the service of the same upon the defendant may be officially certified to the High Court, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the courts of (name of country) in proving service of legal process.

The Chief Justice begs further to request that in the event of efforts to effect personal service of the said notice of writ proving ineffectual the government or court of the said country be requested to certify the same to the High Court of Kenya.

Civil Procedure

[Subsidiary]

FORM No. 8

REQUEST FOR SERVICE ABROAD

[Order 5, rule 29(b).]

(Title of Action)

I (or we) hereby request that a notice of writ of summons in this action be transmitted through the proper channel to (name of country) for service (or substituted service) on the defendant (naming him) at (address of defendant) or elsewhere in (name of country).

And I (or we) hereby personally undertake to be responsible for all expenses incurred in respect of the service hereby requested, and on receiving due notification of the amount of such expenses, I (or we) undertake to pay the same to the ..... and to produce the receipt of such payment to the proper officer of the High Court of Kenya.

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

(Signature of Advocate)

APPENDIX A—continued

FORM No. 9

ORDER TO BESPEAK REQUEST FOR SUBSTITUTED SERVICE ABROAD

[Order 5, rule 29(d).]

(Title of Action)

Upon reading the (certificate, declaration, or as the case may be, describing the same).

It is ordered that the plaintiff be at liberty to bespeak a request for substituted service of notice of the writ of summons herein on the defendant ..... at ..... or elsewhere in (name of country) and that the said defendant have ..... days after such substituted service within which to file a written statement.

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

FORM No. 10

LETTER FORWARDING REQUEST FOR SUBSTITUTED SERVICE

[Order 5, rule 29(e).]

The Chief Justice of the High Court of Kenya presents his compliments to ..... and begs to enclose a notice of a writ of summons in the case of ..... versus ..... in which the plaintiff has obtained an order of the High Court of Kenya (which is also enclosed) giving leave to bespeak a request that the said notice of writ may be served by substituted service on the defendant ..... at ..... in (name of country).

The Chief Justice requests that the said notice of writ and order may be forwarded to the proper authority in (name of country) with the request that the same may be transmitted by post addressed to the defendant ..... at ..... (the last known place of abode or the place of business ) of the said defendant, or there delivered in such manner as may be consistent with the usage or practice of the courts of (name of country) for service of legal process where personal service cannot be effected; and with the further request that the same may be officially certified to the High Court of Kenya, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the courts of (name of country) in proving service of legal process.



FORM No. 11

CERTIFICATE OF SERVICE OF FOREIGN PROCESS

[Order 5, rule 32(e).]

I, \_\_\_\_\_, Registrar of the High Court of Kenya, hereby certify that the documents annexed hereto are as follows:

- (1) The original letter of request for service of process received from the court or tribunal at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ in the matter of \_\_\_\_\_ versus \_\_\_\_\_ and;
- (2) The process received with such letter of request; and
- (3) The evidence of service upon \_\_\_\_\_, the person named in such letter of request, together with the verification of a magistrate.

And I certify that such service so proved, and the proof thereof, are such as are required by the law and practice of the High Court of Kenya regulating the service of legal process in Kenya and the proof thereof.

APPENDIX A, FORM 11—continued

And I certify that the costs of effecting such service amounts to the sum of £ \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

FORM No. 12

MEMORANDUM OF APPEARANCE

[Order 6, rule 2(1).]

(Title)

Please enter an appearance for1 \_\_\_\_\_

sued as 2 \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signed 3 \_\_\_\_\_

Whose address for service is 4 \_\_\_\_\_

and whose postal address is 5 \_\_\_\_\_

Notes:

- 1 Give the full name of the defendant appearing.
- 2 Give the name by which the defendant is described in the summons if this differs from the defendant's full name.
- 3 To be signed by the advocate, or by the defendant or his recognised agent if he appears in person.
- 4 Give the physical address which is either the place of business of the advocate within Kenya, or if the defendant appears in person his residence or place of business in Kenya, or if he does not reside or carry on business in Kenya, some other place in Kenya at which communications for him may be left.
- 5 Give the postal address either of the advocate within Kenya or of the defendant within Kenya if he appears in person.

