



LAWS OF KENYA

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## **THE CIVIL PROCEDURE ACT**

### CHAPTER 21

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## CHAPTER 21

### THE CIVIL PROCEDURE ACT

*Commencement: 31st January, 1924*

#### **An Act of Parliament to make provision for procedure in civil courts**

#### PART I—PRELIMINARY

**1.** (1) This Act may be cited as the Civil Procedure Act.

(2) This Act applies to proceedings in the High Court and, subject to the Magistrate's Courts Act, to proceedings in subordinate courts.

**1A** (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

**1B.** (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—

- (a) the just determination of the proceedings;
- (b) the efficient disposal of the business of the Court;
- (c) the efficient use of the available judicial and administrative

resources;

(d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and

(e) the use of suitable technology.

2. In this Act, unless the context otherwise requires-

“Act” includes rules;

“court” means the High Court or a subordinate court, acting in the exercise of its civil jurisdiction;

“decree” means the formal expression of an adjudication which, so far 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 and may be either preliminary or final; it includes the striking out of a plaint and the determination of any question within section 34 or section 91, but does not include—

(a) any adjudication from which an appeal lies as an appeal from an order; or

(b) any order of dismissal for default:

Provided that, for the purposes of appeal, “decree” includes judgment, and a judgment shall be appealable notwithstanding the fact that a formal decree in pursuance of such judgment may not have been drawn up or may not be capable of being drawn up;

*Explanation.* — A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

“decree holder” means any person in whose favour a decree has been passed or an order capable of execution has been made, and includes the assignee of such decree or order;

“district” means the local limits of the jurisdiction of a subordinate court;

“foreign court” means a court situate outside Kenya which has no authority in Kenya;

“foreign judgment” means the judgment of a foreign court;

“impartial” in relation to a dispute means being and being seen to be unbiased towards parties to a dispute, their interests and the options they present for settlement;

“judge” means the presiding officer of a court;

Interpretation.  
17 of 1967, s. 38,  
10 of 1969, Sch.,  
4 of 1974, Sch.,  
12 of 2012, Sch.

“judgment-debtor” means any person against whom a decree has been passed or an order capable of execution has been made;

“legal representative” means a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

“mediation” means an informal and non-adversarial process where an impartial mediator encourages and facilitates the resolution of a dispute between two or more parties, but does not include attempts made by a judge to settle a dispute within the course of judicial proceedings related thereto;

“mediation rules” means the mediation rules made under this Act;

“mediator” means an impartial third party selected to carry out a mediation;

“mesne profits”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;

“movable property” includes growing crops;

“order” means the formal expression of any decision of a court which is not a decree, and includes a rule *nisi*;

“pleading” includes a petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant;

“prescribed” means prescribed by rules;

“registrar” includes a district registrar and a deputy registrar;

“rules” means rules and forms made by the Rules Committee to regulate the procedure of courts;

“share in a corporation” includes stock, debenture stock, debentures and bonds;

“suit” means all civil proceedings commenced in any manner prescribed.

**3.** In the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force.

Saving of special jurisdiction and powers.

Saving of inherent

**3A.** Nothing in this Act shall limit or otherwise affect the inherent

power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. powers of court.

4. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction. Pecuniary jurisdiction.

## PART II—SUITS IN GENERAL

### *Jurisdiction of Courts*

5. Any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred. Courts to try all civil suits unless barred.

6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed. Stay of suit. 10 of 1969, Sch.

*Explanation.*—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

7. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. *Res judicata.* L.N. 22/1984.

*Explanation.* (1)—The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

*Explanation.*(2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

*Explanation.* (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation.*(4)—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation.* (5)—Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

*Explanation.* (6)—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further suit.

**8.** Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of that cause of action.

When foreign judgment not conclusive.  
10 of 1969, Sch.

**9.** A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except—

- (a) where it has not been pronounced by a court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Kenya in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in Kenya.

**10.** (*Repealed by 46 of 1963, 2nd Sch.*).

*Place of Suing*

Court in which suit to be instituted.  
19 of 1964, Sch.

**11.** Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a

suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- (i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
- (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district.

**12.** Subject to the pecuniary or other limitations prescribed by any law, suits -

- (a) for the recovery of immovable property, with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of movable property actually under distraint or attachment,

where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the

Suit to be instituted where subject matter situate.  
10 of 1969, Sch.

local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.

Suit for immovable property situate within jurisdiction of different courts.

**13.** Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court.

Suit for compensation for wrong to the person or movables.

**14.** Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.

*Illustration.—(a)* A residing in Mombasa beats B in Nairobi. B may sue A either in Mombasa or Nairobi.

*Illustration.—(b)* A residing in Mombasa publishes at Nairobi statements defamatory of B. B may sue A either in Mombasa or Nairobi.

Other suits to be instituted where defendant resides or cause of action arises. 10 of 1969, Sch.

**15.** Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- (b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

*Explanation.(1)*—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

*Explanation.(2)*—A corporation shall be deemed to carry on

business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Explanation.*(3)—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely—

- (i) the place where the contract was made;
- (ii) the place where the contract was to be performed or the performance thereof completed;
- (iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

*Illustration.*—(a) A is a tradesman in Nairobi. B carries on business in Mombasa. B by his agent at Nairobi buys goods of A and requests A to deliver them to Mombasa by rail. A may sue B for the price of the goods either in Nairobi, where the cause of action has arisen, or in Mombasa, where B carries on business.

*Illustration.*—(b) A resides at Kisumu, B at Nairobi, and C at Mombasa. A, B, and C being together at Nakuru, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Nakuru, where the cause of action arose. He may also sue them at Nairobi, where B resides, or at Mombasa, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the court.

**16.** No objection as to the place of suing shall be allowed on appeal unless such objection was taken in the court of first instance and there has been a consequent failure of justice.

Objections to jurisdiction.

**17.** Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.

Power to transfer suits which may be instituted in more than one court.

**18.** (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

Power of High Court to withdraw and transfer case instituted in

subordinate court.

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
  - (i) try or dispose of the same; or
  - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
  - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

#### *Institution of Suits*

Institution of suits.

**19.** Every suit shall be instituted in such manner as may be prescribed by rules.

#### *Procedure in Suits and Discovery*

Service on defendant.

**20.** Where a suit has been duly instituted the defendant shall be served in manner prescribed to enter an appearance and answer the claim.

Service where defendant resides in another district.

**21.** (1) Any document which is required to be served in connexion with a suit may be sent for service in another district to a court having jurisdiction in that district.

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

Power to order discovery and the like.

**22.** Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

**23.** Sections 21 and 22 shall apply to summonses to give evidence or to produce documents or other material objects. Summons to witness.

**24.** The court may compel the attendance of any person to whom a summons has been issued under section 22, and for that purpose may - Penalty for default.

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine on him not exceeding one thousand shillings;
- (d) order him to furnish security for his appearance and in default commit him to prison.

#### *Judgement and decree*

**25.** The court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow: Judgment and decree.

Provided that it shall not be necessary for the court to hear the case before pronouncing judgment—

- (i) where the plaint is drawn claiming a liquidated demand, and either—
  - (a) the defendant has not entered such appearance as may be prescribed; or
  - (b) the defendant, having entered such appearance, has failed to file a defence within the time prescribed; or
- (ii) in such cases as may be prescribed under section 81 (2)(f).

*Interest*

Interests.

**26.** (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

*Costs*

Costs.

**27.** (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

## PART III—EXECUTION

*General*

Application to orders.

**28.** The provisions of this Act relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Definition of "court which passed a decree".

**29.** The expression "court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, except where the context otherwise requires, include -

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance; and
- (b) where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed were instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

*Courts by which Decrees may be Executed*

- 30.** A decree may be executed either by the court which passed it or by the court to which it is sent for execution. Court by which decree may be executed.
- 31.** (1) The court which passed a decree may, on the application of the decree-holder, send it for execution to another court— Transfer of decree.
- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of that other court; or
- (b) if such person has no property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court; or
- (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the court which has passed it; or
- (d) if the court which has passed the decree considers for any other reason, which it has recorded in writing, that the decree should be executed by such other court.
- (2) The court which passed a decree may of its own motion send it for execution to any court of inferior but competent jurisdiction.
- 32.** The court to which a decree is sent for execution shall certify to the court which passed it the fact of such execution, or where the former court fails to execute the same the circumstances attending such failure. Result of execution proceedings to be certified.
- 33.** (1) The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. Powers of court in executing transferred decree.

(2) All persons disobeying or obstructing the execution of the decree shall be punishable by such court in the same manner as if it had passed the decree; and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

*Questions to be Determined by Court Executing Decree*

Questions to be determined by court executing decree.

**34.** (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

*Explanation.*—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

**35.** (*Repealed by 21 of 1968, Sch.*).

*Transferees and Legal Representatives*

Transferee of decree.

**36.** Every transferee of a decree shall hold the same subject to the equities, if any, which the judgment-debtor might have enforced against the original decree-holder.

Legal representative.

**37.** (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased.

(2) Where the decree is executed against such legal representative, or against any person as aforesaid, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability the court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

*Procedure in Execution*

**38.** Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree—

Powers of court to enforce execution. 11 of 1970, Sch.

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale, or by sale without attachment, of any property;
- (c) by attachment of debts;
- (d) by arrest and detention in prison of any person;
- (e) by appointing a receiver; or
- (f) in such other manner as the nature of the relief granted may require:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing, is 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, by or under any law, or custom having the force of law, for the time being in force, 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.

Enforcement of  
decree against legal  
representative.

**39.** (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor, and he fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the decree had been against him personally.

#### *Arrest and Detention*

Arrest and detention.  
L.N. 299/1956,  
L.N. 300/1956,  
10 of 1969, Sch.

**40.** (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the court, and his detention may be in any prison of the district in which the court ordering the detention is situate, or, if such prison does not afford suitable accommodation, in any other place which the Minister may appoint for the detention of persons ordered by the courts of such district to be detained:

Provided that—

- (i) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise;
- (ii) no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the officer authorized to make the arrest has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found;
- (iii) if the room is in the actual occupancy of a woman who is not the judgment-debtor, and who according to the custom of her community does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room

for the purpose of making the arrest;

- (iv) where the decree in execution of which a judgment-debtor is arrested is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Minister may, by notice in the Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as he may direct.

**41.** The Minister may, by notice in the Gazette, fix scales of monthly allowances payable for the subsistence of a judgment-debtor.

Subsistence allowances.  
L.N. 300/1956,  
8 of 1968, Sch.,  
10 of 1969, Sch.

**42.** (1) Every person detained in prison in execution of a decree shall be so detained—

Detention and release.

- (a) where the decree is for the payment of a sum of money exceeding one hundred shillings, for a period not exceeding six months; and
- (b) in any other case, for a period not exceeding six weeks:

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the prison; or
- (ii) on the decree against him being otherwise fully satisfied, if the court so orders; or
- (iii) on the request of the person on whose application he has been so detained, if the court so orders; or
- (iv) on the omission of the person, on whose application he has been so detained, to pay subsistence allowance.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be rearrested under the decree in execution

of which he was detained in prison.

Release on ground of illness.

**43.** (1) At any time after a warrant for the arrest of a judgment-debtor has been issued, the court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the court may release him if in its opinion he is not in a fit state of health to be detained in prison.

(3) Where a judgment-debtor has been committed to prison, he may be released therefrom—

(a) by the superintendent of the prison in which he is confined on the grounds of the existence of any infectious or contagious disease; or

(b) by the committing court or the High Court on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be rearrested, but the period of his detention in prison shall not in the aggregate exceed that prescribed by section 42 of this Act.

#### *Attachment*

Property liable to attachment and sale in execution of a decree.  
1 of 1981, s. 25.

**44.** (1) All property belonging to a judgment debtor, including property over which or over the profits of which he has a disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree:

Provided that the following shall not be liable to attachment or sale—

(i) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor and of his wife and children, and those personal ornaments from which, in accordance with religious usage, a woman cannot be parted;

(ii) the tools and implements of a person necessary for the performance by him of his trade or profession;

(iii) where the judgment-debtor is an agriculturalist—

(a) the first ten thousand shillings in value of his livestock, if

any; and

- (b) the first five thousand shillings in value of all implements, tools, utensils, plant and machinery used in connection with stock or dairy farming or in the production of crops or plants; and
- (c) the first one thousand shillings in value of agricultural produce necessary to enable him to earn his livelihood;
- (iv) books of accounts;
- (v) a right to sue in damages;
- (vi) a right of personal service;
- (vii) stipends and gratuities allowed to pensioners of the Government, or payable out of a service family pension fund notified in the Gazette by the Minister, and political pensions;
- (viii) two thirds of the salary of public officer or other person in employment;
- (ix) a contingent or possible right or interest, including an expectancy of succession by survivorship;
- (x) a right of future maintenance;
- (xi) any fund or allowance declared by law to be exempt from attachment and sale in execution of a decree.

(2) Nothing in this section shall affect the provisions of the Armed Forces Act or of any similar law for the time being in force. Cap.199.

**45.** (1) No person in executing any process under this Act directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise. Seizure of property in dwelling-house.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the person executing the process has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy

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of a woman who, according to the custom of the country, does not appear in public, the person executing the process shall give notice to the woman that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter the room for the purpose of seizing the property, using at the same time every precaution consistent with these provisions to prevent its clandestine removal.

Property attached in execution of decrees of several courts.

**46.** (1) Where property not in the custody of a court is under attachment in execution of decrees of more courts than one, the court which shall receive and realize that property and shall determine any claim thereto and any objection to the attachment thereof shall be the court of the highest grade, or, where there is no difference in grade between the courts, the court under whose decree the property was first attached.

(2) Nothing in this section shall invalidate any proceeding taken by a court executing one of the decrees.

Private alienation of property after attachment to be void.

**47.** Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein, and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

#### *Sale*

Purchaser's title.

**48.** Where immovable property is sold in execution of a decree and the sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

**49.** (1) No suit shall be maintained against any person claiming title under a purchase certified by the court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

#### *Distribution of Assets*

Distribution of assets.

**50.** (1) Where assets are held by any court and more persons

than one have before the receipt of such assets by such court lodged applications in court for the execution of decrees for the payment of money issued against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be distributed amongst such decree-holders in accordance with the priorities of the lodging of their several applications:

Provided that, where any property is sold subject to a mortgage or charge, the mortgagee or encumbrancer shall not be entitled to share in any surplus arising from the sale.