N.B.—Additional notes for the guidance of defendants appearing are given on the back of this form. Please read them carefully. The form may have to be returned if any of the information required is omitted or given incorrectly. The delay may result in judgment being entered against the defendant. If judgment is entered, the defendant or his advocate may have to pay the costs of applying to set it aside.

[Subsidiary]

ADDITIONAL NOTES

(Back of form)

- 1 Where the defendant is a firm, the appearance must list the individual partners by name with the description "Partners in the firm of".
- 2 Where the defendant is an individual trading in a name other than his own, he must appear in his own name with the addition of the description "trading as".
- 3 Where the defendant is a corporation the appearance must be either by an advocate or by an officer of the corporation duly authorised so to do under the corporate seal.
- 4 If the defendant has no defence or admits the plaintiff's claim, appearance will delay judgment and may increase the costs payable by the defendant. Any proposal for the payment of a debt by installments or otherwise must be made direct to the plaintiff or his advocate and not to the court.
- 5 Where appearance is to be entered for a third party substitute, for references to the defendant, references to the third party.

APPENDIX A—continued

FORM No. 13

REQUEST FOR JUDGMENT

[Order 10, rule 4.]

(Title)

The plaintiff requests judgment against the defendant(s)1..... who has (have) failed to appear (or as the case may be).

This request is for interlocutory judgment for Sh.....(with or without interest as the case may be) and costs. 2

Dated, etc.,

.....

(Signed) Advocate for the Plaintiff

Notes

- 1 Insert names of defendants who have failed to appear or file a defence.
- 2 Delete "and costs" if a further claim in the suit remains to be dealt with.

FORM No. 14

APPLICATION FOR EXECUTION OF DECREE

[Order 22, rule 6.]

In the Court.....

I, ....., decree-holder, hereby apply for execution of the decree herein below set forth—  
.....of 20.....

1 Name of suit .....  
A.B..... – Plaintiff  
C.D. .... – Defendant

2 Names of parties .....  
..... 20.....

3 Date of decree .....  
No. ....

4 Whether any appeal preferred, from decree ..... None .....

5 (Payment or adjustment made, if any)

6 (Previous application, if any, with date and result)

7 (Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross-decree)

As awarded in the decree ..... S. .... C.

Subsequently incurred .....

Total

8 Amount of costs, if any, awarded .....

Against the defendant, C.D. ....

9 (Against whom to be executed.) .....

(When attachment and sale of movable property is sought.)

I pray that the total amount of shillings ..... (together with interest on

Civil Procedure

[Subsidiary]

APPENDIX A, FORM 14—continued

the principal sum up to date of payment) and the costs of taking out this execution, be realized by attachment and sale of defendant's movable property as per annexed list and paid to me.

(When attachment and sale of immovable property is sought.)

I pray that the total amount of shillings ..... (together with interest on the principal sum up to date of payment) and the costs of taking out this execution, be realized by attachment and sale of defendant's immovable property specified at the foot of this application and paid

10 (Mode in which the assistance of the court is required.)

I, ....., declare that what is stated herein is true to the best of my knowledge and belief.

(Signed) ..... Decree-holder.

Dated the ..... day of ....., 20 .....

(When attachment and sale of immovable property is sought.)

Description and Specification of Property:

The undivided one-third share of the judgment-debtor in a house situated in the village of ..... value shillings 80 and bounded as follows:

East by G's house; west by H.'s house, south by public road, north by private lane and J.'s house.

I, ....., declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

(Signed) ..... Decree-holder.

FORM No. 15

NOTICE BY ADVERTISEMENT OF SALE

[Order 22, rule 57(6).]

(Title)

(Set out description of property, encumbrances, etc.)

By Order of the ..... Court and pursuant to a judgment for Sh. .... (insert Broker's name and address), will sell the above property by public auction at ..... (insert place of sale) on ..... day the ..... day of ....., 20 ....., at ..... o'clock

(Signed) .....

Advocate (or Broker)



APPENDIX A—continued

FORM No. 16

GARNISHEE ORDER (ABSOLUTE) WHERE GARNISHEE OWES MORE THAN JUDGMENT-DEBT

[Order 23, rule 1(4).]

REPUBLIC OF KENYA

In the ..... Court at .....

Civil Suit No. .... of 20 .....

Between

..... Decree-holder

and

..... Judgment-debtor

and

..... Garnishee

To, The above-named ..... Judgment-debtor.

and

To, The above-named ..... Garnishee.

Upon hearing ..... (advocate for judgment-creditor) and upon reading the order nisi made herein dated the ..... day of ....., 20 ....., whereby it was ordered that all debts owing or accruing due from the garnishee to the judgment-debtor should be attached to answer a decree passed against the judgment-debtor in favour of the decree-holder in the ..... Court ..... on the ..... day of ..... , 20 ....., in the above-named suit for the sum of shillings ..... debt and shillings ..... costs (together with the costs of the garnishee proceedings) on which decree the sum of shillings ..... remained due and unpaid: And it appearing that the garnishee is indebted to the judgment-debtor in the sum of shillings ..... It is ordered that the garnishee do forthwith pay the decree-holder shillings ..... being so much of the debt due from the garnishee to the judgment-debtor as is sufficient to satisfy the said decree and costs together with the costs of the garnishee proceedings, and that in default thereof execution may issue for the same.

And that the garnishee be at liberty to retain shillings ..... for his costs of this application out of the balance of the debt due from him to the judgment-debtor.

Given under my hand and the seal of the court this ..... day of ....., 20 .....

....., Judge.

Civil Procedure

[Subsidiary]

APPENDIX A—continued

FORM No. 17

GARNISHEE ORDER (ABSOLUTE) WHERE GARNISHEE OWES LESS THAN JUDGMENT-DEBT [Order 23, rule 4.]

REPUBLIC OF KENYA

In the ..... Court at ..... Civil Suit No. .... of 20.....

Between

..... Decree-holder and ..... Judgment-debtor and ..... Garnishee To, The above-named ..... Judgment-debtor. and

To, The above-named ..... Garnishee.

Upon hearing ..... (advocate for judgment-creditor) and upon reading the order nisi made herein dated the ..... day of ..... , 20 ..... whereby it was ordered that all debts owing or accruing due from the garnishee to the judgment-debtor should be attached to answer a decree passed against the judgment-debtor in favour of the decree-holder in the ..... Court ..... on the ..... day of ..... , 20..... , in the above-named suit for the sum of shillings ..... debt and shillings ..... costs (together with the costs of the garnishee proceedings) on which decree the sum of shillings ..... remained due and unpaid: And it appearing that the garnishee is indebted to the judgment-debtor in the sum of shillings .....

It is ordered that the garnishee (after deducting therefrom shillings ..... for his costs of this application) do forthwith pay to the decree-holder shillings ..... the debt due from the garnishee to the judgment-debtor, and that in default thereof execution may issue for the same:

And that the sum of shillings ..... , the costs of the decree-holder of this application be added to the amount of the decree and be retained out of the money recovered by the decree-holder under this order and in priority to the amount of the decree.

Given under my hand and the seal of the court this ..... day of ..... , 20 .....

....., Judge.

APPENDIX A—continued

FORM No. 18

GARNISHEE ORDER (ABSOLUTE) WHERE GARNISHEE OWES LESS THAN JUDGMENT-DEBT

[Order 23, rule 4.]

REPUBLIC OF KENYA

In the ..... Court
..... at

Civil Suit No. .... of 20.....

Between
Decree-holder
and
Judgment-debtor
and
Garnishee

To,
The above-named .....
Judgment-debtor

and

To,
The above-named ..... Garnishee.

Upon hearing ..... (advocate for judgment-creditor) and
upon reading the order nisi made herein dated the ..... day of
....., 20.....

whereby it was ordered that all debts owing or accruing due from the garnishee to the judgment-
debtor should be attached to answer a decree passed against the judgment-debtor in favour of the
decree-holder in the .....
Court ..... on the day of ....., 20.....,
in the above-named suit for the sum of ..... shillings debt and shillings costs
(together with the costs of the garnishee proceedings) on which decree the sum of .....
shillings remained due and unpaid:

And it appearing that the garnishee is indebted to the judgment-debtor in the sum of .....
..... shillings

It is ordered that the garnishee (after deducting therefrom .....
shillings for his costs of this application) do forthwith pay to the decree-holder .....
..... shillings the debt due from the garnishee to the judgment-debtor,
and that in default thereof execution may issue for the same:

And that the sum of shillings, the costs of the decree-holder of this application be added to the
amount of the decree and be retained out of the money recovered by the decree-holder under this
order and in priority to the amount of the decree.