(2) Every application for execution of a decree shall, at the time of lodgment, be endorsed by the court, or by a duly authorized officer of the court, with a note of the day upon which and the hour at which such lodgment has been effected.

(3) Nothing in this section shall affect any right of the Government.

#### *Resistance to Execution*

**51.** Where the court is satisfied that the holder of a decree for the possession of immovable property, or that the purchaser of immovable property sold in execution of a decree, has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person on his behalf, and that such resistance or obstruction was without any just cause, the court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in prison for a term which may extend to thirty days, and may further direct that the decree-holder or purchaser be put in possession of the property.

Resistance to execution.

#### PART IV—INCIDENTAL PROCEEDINGS

#### *Commissions*

**52.** Subject to such conditions and limitations as may be prescribed, the court may issue a commission—

Power of court to issue commission.

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

**53.** (1) A commission for the examination of any person may be

Commission to another court.

10 of 1969, Sch.

issued by the High Court to any subordinate court or to any advocate, and by a subordinate court of the first or second class to any other subordinate court situate in a district other than the district in which the court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every court receiving a commission for the examination of any person under subsection (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of the order.

Letter of request.  
10 of 1969, Sch.

**54.** In lieu of issuing a commission, the High Court or a subordinate court with the sanction of the High Court may issue a letter of request to examine a witness residing at any place outside Kenya.

Commission issued  
by foreign court.  
10 of 1969, Sch.

**55.** Commissions issued by foreign courts for the examination of persons in Kenya shall be executed and returned in such manner as may be from time to time authorized by the High Court.

#### PART V—SUITS IN PARTICULAR CASES

##### *Suits by Aliens and by or against Foreign Rulers*

When alien may sue.  
10 of 1969, Sch.

**56.** (1) Alien enemies residing in Kenya with the permission of the President, and alien friends, may sue in the courts of Kenya.

(2) No alien enemy residing in Kenya without such permission, or residing in a foreign country, shall sue in any of such courts.

*Explanation.*—Every person residing in a foreign country the government of which is at war with Kenya, and carrying on business in that country without a licence in that behalf under the hand of the President, shall, for the purpose of subsection (2), be deemed to be an alien enemy residing in foreign country.

When foreign state  
may sue.  
10 of 1969, Sch.

**57.** (1) A foreign state may sue in any court of Kenya, provided that state has been recognized by Kenya, and provided the object of the suit is to enforce a private right vested in the head of that state or in any officer of that state in his public capacity.

(2) Every court shall take judicial notice of the fact that a foreign state has or has not been recognized by Kenya.

*Interpleader*

**58.** Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants, or where a suit dealing with the same subject-matter is pending may intervene by motion on notice in such suit, for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself:

When interpleader suit may be instituted.

Provided that where any suit is pending in which the rights of all parties can be properly decided no such suit of interpleader shall be instituted.

PART VI—SPECIAL PROCEEDINGS

*Arbitration*

**59.** All references to arbitration by an order in a suit, and all proceedings thereunder, shall be governed in such manner as may be prescribed by rules.

Arbitration.

**59A.** (1) There shall be a Mediation Accreditation Committee which shall be appointed by the Chief Justice.

Establishment of Mediation Accreditation Committee. 12 of 2012, Sch.

(2) The Mediation Accreditation Committee shall consist of—

- (a) the chairman of the Rules Committee;
- (b) one member nominated by the Attorney-General;
- (c) two members nominated by the Law Society of Kenya; and
- (d) eight other members nominated by the following bodies respectively—
  - (i) the Chartered Institute of Arbitrators (Kenya Branch);
  - (ii) the Kenya Private Sector Alliance;
  - (iii) the International Commission of Jurists (Kenya Chapter);
  - (iv) the Institute of Certified Public Accountants of Kenya;
  - (v) the Institute of Certified Public Secretaries;

- (vi) the Kenya Bankers' Association;
- (vii) the Federation of Kenya Employers, and
- (viii) the Central Organisation of Trade Unions.

(3) The Chief Justice shall designate a suitable person to be the Mediation Registrar, who shall be responsible for the administration of the affairs of the Committee under this Act.

(4) The functions of the Mediation Accreditation Committee shall be to—

- (a) determine the criteria for the certification of mediators;
- (b) propose rules for the certification of mediators;
- (c) maintain a register of qualified mediators;
- (d) enforce such code of ethics for mediators as may be prescribed; and
- (e) set up appropriate training programmes for mediators.

Reference of cases to mediation.  
12 of 2012, Sch.

**59B.** (1) The Court may—

- (a) on the request of the parties concerned;
- (b) where it deems it appropriate to do so, or
- (c) where the law so requires,

direct that any dispute presented before it be referred to mediation.

(2) Where a dispute is referred to mediation under subsection (1), the parties thereto shall select for that purpose a mediator whose name appears in the mediation register maintained by the Mediation Accreditation Committee.

(3) A mediation under this Part shall be conducted in accordance with the mediation rules.

(4) An agreement between the parties to a dispute as a result of a process of mediation under this Part shall be recorded in writing and registered with the Court giving the direction under subsection (1), and shall be enforceable as if it were a judgment of that Court.

(5) No appeal shall lie against an agreement referred to in subsection (4).

**59C.** (1) A suit may be referred to any other method of dispute resolution where the parties agree or the Court considers the case suitable for such referral.

Other alternative dispute resolution methods.  
12 of 2012, Sch.

(2) Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the Court may, in its discretion, order.

(3) Any settlement arising from a suit referred to any other alternative dispute resolution method by the Court or agreement of the parties shall be enforceable as a judgment of the Court.

(4) No appeal shall lie in respect of any judgment entered under this section.

**59D.** All agreements entered into with the assistance of qualified mediators shall be in writing and may be registered and enforced by the Court.

Power to enforce private mediation agreements.  
12 of 2012, Sch.

### *Special Case*

**60.** Where any persons agree in writing to state a case for the opinion of the court, then the court shall try and determine the same in the manner prescribed.

Power to state case for opinion of court.

### *Suits Relating to Public Matters*

**61.** (1) In the case of a public nuisance, the Attorney-General, or two or more persons having the consent in writing of the Attorney-General, may institute a suit though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

Public nuisance.

(2) Nothing in this section shall limit or otherwise affect any right of suit which may exist independently of its provisions.

**62.** In the case of an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of the trust, the Attorney-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney-General, may institute a suit, whether contentious or

Public charity.

not in the High Court to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in trustees;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

PART VII—SUPPLEMENTAL PROCEEDINGS

Supplemental proceedings.

**63.** In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed—

- (a) issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to prison;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment of any property;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the court to be just and convenient.

**64.** (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under section 63—

Compensation for arrest, attachment or injunction on insufficient grounds.

- (a) it appears to the court that the arrest, attachment or injunction was applied for on insufficient grounds; or
- (b) the suit of the plaintiff fails and it appears to the court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the court, and the court may, upon such application, award against the plaintiff by its order such amount, not exceeding two thousand shillings, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that, a court shall not award under this section an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining an application under subsection (1) shall bar any suit for compensation in respect of the arrest, attachment or injunction.