Given under my hand and the seal of the court this ..... day of....., 20.....

Judge

Civil Procedure

[Subsidiary]

APPENDIX A—continued

FORM No. 19

NOTICE OF PAYMENT INTO COURT

[Order 27, rule 1(3).]

(Title)

Take notice that the defendant ..... (name) has paid the sum of Sh. .... into court.

FORM No. 20

NOTICE OF PAYMENT INTO COURT

[Order 27, rule 1(3).]

The said sum is in satisfaction of the cause of action (or all the causes or action) in respect of which the plaintiff claims (after taking into account and satisfying the above-named defendant's cause of action for ..... in respect of which he counterclaims).

(or)

The said sum is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely ..... (after taking into account and satisfying the above-named defendant's cause of action for ..... and in respect of which he counterclaims).

(or)

Of the said sum, Sh. .... is in satisfaction of the plaintiff's cause(s) of action for ..... (after taking into account and satisfying the above-named defendant's cause of action for ..... in respect of which he counterclaims) and Sh. .... is in satisfaction of the plaintiff's cause(s) of action for ..... (after taking into account, etc., .....).

(and where appropriate)

And take notice that the said sum of Sh. .... has been paid into court pursuant to the Exchange Control Act being the amount of Sh ..... due to ..... (name) being a person resident outside the Scheduled Territories (or a person acting by order of (or on behalf of) a person resident outside the Scheduled Territories) together with (or less) Sh. .... costs.

Dated, etc., .....

(Signed) .....

Advocate for.....

APPENDIX A—continued

FORM No. 21

NOTICE OF ACCEPTANCE OF PAYMENT INTO COURT

[Order 27, rule 2.]

(Title)

Take notice that the plaintiff accepts the sum of Sh. .... paid into court by the defendant ..... (name) in satisfaction of the cause of action (or all the causes of action (or the following causes of action) (specify them))—

At any time after fourteen days after receipt of this notice the court may give judgment for the plaintiff's costs incurred up to the time of payment into court unless you apply to the court by summons for an order disallowing the whole or any part thereof.

Dated, etc. ....



FORM No. 22

CERTIFICATE OF ORDER AGAINST THE GOVERNMENT

[Order 29, rule 3.]

(Title)

By a judgment (decree) (order) of this court dated the ..... day of ..... , 20..... , it was adjudged (decree) (ordered)

(Give particulars of the judgment, decree or order.)

I hereby certify that the amount payable to ..... by ..... in pursuance of the said judgment (decree) (order) is ..... (\*together with interest thereon from the ..... day of ..... until the date of payment, and together with costs which have been taxed and certified by the Registrar at ..... Interest is payable on the said costs from the ..... day of ..... , 20..... , until the date of payment).

(+This certificate does not include the amount payable under the said judgment (decree) (order) in respect of costs.)

- \* Omit so far as not required.
- + To be included where a separate certificate has been directed to be issued as to costs.
- \* Here insert name of proper officer.

FORM No. 23

CERTIFICATE OF ORDER FOR COSTS AGAINST THE GOVERNMENT

[Order 29, rule 3.]

(Title)

By a judgment (decree) (order) of this court dated the ..... day of ..... , 20..... , it was adjudged (decree) (ordered):

(Give particulars of the judgment, decree or order.)

I hereby certify that the costs payable to ..... by ..... in pursuance of the said

APPENDIX A, FORM 23—continued

judgment (decree) (order) have been taxed and certified by the Registrar at ..... (\*Interest is payable on the said costs from the ..... day of ..... , 20..... , until the date of payment.)

\*Omit where not required.

.....  
Signature of Judge

[Subsidiary]

FORM No. 24

AFFIDAVIT
[Order 36, rule 9.]