#### PART VIII—APPEALS TO THE HIGH COURT AND COURT OF APPEAL

##### *Appeals from Original Decrees*

**65.** (1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court -

Appeal from other courts.  
17 of 1967, s. 39,  
10 of 1969, Sch.,  
4 of 1974, Sch.

- (a) *(Deleted by 10 of 1969, Sch.);*
- (b) from any original decree or part of a decree of a subordinate court, other than a magistrate's court of the third class, on a question of law or fact;
- (c) from a decree or part of a decree of a Kadhi's Court, and on such an appeal the Chief Kadhi or two other Kadhis shall sit as assessor or assessors.

(2) *(Deleted by 10 of 1969, Sch.).*

**66.** Except where otherwise expressly provided in this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie from the decrees or any part of decrees and from the orders of the High Court to the Court of Appeal.

Appeal from decree of High Court.  
14 of 1977, Sch.

Appeal from original decree.

**67.** (1) An appeal may lie from an original decree passed *ex parte*.

(2) No appeal shall lie from a decree passed by the court with the consent of parties.

Appeal from final decree where no appeal from preliminary decree.

**68.** Where any party aggrieved by a preliminary decree does not appeal from that decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Decision where appeal heard by two or more judges. 13 of 1980, Sch.

**69.** Where an appeal is heard by a court consisting of two or more judges the appeal shall be decided in accordance with the opinion of the judges or a majority of them:

Provided that where a court consisting of two judges is divided in its opinion the appeal shall be reheard by a court consisting of an uneven number of judges being not less than three.

**70.** (*Renumbered as section 79A.*)

**71.** (*Renumbered as section 79C.*)

*Appeals from Appellate Decrees of a Subordinate Court*

Second appeal from subordinate court. 10 of 1969, Sch., 13 of 1978, Sch.

**71A.** (1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court from a decree passed by a subordinate court of the first class on an appeal from a subordinate court of the third class, on a question of law only.

(2) An appeal under this section shall be final.

*Appeals from Appellate Decrees of the High Court*

Second appeal from the High Court. 10 of 1969, Sch.

**72.** (1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely—

- (a) the decision being contrary to law or to some usage having the force of law;
  - (b) the decision having failed to determine some material issue of law or usage having the force of law;
  - (c) a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, which
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may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

**73.** (*Repealed by 10 of 1969, Sch.*).

**74.** (*Repealed by 10 of 1969, Sch.*).

#### *Appeals from Orders*

**75.** (1) An appeal shall lie as of right from the following orders, and shall also lie from any other order with the leave of the court making such order or of the court to which an appeal would lie if leave were granted—

Orders from which  
appeal lies.

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;
- (b) an order on an award stated in the form of a special case;
- (c) an order modifying or correcting an award;
- (d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
- (e) an order filing or refusing to file an award in an arbitration without the intervention of the court;
- (f) an order under section 64;
- (g) an order under any of the provisions of this Act imposing a fine or directing the arrest or detention in prison of any person except where the arrest or detention is in execution of a decree;
- (h) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.

**76.** (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case may be set

Other Orders.

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forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in subsection (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

What court to hear appeal.

**77.** Where an appeal from any order is allowed, it shall lie to the court to which an appeal would lie from the decree in the suit in which the order was made.

*General Provisions Relating to Appeals*

Powers of appellate court.

**78.** (1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require the evidence to be taken;
- (e) to order a new trial.

(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.

Procedure in appeals from appellate decrees and orders.

**79.** The provisions of this Part relating to appeals from original decrees shall, as far as may be, apply to appeals -

- (a) from appellate decrees; and
- (b) from orders made under this Act or under any special or local law in which a different procedure is not provided.

No decree to be altered for error not affecting merits or jurisdiction.  
10 of 1969, Sch.

**79A.** No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court.

Summary rejection of

**79B.** Before an appeal from a subordinate court to the High Court

is heard, a judge of the High Court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against he may, notwithstanding section 79C, reject the appeal summarily.

appeal.  
17 of 1967, s.40,  
38 of 1968, Sch.,  
10 of 1969, Sch.

**79C.** Appeals from subordinate courts shall be heard by one judge of the High Court except when in any particular case the Chief Justice shall direct that the appeal be heard by two or more judges of the High Court; and such direction may be given before the hearing of the appeal or at any time before judgment is delivered.

Mode of hearing  
appeal.  
10 of 1969, Sch.

**79D.** No second appeal from a decree passed in appeal by the High Court shall lie except on the grounds mentioned in section 72.

Grounds for second  
appeal from High  
Court.  
10 of 1969, Sch.

**79E.** No second appeal from a decree passed in appeal by the High Court shall lie in any suit when the amount or value of the subject-matter of the original suit does not exceed ten thousand shillings unless special leave has been first obtained from the court before whom the appeal is to be heard.

No second appeal  
from High Court in  
certain cases.  
10 of 1969, Sch.,  
21 of 1990.

**79F.** A person who has been allowed to take, defend or be a party to any legal proceedings in a subordinate court as a pauper may not appeal to the High Court, or from the High Court to the Court of Appeal, except with the leave of the Court before whom the proceedings appealed against were heard or (if such leave is refused) unless special leave has been first obtained from the Court before whom the appeal is to be heard.

Appeals by paupers.  
10 of 1969, Sch.

**79G.** Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Time for filing  
appeals from  
subordinate courts.  
10 of 1969, Sch.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

PART IX—REVIEW

**80.** Any person who considers himself aggrieved—

Review.

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



(b) by a decree or order from which no appeal is allowed by this Act,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

#### PART X—RULES

Rules Committee.  
39 of 1956, s. 5,  
14 of 1977, Sch.  
13 of 1978, Sch.  
10 of 1997,  
6 of 2009, Sch.

**81.** (1) There shall be a Rules Committee consisting of two judges of the High Court, two judges of the Court of Appeal, the Attorney-General and two advocates, one to be nominated by the Law Society of Kenya and the other by the Mombasa Law Society, which shall have power to make rules not inconsistent with this Act and, subject thereto, to provide for any matters relating to the procedure of civil courts.

(1A) The judges referred to in subsection (1) shall be appointed by the Chief Justice, who shall nominate one of them to be chairman of the Committee, and the Chief Justice may himself elect to be a member of the Committee in which case he shall be the chairman.

(2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), such rules may provide for all or any of the following matters namely—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;
- (b) the maintenance and custody, while under attachment, of livestock and other movable property, the fees payable for such maintenance and custody, the sale of such livestock and property, and the proceeds of such sale;
- (c) procedure in suits by way of counterclaim and the valuation of such suits for the purposes of jurisdiction;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person, whether a party to the suit or not;
- (f) summary procedure—
  - (i) in suits in which the plaintiff seeks only to recover a debt

or liquidated demand in money payable by the defendant, with or without interest, arising on a contract express or implied; or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only or on a trust; or

(ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined for non-payment of rent, or against persons claiming under such tenant;

(ff) the selection of mediators and the hearing of matters referred to mediation under this Act.

(g) procedure by way of originating summons;

(h) consolidation of suits, appeals and other proceedings;

(i) delegation to any registrar or other official of the court of any judicial, quasi-judicial and non-judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of civil courts.

(3) The Chief Justice may, in consultation with the Rules Committee, issue practice notes or directions to resolve procedural difficulties arising under this Act, in order to facilitate the attainment of the overriding objective of this Act as specified in section 1A.

#### PART XI—MISCELLANEOUS PROVISIONS

**82.** (1) Women who according to the customs and manners of their community ought not to be compelled to appear in public shall be exempt from personal appearance in court. Exemption of certain women.

(2) Nothing herein contained shall be deemed to exempt those women from arrest in execution of civil process.

**83.** The provisions of section 40, 41 and 43 shall apply so far as may be to all persons arrested under this Act. Arrest other than in execution of decree.

**84.** (1) No judge, magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in or returning Exemption from arrest under civil

process.

from his court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their advocates and recognized agents, and their witnesses acting in obedience to a summons shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in subsection (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution, or where such judgment-debtor attends to show cause why he would not be committed to prison in execution of a decree.

Procedure relating  
to arrest and  
attachment.

**85.** (1) Where an application is made to a subordinate court that any person shall be arrested or that any property shall be attached under any provision of this Act, and where the person resides or is found, or the property is situate, outside the local limits of the jurisdiction of the court to which the application is made, the court may in its discretion issue a warrant of arrest, or make an order of attachment, and send to the magistrate of the subordinate court within the local limits of whose jurisdiction that person resides or is found or the property is situate the warrant or order together with the probable amount of the costs of the arrest or attachment.

(2) On the issue of a warrant or order under subsection (1) the magistrate of the subordinate court within whose jurisdiction the person to be arrested resides or is found or the property to be attached is situate, as the case may be, shall have power—

- (a) to endorse and execute the warrant or order; or
- (b) to issue, before the endorsement, a provisional warrant or order for the arrest of the defendant or the attachment of the property upon receipt of such telegraphic or other information as may satisfy him that a warrant or order has been issued:

Provided that a person arrested or property attached under the provisional warrant or order shall be discharged or released from attachment unless the original warrant or order is produced and endorsed within such time as may seem reasonable.

(3) The court ordering an arrest under subsection (2) shall upon receipt of the original warrant send the person arrested to the court by

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which the original warrant was issued, unless that person shows cause to the satisfaction of the former court why he should not be so sent or unless he furnishes sufficient security for his appearance before the latter court or for satisfying any decree that may be or may have been passed against him by that court, in either of which cases the court making the arrest shall release him and shall inform the court by which the original warrant was issued accordingly.

(4) Where an application is made to a judge of the High Court that any person shall be arrested or that any property shall be attached under any provision of this Act, and where owing to distance or for other sufficient cause the warrant or order cannot be immediately executed, it shall be competent for another judge of the High Court to issue a provisional warrant or order for the arrest of the defendant or the attachment of the property upon receipt of such telegraphic or other information as may satisfy him that a warrant or order has been issued:

Provided that a person arrested or property attached under the provisional warrant or order shall be discharged or released from attachment unless the original warrant or order is produced within such time as may seem reasonable.

(5) The judge issuing a provisional warrant under subsection (4) shall send the person arrested to such places as may be specified in the original warrant, unless such person shows cause why he should not be so sent, or unless he furnishes sufficient security for his appearance at such place as aforesaid or for satisfying any decree that may be or may have been passed against him, in either of which cases the judge ordering the arrest shall release him and shall inform the judge by whom the original warrant was issued accordingly.

**86.** (1) The language of the High Court and of the Court of Appeal shall be English, and the language of subordinate courts shall be English or Swahili.

Language of courts.  
17 of 1967, s. 41,  
14 of 1977, Sch.

(2) (*Deleted by 17 of 1967, s. 41.*)

(3) Written applications to the High Court and to the Court of Appeal shall be in English and to subordinate courts in English or Swahili.

**87.** (1) Any court may in any cause or matter pending before it in which questions may arise as to the laws or customs of any tribe, caste or community, summon to its assistance one or more competent assessors, and such assessors shall attend and assist accordingly.

Assessors.

(2) In any Admiralty or Vice-Admiralty cause of salvage, towage

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or collision, the court, whether it be exercising its original or its appellate jurisdiction, may summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(3) Every such assessor shall be summoned in such manner as the court may direct, and shall receive such fees for his attendance as may be prescribed to be paid in such manner as the court may direct.

**88.** In the case of any affidavit under this Act—

Administration of  
oath on affidavit.

(a) any court, magistrate, registrar of a court, notary public or commissioner of oaths; or

(b) any officer or other person whom the High Court may appoint in this behalf,

may administer the oath to the deponent.

**89.** The procedure provided in this Act in regard to suits shall be followed as far as it may be applicable in all proceedings in any court of civil jurisdiction.

Miscellaneous  
proceedings.

**90.** All orders or notices served on or given to any person under this Act shall be in writing.

Orders and notices to  
be in writing.

**91.** (1) Where and in so far as a decree is varied or reversed, the court of first instance shall, on the application of the party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position they would have occupied but for such decree or such part thereof as has been varied or reversed; and for this purpose the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

Application for  
restitution.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under subsection (1).

**92.** Where any person has become liable as surety—

Enforcement of  
liability of surety.

(a) for the performance of any decree or any part thereof; or

(b) for the restitution of any property taken in execution of a decree; or

(c) for the payment of any money, or for the fulfillment of any condition imposed on any person, under an order of the court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall for the purposes of appeal be deemed a party within the meaning of section 34:

Provided that such notice in writing as the court in each case thinks sufficient has been given to the surety.

**93.** In all suits to which any person under disability is a party, any consent or agreement as to any proceeding shall, if given or made with the express leave of the court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

Consent or agreement by persons under disability.

**94.** Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Execution of decree of High Court before costs ascertained.

**95.** Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Enlargement of time.

**96.** Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole or part, as the case may be, of the fee; and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Power to make up deficiency of court fees.

**97.** (*Renumbered as section 3A.*)

**98.** Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may

Execution of instruments by order of court.

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nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

Amendment of judgments, decrees or orders.

**99.** Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.

General power to amend.

**100.** The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.

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**SUBSIDIARY LEGISLATION**

L.N. 151/2010.

## CIVIL PROCEDURE RULES, 2010

## RULES UNDER SECTION 81

## ARRANGEMENT OF RULES

## ORDER 1

## PARTIES TO SUITS

*Rule*

- 1—Who may be joined as plaintiffs.
  - 2—Power of court to order separate trial.
  - 3—Who may be joined as defendants.
  - 4—Court may give judgment for or against one or more of joint parties.
  - 5—Defendant need not be interested in all relief claimed.
  - 6—Joinder of parties liable on same contract.
  - 7—When plaintiff in doubt from whom redress to be sought.
  - 8—One person may sue or defend on behalf of all in same interest.
  - 9—Misjoinder and non-joinder.
  - 10—Substitution and addition of parties.
  - 11—Government proceedings.
  - 12—Conduct of suit.
  - 13—Appearance of one of several plaintiffs or defendants for others.
  - 14—Practice.
  - 15—Notice to third and subsequent parties.
  - 16—Notice to Government as third party.
  - 17—Default of appearance by third party.
  - 18—Default of appearance by Government as third party.
  - 19—Judgment against third party in default.
  - 20—No judgment against Government without leave of the court.
  - 21—Judgment after trial against third party in default.
  - 22—Appearance of third party and directions.
  - 23—Costs.
  - 24—Defendant claiming against a co-defendant.
  - 25—Procedure.
-

[Subsidiary]

## ORDER 2

### PLEADINGS GENERALLY

#### *Rule*

- 1—Pleadings generally.
- 2—Formal requirements.
- 3—Facts, not evidence, to be pleaded.
- 4—Matters which must be specifically pleaded.
- 5—Matter may be pleaded whenever arising.
- 6—Departure.
- 7—Particulars in defamation actions.
- 8—Particulars of evidence in mitigation.
- 9—Points of law.
- 10—Particulars of pleading.
- 11—Admissions and denials.
- 12—Denial by joinder of issue.
- 13—Close of pleadings.
- 14—Technical objection.
- 15—Striking out pleadings.
- 16—Pleading to be signed.
- 17—Proceedings *in rem*.