(Title)

I, ..... of ..... make oath and say as follows:

- 1. The defendant(s) is (are jointly) and truly indebted to ..... in the sum of Sh. .... for ..... and was (were) so indebted at the commencement of this suit. The particulars of the said claim are set out in the plaint filed herein.
2. I verily believe that there is no defence to this suit.
3. The facts herein deposed to are within my own knowledge and I am duly authorised by the plaintiff to make this affidavit.

(Strike out paragraph 3 if affidavit made by plaintiff)
Sworn, etc. ....

FORM No. 25

ORDER FOR LEAVE TO DEFEND
[Order 36, rule 9.]

(Title)

Upon hearing ..... and upon reading ..... is ordered that the defendant be at liberty to defend this suit ..... (state conditions, if any) ..... and that the costs of this application be.....

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

FORM No. 26

GENERAL FORM OF ORIGINATING SUMMONS
[Order 37, rule 14.]

In the ..... Court at .....
In the matter of .....
Between

APPENDIX A, FORM 26—continued

A.B. .... Plaintiff
and
C.D. .... Defendant

Let ..... of ..... within ..... days after service of this summons on him enter an appearance to this summons which is issued on the application of ..... who claims to be (state the nature of the claim) ..... for the determination of the following questions (state the questions).

Dated the ..... day of ....., 20 .....
This summons was taken out by ..... advocate for the above-named .....

Appearance may be effected personally or by advocate.
NOTE. - If the defendant does not enter an appearance within the time above-mentioned such order may be made and proceedings taken as the court may think just and expedient.

FORM No. 27

GENERAL FORM OF ORIGINATING SUMMONS NOT INTER PARTIES

[Order 37, rule 14.]

..... 20 ..... (Here put the year and number)

In the High Court of Kenya, .....  
In the matter of the Trusts of the Will of A.B. and in the matter of ..... (or  
as the case may be).

Let ..... of ..... within ..... days after  
service of this summons on him, inclusive of the day of such service, cause an appearance to be  
entered for him to this summons, which is issued upon the application of .....  
..... of ..... for an order that (state the object of the application).

Dated the .....

This summons was taken out by ..... of ....., advocate  
for the above-named .....

The respondent may appear thereto by entering appearance either personally or by advocate at the  
High Court of Kenya, Court or District Registry in which this summons is filed.

NOTE. - If the respondent does not enter appearance within the time and at the place above  
mentioned, such order will be made and the proceedings taken as the judge may think just and  
expedient.

APPENDIX A, FORM 26—continued

FORM No. 28

APPLICATION FOR AN ORDER OF REFERENCE

[Order 46, rule 19.]

(Title)

1. This suit is instituted for (state nature of claim).
2. The matter in difference between the parties is (state matter of difference).
3. The applicants being all the parties interested have agreed that the matter in difference between  
them shall be referred to arbitration.
4. The applicants therefore apply for an order of reference.

A.B.

C.D.

Dated the ..... day of ....., 20.....

(Note.-If the parties are agreed as to the arbitrator or arbitrators it should be so stated and a written  
statement signed by the arbitrator or arbitrators to the effect that he or they are willing to act must  
be filed.)

[Subsidiary]

FORM No. 29

ORDER OF REFERENCE

[Order 46, rule 19.]

(Title)

Upon reading the application presented on the ..... day of ....., 19....., it is ordered that the following matter in difference arising in this suit, namely ..... be referred for determination to X and Y, or in case of their not agreeing, then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the ..... day of ....., 20....., and in case the said arbitrators not agreeing in an award, the said umpire is to make his award in writing within ..... month's after the time during which it is within the powers of the arbitrators to make an award shall have ceased.

Liberty to apply.

Given under my hand and the seal of the court this ..... day of ....., 20.....

....., Judge.

FORM No. 30

ORDER FOR APPOINTMENT OF ARBITRATOR

[Order 46, rule 19.]

(Title)

Whereas by an order dated the ..... day of ....., 20....., (state order of reference and death, refusal, etc., of arbitrator) it is by consent ordered that Z be appointed in the place of X (deceased, or as the case may be) to act as arbitrator, with Y, the surviving arbitrator, under the said order, and it is ordered that the award of the said arbitrators be made on or before the ..... day of ....., 20.....