## ORDER 3

### FRAME AND INSTITUTION OF SUIT

#### *Rule*

- 1—Commencement of suit and case track allocation.
- 2—Documents to accompany suit.
- 3—Register of civil suits and filing.
- 4—Suit to include the whole of claim.
- 5—Joinder of causes of action.
- 6—Only certain claims may be joined with a suit for recovery of immovable property.
- 7—Claims by or against executor, administrator or heir.
- 8—Power of court to order separate trials.
- 9—Declaratory judgment.

## ORDER 4

### PLAINT

#### *Rule*

- 1—Particulars of plaintiff.
  - 2—Money suits.
-

[Subsidiary]

- 3—Where the subject-matter of the suit is immovable property.
- 4—Capacity of parties.
- 5—Defendant's interest and liability to be shown.
- 6—Statement of relief claimed.
- 7—Relief founded on separate grounds.
- 8—Copies of plaint.
- 9—Return of plaint.

## ORDER 5

## ISSUE AND SERVICE OF SUMMONS

*Rule*

- 1—Issue of summons.
  - 2—Duration and renewal of summons.
  - 3—Service on a corporation.
  - 4—Concurrent summons.
  - 5—Delivery or transmission of summons for service.
  - 6—Mode of service.
  - 7—Service on several defendants.
  - 8—Service to be on defendant in person or on his agent.
  - 9—Mode of service on the Government.
  - 10—Service on agent by whom defendant carries on business.
  - 11—Service on agent in charge in suits for immovable property.
  - 12—Service on agent or adult.
  - 13—Person served to sign acknowledgment.
  - 14—Procedure when defendant refuses to accept service or cannot be found.
  - 15—Affidavit of service.
  - 16—Examination of serving officer.
  - 17—Substituted service.
  - 18—Service on defendant in prison.
  - 19—Service on public officers and soldiers.
  - 20—Duty on person to whom the summons is sent.
  - 21—Service out of Kenya.
  - 22—Service of other process out of the jurisdiction.
  - 23—Service under contract.
  - 24—Probate and marriage suits.
  - 25—Application to be supported by evidence.
  - 26—Order to fix time for entering appearance.
  - 27—Service where defendant resides out of Kenya.
  - 28—Notice in lieu of summons.
  - 29—Service of notice of summons in a foreign country.
  - 30—Extension of procedure to any order or notice.
  - 31—Application to Government.
-

[Subsidiary]

SERVICE OF FOREIGN LEGAL PROCESS IN KENYA

- 32—Procedure
- 33—General powers of the court.
- 34—Request for service from foreign country.

ORDER 6

APPEARANCE OF PARTIES

*Rule*

- 1—Time for appearance.
- 2—Mode of appearance.
- 3—Defendant's address for service.
- 4—Memorandum irregular, address fictitious.
- 5—Defendants appearing by same advocate.
- 6—Delivery of documents to address for service.

ORDER 7

DEFENCE AND COUNTERCLAIM

*Rule*

- 1—Defence.
  - 2—Defence of tender.
  - 3—Set-off and counterclaim.
  - 4—Set-off or counterclaim in proceedings by Government.
  - 5—Documents to accompany defence or counterclaim.
  - 6—Persons in representative capacity.
  - 7—Pleading a counterclaim.
  - 8—Title of counterclaim.
  - 9—Claim against person not party.
  - 10—Appearance by added parties.
  - 11—Reply to counterclaim.
  - 12—Exclusion of counterclaim.
  - 13—Discontinuance, stay or dismissal of suit.
  - 14—Judgment for balance.
  - 15—Defence or set-off founded on separate grounds.
  - 16—New ground of defence.
  - 17—Subsequent pleadings.
  - 18—Filing subsequent pleadings.
  - 19—Register of documents.
  - 20—Service of documents.
-

## ORDER 8

## AMENDMENT OF PLEADINGS

*Rule*

- 1—Amendment of pleading without leave.
- 2—Application for disallowance of amendment.
- 3—Amendment of pleading with leave.
- 4—Amendment of originating process.
- 5—General power to amend.
- 6—Failure to amend after order.
- 7—Mode of amendment.
- 8—Procedure.

## ORDER 9

## RECOGNIZED AGENTS AND ADVOCATES

*Rule*

- 1—Applications, appearance or acts in person, by recognized agent or by advocate.
- 2—Recognized agents.
- 3—Service of process on recognized agent.
- 4—Agent to accept service.
- 5—Change of advocate.
- 6—Service of notice of change of advocate.
- 7—Notice of appointment of advocate.
- 8—Notice of intention to act in person.
- 9—Change to be effected by order of court or consent of parties.
- 10—Procedure.
- 11—Power to act in person or through new advocate.
- 12—Removal of advocate from record at instance of another party.
- 13—Withdrawal of advocate who has ceased to act for a party.

## ORDER 10

CONSEQUENCE OF NON-APPEARANCE, DEFAULT OF DEFENCE AND  
FAILURE TO SERVE*Rule*

- 1—Suits against infants and persons of unsound mind.
  - 2—Affidavit of service upon non-appearance.
  - 3—Failure to serve.
  - 4—Judgment upon a liquidated demand.
-

[Subsidiary]

- 5—Liquidated demand against several defendants.
- 6—Interlocutory judgment.
- 7—Interlocutory judgment where several defendants.
- 8—Judgment in default against the Government.
- 9—General rule where no appearance entered.
- 10—Default of defence.
- 11—Setting aside judgment.

## ORDER 11

### PRE-TRIAL DIRECTIONS AND CONFERENCES

#### *Rule*

- 1—Application.
- 2—Pre-trial questionnaire.
- 3—Case conference.
- 4—Case conference order.
- 5—Settlement conference order.
- 6—Trial conference questionnaire.
- 7—Trial conference.
- 8—Trial conference order.
- 9—Case managers.

## ORDER 12

### HEARING AND CONSEQUENCE OF NON-ATTENDANCE

#### *Rule*

- 1—When neither party attends.
- 2—When only plaintiff attends.
- 3—When only defendant attends.
- 4—When some only of plaintiffs attend.
- 5—When some only of defendants attend.
- 6—Effect of dismissal.
- 7—Setting aside judgment or dismissal.

## ORDER 13

### ADMISSIONS

#### *Rule*

- 1—Notice of admission of case.
  - 2—Judgment on admissions.
-

## ORDER 14

## PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

*Rule*

- 1—Endorsements on documents admitted in evidence.
- 2—Endorsements on copies of admitted entries in books, accounts, and records.
- 3—Record of admitted and return of rejected documents.
- 4—Court may order any document to be impounded.
- 5—Return of admitted documents.
- 6—Court may send for records of its own or of other court.
- 7—Provisions as to documents applied to material objects.

## ORDER 15

## ISSUES

*Rule*

- 1—Framing of issues.
- 2—Materials from which issues may be framed.

## ORDER 16

## SUMMONING AND ATTENDANCE OF WITNESSES

*Rule*

- 1—Summons to attend to give evidence or produce documents.
  - 2—Expenses of witnesses to be paid into court on applying for summons.
  - 3—Tender of expenses or notification of sum lodged.
  - 4—Procedure where insufficient sum paid in. Expenses of witnesses detained more than one day.
  - 5—Time, place, and purpose of attendance to be specified in summons.
  - 6—Summons to produce documents.
  - 7—Power to require persons present in court to give evidence or produce document.
  - 8—Summons, how served.
  - 9—Time for serving summons.
  - 10—Procedure where witness fails to comply with summons.
  - 11—If witness appears, attachment may be withdrawn.
-

[Subsidiary]

- 12—Procedure if witness fails to appear.
- 13—Mode of attachment.
- 14—Duty of persons summoned to give evidence or produce document.
- 15—When summoned persons may depart.
- 16—Application of rules 10 to 13.
- 17—Procedure where witness apprehended cannot give evidence or produce document.
- 18—Consequence of refusal of a party to give evidence when called on by the court.
- 19—Rules as to witnesses to apply to parties summoned.

## ORDER 17

### PROSECUTION OF SUITS

#### *Rule*

- 1—Hearing to be from day to day.
- 2—Notice to show cause why suit should not be dismissed.
- 3—Procedure if parties fail to appear on day fixed.
- 4—Court may proceed notwithstanding either party fails to produce evidence.

## ORDER 18

### HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

#### *Rule*

- 1—Right to begin.
  - 2—Statement and production of evidence.
  - 3—Witnesses to be examined in open court.
  - 4—How evidence to be recorded.
  - 5—Any particular question and answer may be taken down.
  - 6—Questions objected to and allowed by court.
  - 7—Remarks on demeanour of witness.
  - 8—Power to deal with evidence taken before another judge.
  - 9—Power to examine witness immediately.
  - 10—Court may recall and examine witness.
  - 11—Power of court to inspect.
-

## ORDER 19

## AFFIDAVITS

*Rule*

- 1—Power to order any point to be proved by affidavit.
- 2—Power to order attendance of deponent for cross-examination.
- 3—Matters to which affidavits shall be confined.
- 4—Deponent's particulars.
- 5—Manner of drawing affidavit.
- 6—Striking out matter.
- 7—Irregularity in form of affidavit.
- 8—Affidavit sworn before suit filed.
- 9—Procedure.

## ORDER 20

## APPLICATION FOR AN ACCOUNT

*Rule*

- 1—Order for accounts.
- 2—Order for accounts on counterclaim.
- 3—Procedure.
- 4—Orders by court.

## ORDER 21

## JUDGMENT AND DECREE

*Rule*

- 1—Judgment when pronounced.
  - 2—Power to pronounce judgment written by another judge.
  - 3—Judgment to be signed.
  - 4—Contents of judgment.
  - 5—Court to state its decision on each issue.
  - 6—Judgment affecting registered title to land.
  - 7—Contents of decree.
  - 8—Preparation and dating of decrees and orders.
  - 9—Costs.
  - 10—Decree for recovery of immovable property.
  - 11—Decree for delivery of movable property.
  - 12—Decree may direct payment by installments.
  - 13—Decree for possession and mesne profits.
  - 14—Decree in administration suit.
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[Subsidiary]

- 15 — Decree in suit for dissolution of partnership.
- 16—Decree in suit for account between principal and agent.
- 17—Special directions as to accounts.
- 18—Decree in suit for partition of property or separate possession of a share.
- 19—Decree where set-off is allowed.
- 20—Certified copies of judgment and decree to be furnished.

## ORDER 22

### EXECUTION OF DECREES AND ORDERS

#### *Rule*

- 1—Modes of paying money under decree.
  - 2—Payment out of court to decree-holder.
  - 3—Lands situate in more than one jurisdiction.
  - 4—Procedure where court desires that its own decree shall be executed by another court.
  - 5—Court receiving copies of decree to file same without proof.
  - 6 —Application for execution.
  - 7—Oral and written applications.
  - 8 —Application for attachment of movable property not in judgment debtor's possession.
  - 9—Application for attachment of immovable property to contain certain particulars.
  - 10—Power to require certified extract from Land Registries in certain cases.
  - 11—Application for execution by joint decree-holder.
  - 12—Application for execution by transferee of decree.
  - 13—Procedure on receiving an application for execution of decree.
  - 14—Execution in case of cross-decrees.
  - 15—Execution in case of cross-claims under same decree.
  - 16—Cross-decrees and cross-claims in mortgage suits.
  - 17—Simultaneous execution.
  - 18 —Notice to show cause against execution in certain cases.
  - 19—Procedure after issue of notice.
  - 20—Process for execution.
  - 21—Endorsement on process.
  - 22—When court may stay execution.
  - 23—Liability of judgment-debtor discharged.
  - 24—Order of court which passed decree or of appellate court to be binding upon court applied to.
  - 25—Stay of execution pending suit between decree-holder and judgment-debtor.
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[Subsidiary]

- 26—Decree for payment of money.
  - 27—Decree for specific movable property.
  - 28—Decree for specific performance, or for an injunction.
  - 29—Decree for immovable property.
  - 30—Decree for delivery of immovable property when in occupancy of tenant.
  - 31—Discretionary power to permit judgment-debtor to show cause against detention in prison.
  - 32—Warrant for arrest to direct judgment-debtor to be brought up.
  - 33—Subsistence allowance.
  - 34—Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.
  - 35—Examination of judgment-debtor as to his property.
  - 36—Attachment in case of decree for rent, or mesne profits, or other matter.
  - 37—Attachment of movable property other than agricultural produce, in possession of judgment-debtor.
  - 38—Attachment of agricultural produce.
  - 39—Provisions as to agricultural produce under attachment.
  - 40—Attachment of share and other property not in possession of judgment-debtor.
  - 41—Attachment of share in movables.
  - 42—Attachment of salary or allowance.
  - 43—Attachment of partnership property.
  - 44—Execution of decree against firm.
  - 45—Attachment of negotiable instrument.
  - 46—Attachment of property in custody of court.
  - 47—Attachment of decree.
  - 48—Attachment of immovable property.
  - 49—Removal of attachment after satisfaction of decree.
  - 50—Determination of attachment.
  - 51—Objection to attachment.
  - 52—Stay of execution.
  - 53—Raising of attachment.
  - 54—Notice of intention to proceed.
  - 55—Power to order property attached to be sold and proceeds to be paid to person entitled.
  - 56—Sale, by whom conducted and how made.
  - 57—Notification of sale by public auction.
  - 58—Time of sale.
  - 59—Adjournment or stoppage of sale.
  - 60—Defaulting purchaser answerable for loss on re-sale.
  - 61—Decree-holder not to bid for or buy property without permission.
  - 62—Restriction on bidding or purchase by officers.
  - 63—Negotiable instruments and shares in corporations.
-