Given under my hand and the seal of the court this ..... day of ....., 20.....

....., Judge.

APPENDIX A—continued

FORM No. 31

SPECIAL CASE

[Order 46, rule 19.]

(Title)

In the matter of an arbitration between A.B., of ..... and C.D., of ..... the following case is stated for the opinion of the court—

(Here state the facts concisely in numbered paragraphs.)

The questions of law for the opinion of the court are—

First, whether .....

Secondly, whether .....

X.

Y.

Dated the ..... day of ....., 20.....



FORM No. 32

A WARD  
[Order 46, rule 19.]  
(Title)

In the matter of an arbitration between A.B., of ..... and C.D.,  
of .....

Whereas in pursuance of an order of reference made by the court of ..... and  
dated the ..... day of ....., 20 ....., the following matter in difference  
between A.B. and C.D., namely ..... has been referred to us for determination:

Now we, having duly considered the matter referred to us, do hereby make our award as follows:  
We award—

- (1) That .....
- (2) That .....

X.  
Y.

Dated the ..... day of ....., 20.....

Civil Procedure

[Subsidiary]

Appendix B  
Case Management Checklist

Nature of the Claim:

PLAINTIFF

[Name and address of advocate: .....]

VERSUS

DEFENDANT

[Name and address of advocate: .....]

DEFENDANT

[Name and address of advocate: .....]

CASE MANAGEMENT CHECKLIST

Plaint Filed on		Defence filed on		Reply filed on	
Other Pleadings					

Pleadings, Statements and Bundles of Documents:

Compliance with Order 3 rule 2 and Order 7 rule 5:

	Dated Filed	Orders for compliance	Unless Orders	Compliance certified
1. Plaintiff's List of witnesses and statements				
2. Plaintiff's Indexed and paginated Bundle of Documents				
3. Defendant's List of witnesses and statements				
4. Defendant's Indexed and paginated Bundle of Documents				

	Application	Directions
5. Alternative dispute resolution.		
Should this case be referred to ADR?		

Further orders relating to pleadings and supporting statements and documents:

	Application	Orders made	Date Filed	Compliance certified
6. Amendment of pleadings				
7. Additional witness statements				
8. Additional documents				
9. Particulars				
10. Interlocutory relief				
11. Striking out				
12. Other applications				

13. Are there any objections to admissibility of any statement or documents or part thereof? When should such objection be determined?

Objections	Directions for determination of objections	Directions on admissibility

14. Issues	Yes/No	Directions	Compliance
Have Issues been agreed and filed under, if not has each party filed its Issues?			

	Application	Directions
15. Consolidation, Case Stated, Test Case		
a) Consolidation with any other suit?		
b) Agreement for Case Stated for the opinion of the Court		
c) Test Cases		

Witnesses and Evidence:

	Application	Orders
16. Witness Summonses?		
17. Admission of statements of evidence without calling the makers as witnesses?		
18. Admission of evidence on affidavit		

Civil Procedure

[Subsidiary]

19. Discovery, production or inspection of documents?		
20. Interrogatories?		
21. Examination of witness by an examiner or by the issue of Commission outside court and for the admission of any such examination as evidence in court?		
22. Examination of Accounts		

23. Expert Reports

Which Experts	Date of Report	Directions on exchange	Direction on Admissibility

24. Chronologies, maps, plans etc	Yes/No	Directions	Compliance
Are directions required regarding chronologies; maps; plans; diagrams			

Hearing

25. How much time is required for the hearing?		
26. Should any evidence be taken by video conferencing link?		
27. Is case ready for hearing?		

I hereby certify that all matters which are necessary for the preparation of this case for hearing have been done and that the case may now be set down for hearing.

Judge: ..... Dated: .....

Case fixed for hearing on ..... Judge ..... Dated .....

Case Management Request

Nature of the Claim:

.....  
PLAINTIFF

VERSUS

.....  
DEFENDANT

.....  
DEFENDANT

CASE MANAGEMENT REQUEST BY .....

The .....gives notice that at the Case Management Conference the following applications will be made or orders requested:

Alternative Dispute Resolution	Application
1. Should this case be referred to ADR	

Further orders relating to pleadings and supporting statements and documents:

2. Amendment of pleadings	Application
3. Additional witness statements	
4. Additional documents	
5. Particulars	
6. Interlocutory relief	
7. Striking out	
8. Other applications	

9. Are there any objections to admissibility of any statement or documents or part thereof? When should such objection be determined?

What is objected to	Nature of Objections

10. Issues - Are any directions required?	Nature of Directions required

11. Consolidation, Case Stated, Test Case	Application
a) Consolidation with any other suit?	

Civil Procedure

[Subsidiary]

b) Agreement for Case Stated for the opinion of the Court	
c) Test Cases	

Witnesses and Evidence:

	Application
12. Witness Summonses?	
13. Admission of statements of evidence without calling the makers as witnesses?	
14. Admission of evidence on affidavit	
15. Discovery, production or inspection of documents?	
16. Interrogatories?	
17. Examination of witness by an examiner or by the issue of Commission outside court and for the admission of any such examination as evidence in court?	
18. Examination of Accounts	

19. Expert Reports

Which Experts	Date of Report	Directions required

20. Chronologies, maps, plans etc.		Directions required
Are directions required regarding chronologies; maps; plans; diagrams		

Hearing

	Applications
21. How much time is required for the hearing?	

22. Should any evidence be taken by video conferencing link?	
23. Is case ready for hearing?	

Dated at Nairobi this.....day of....., 20....

Drawn and filed by:

ADVOCATES FOR

to be served upon:

[L.N. 22/2020, r. 27.]

Appendix C

[O. 11, r. 4]

Case Management Conference Certificate

I hereby certify that all matters which are necessary for the preparation of this case for hearing have been done and that the case may now be set down for hearing.

Judge: ..... Dated: .....

Case fixed for hearing on ..... Judge .....Dated .....

[L.N. 22/2020, r. 28.]

[Subsidiary]

Appendix D

[O. 11, r. 4]

Case Management Order

Following the case management conference held on the.....day of..... 20..... where the following parties were in attendance-

- 1.
- 2.
- 3.

It is ordered and decreed that-

- a).....
- b).....
- c).....

Given under my hand and the seal of the court this.....day of..... 20.....

.....

Judge

[L.N. 22/2020, r. 29.]

Appendix E

(Title as in the pleadings)

TRIAL CONFERENCE MEMORANDUM

(Order 11 Rule 7(4)(a))

The following are the results of the Trial Conference held on the day..... of 20..... before..... Judge/Magistrate.

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)

We the undersigned do hereby bind ourselves by this memorandum and undertake to comply with each and every clause hereof.

Appendix F



**FORM No. 1**

NOTICE TO PERSON TO WHOM THE COURT CONSIDERS SHOULD BE ADDED AS  
CO-PLAINTIFF

[Order 1, rule 10.]

(Title)

To (name, description and place of residence).

Whereas ..... has instituted the above suit against .....  
st ..... for ..... and whereas it appears necessary that you  
should be added as a plaintiff in the said suit in order to enable the court effectually and completely  
to adjudicate upon and settle all the questions involved.

Take notice that you should on or before the ..... Day of ..... 20....., signify  
to this court whether you consent to be so added.

Give under my hand and the seal of the court, this ..... day of ....., 20.....

.....  
*Judge*

**FORM No. 2**

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER

[Order 5, rule 18.]

(Title)

To be superintendent of the G.K. Prison at .....

APPENDIX F, Form 2—*continued*

Under the provisions of Order V, rule 18, of Civil Procedure Rules a summons in duplicate is  
herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to  
cause a copy of the said summons to be served upon the said defendant and to return the original  
to this court signed by the said defendant, with a statement of service endorsed thereon by you.

.....  
*Judge*

**FORM No. 3**

ORDER FR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT  
OR SOLDIER

[Order 5, rule 19.]

(Title)

To .....

Under the provisions of Order V, rule 19 (.....) of the Civil Procedure Rules, a  
summons in duplicate is herewith forwarded for service on the defendant, ..... who is  
stated to be serving under you. You are requested to cause a copy of the said summons to be  
served upon the said defendant and to return the original to this court signed by the said defendant,  
with a statement of service endorsed thereon by you.

.....  
*Judge*

[Subsidiary]

FORM No. 4

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT

[Order 22, rule 4.]

(Title)

- 1. Number of suit and the court by which the decree was passed.
- 2. Names of parties.
- 3. Date of application for execution.
- 4. Number of the execution case.
- 5. Processes issued and dates of service thereof.
- 6. Costs of execution.
- 7. Amount realised. Sh.            cts.
- 8. How the case is disposed of. Sh.            cts
- 9. Remarks.

.....  
Judge

APPENDIX F—continued

FORM No. 5

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE

[Order 22, rule 18.]

(Title)

To .....

Whereas ..... had made application to this court for execution of decree in Suit No. .... of 20..... on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this court ..... on the ..... day of ....., 20....., to show cause why execution should not be granted.

Given under my hand and the seal of the court this ..... day of ....., 20.....

FORM No. 6

ATTACHMENT IN EXECUTION. - PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION

[Order 22, rule 41.]

(Title)

To ....., defendant, and to ..... Secretary of ..... Corporation.

Whereas ..... has failed to satisfy a decree passed against ..... on the ..... day of ....., 19....., in Suit No. .... of 19....., in favour of ....., for shillings ..... : It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this court, from making any transfer of .... shares in the aforesaid Corporation, namely....., or from receiving payment of any dividends thereon; and you ....., the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

Given under my hand and the seal of the court this ..... day of ....., 20.....

.....  
Judge

APPENDIX F—continued

FORM No. 7

WARRANT OF COMMITTAL

[Order 22, rule 8.]

(Title)

To .....

The Officer-in-Charge of the G.K. Prison at .....

Whereas the under mentioned property has been decreed to ....., the plaintiff in this suit, and whereas the court is satisfied that ..... without any just cause resisted (or obstructed) and is still resisting (or obstructing) the said ..... in obtaining possession of the property and whereas the said ..... has made application to this court that the said ..... be committed to prison.

You are hereby commanded and required to take and receive the said ..... into prison and to keep him imprisoned therein for the period of ..... days.

Given under my hand and the seal of the court this ..... day of ....., 20.....

Judge

FORM No. 8

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT

[Order 24, rule 4.]

(Title)

To .....

Whereas the plaintiff ..... instituted a suit in this court on the ..... day of ..... , 19..... against the defendant ..... who has since died, and whereas the said plaintiff has made an application to this court alleging that you are legal representatives of the said ....., deceased, and desiring that you be made the defendant in his stead.

You are hereby summoned to attend in this court on the ..... Day of ..... 19..... at ..... a.m to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

Given under my hand and the seal of the court this ..... Day of ....., 20.....

Judge

Appendix G  
SCHEDULE

*Civil Procedure*

[Subsidiary]

<i>Area</i>	<i>Place of Registry</i>
The Districts of Mombasa, Taita-Taveta, Kwale	Mombasa
The Districts of Malindi, Lamu, Kilifi and Tana-River	Malindi
The Districts of Kericho, Bomet and Sotik.	Kericho
The Districts of Nandi, Elgeyo, Marakwet, Baringo and Uasin- Gishu	Eldoret
The Districts of Turkana, Trans-Nzoia and West Pokot.	Kitale
The Districts of Nakuru, Laikipia, Nyandarua, Samburu, Narok and Trans-Mara.	Nakuru
The Districts of Machakos, Kitui, Makueni, Mwingi and Kajiado.	Machakos
The Districts of Meru, Isiolo, Marsabit and Moyale.	Meru
The District of Embu, Kirinyaga and Mbeere.	Embu.
The Districts of Nyeri, Murang'a and Nanyuki.	Nyeri.
The Districts of Kisii, Homa Bay and Trans-Mara	Kisii.
The Districts of Kisumu and Siaya	Kisumu
The Districts of Kakamega, Butere, Mumias and Vihiga.	Kakamega
The Districts of Bungoma and Mount Elgon.	Bungoma
The District of Busia	Busia

## Civil Procedure

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