[Subsidiary]

- 64 — Sale by public auction.
- 65 — Irregularity not to vitiate sale, but any person injured may sue.
- 66 — Delivery of movable property, debts and shares.
- 67 — Vesting order in case of other property.
- 68 — Sale of immovable property.
- 69 — Deposit by purchaser and re-sale on default.
- 70 — Payment of purchase-money.
- 71 — Procedure in default of payment.
- 72 — Notification on re-sale.
- 73 — Bid of co-sharer to have preference.
- 74 — Application to set aside sale on deposit.
- 75 — Application to set aside sale on ground of irregularity or fraud.
- 76 — Application by purchaser to set aside sale on ground of judgment- debtor having no saleable interest.
- 77 — Sale, when to become absolute or be set aside.
- 78 — Return of purchase-money in certain cases.
- 79 — Certificate to purchaser.
- 80 — Delivery of property in occupancy of judgment-debtor.
- 81 — Delivery of property in occupancy of tenant.
- 82 — Resistance or obstruction to possession of immovable property.
- 83 — Resistance or obstruction by judgment-debtor.
- 84 — Resistance or obstruction by bona fide claimant.
- 85 — Rules not applicable to transfer *pendente lite*.
- 86 — Order conclusive subject to regular suit.

## ORDER 23

### ATTACHMENT OF DEBTS

#### *Rule*

- 1 — Order for the attachment of debts.
  - 2 — Attachment of deposits.
  - 3 — Effect of garnishee order.
  - 4 — Execution against garnishee.
  - 5 — Trial of liability of garnishee.
  - 6 — Claim of third person.
  - 7 — Trial of claim of third person.
  - 8 — Payment by or execution on the garnishee is a valid discharge.
  - 9 — Record of proceedings.
  - 10 — Costs of proceedings.
-

## ORDER 24

## DEATH AND BANKRUPTCY OF PARTIES

*Rule*

- 1—No abatement by party's death if right survives.
- 2—Procedure where one of several plaintiffs or defendants dies and right to sue survives.
- 3—Procedure in case of death of one of several plaintiffs or of sole plaintiff.
- 4—Procedure in case of death of one of several defendants or of sole defendant.
- 5—Determination of question as to legal representative.
- 6—When plaintiff's bankruptcy bars suit.
- 7—Effect of abatement or dismissal.
- 8—Procedure in case of assignment before final order in suit.
- 9—Application of Order to appeals.
- 10—Application of Order to execution proceedings.

## ORDER 25

## WITHDRAWAL, DISCONTINUANCE AND ADJUSTMENT OF SUITS

*Rule*

- 1—Withdrawal by plaintiff.
- 2—Discontinuance.
- 3—Costs.
- 4—Stay of subsequent suit.
- 5—Compromise of a suit.

## ORDER 26

## SECURITY FOR COSTS

*Rule*

- 1—Security for costs.
  - 2—Application before defence.
  - 3—Where two or more defendants.
  - 4—Claims by non-resident plaintiff.
  - 5—Effect of failure to give security.
  - 6—Investment of security.
-

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[Subsidiary]

## ORDER 27

## PAYMENT INTO COURT AND TENDER

*Rule*

- 1—Payment into court.
- 2—Acceptance of payment.
- 3—Money remaining in court.
- 4—Payment into court where several defendants.
- 5—Payment into court on a counterclaim.
- 6—Confidentiality of payments into court.
- 7—Register of payments to be kept.
- 8—Investment of payment.
- 9—Money paid in under order.
- 10—Moneys recovered by infants or persons of unsound mind.

## ORDER 28

## COMMISSION AND REFERENCES

*Rule*

- 1—Cases in which court may issue commission to examine witnesses.
  - 2—Where witness resides within court's jurisdiction.
  - 3—Persons for whose examination commission may issue.
  - 4—Request to examine witness abroad.
  - 5—Court to examine witness pursuant to commission.
  - 6—Return of commission with deposition of witness.
  - 7—Commission to make investigations.
  - 8—Procedure of commissioner.
  - 9—Examination of accounts by referee.
  - 10—Instructions to referee.
  - 11—Partition of immovable property.
  - 12—Procedure upon partition.
  - 13—Expenses of commission to be paid into court.
  - 14—Powers of commissioner.
  - 15—Attendance and examination of witnesses before commissioner.
  - 16—Parties to appear before commissioner.
  - 17—Commissions issued by foreign courts.
  - 18—Evidence in proceedings by or against the Government.
-

## ORDER 29

## PROCEEDINGS BY OR AGAINST THE GOVERNMENT

*Rule*

- 1—Interpretation.
- 2—Rules to apply to proceedings by or against the Government.
- 3—Application for a certificate under s. 21 of the Government Proceedings Act.
- 4—Attachment of debts or appointment of a receiver.

## ORDER 30

SUITS BY OR AGAINST FIRMS AND OTHER PERSONS CARRYING OUT  
BUSINESS IN NAMES OTHER THAN  
THEIR OWN*Rule*

- 1—Suing of partners in name of firm.
- 2—Disclosure of partners' names.
- 3—Service.
- 4—Notice in what capacity served.
- 5—Appearance of partners.
- 6—No appearance except by partners.
- 7—Appearance in action against firms.
- 8—Suits between firm and partners.
- 9—Suit against person carrying on business in name other than his own.

## ORDER 31

## SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

*Rule*

- 1—Representation of beneficiaries in suits concerning property vested in trustees.
- 2—Joinder of trustees, executors and administrators.

## ORDER 32

## SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

*Rule*

- 1—Minor to sue by next friend.
-

[Subsidiary]

- 2—Where suit is instituted without next friend.
- 3—Guardian *ad litem*.
- 4—Who may act as next friend or be appointed guardian for the suit.
- 5—Representation of minor by next friend or guardian for the suit.
- 6—Receipt of property or money on behalf of minor.
- 7—Agreement or compromise of suit on behalf of minor.
- 8—Retirement of next friend.
- 9—Removal of next friend.
- 10—Stay of proceedings.
- 11—Retirement, removal, or death of guardian *ad litem*.
- 12—Procedure where minor attains majority.
- 13—Where minor co-plaintiff attaining majority desires to repudiate suit.
- 14—Unreasonable or improper suit.
- 15—Application of rules to persons of unsound mind.

### ORDER 33

#### SUITS BY PAUPERS

##### *Rule*

- 1—Suits may be instituted by a pauper.
  - 2—Contents of application.
  - 3—Presentation of application.
  - 4—Examination of applicant.
  - 5—Rejection of application.
  - 6—Notice of day for receiving evidence of applicant's pauperism.
  - 7—Procedure at hearing.
  - 8—Procedure if application admitted.
  - 9—Dispaupering.
  - 10—Costs where pauper succeeds.
  - 11—Procedure where pauper fails.
  - 12—Government may apply for payment of court fees.
  - 13—Government to be deemed a party.
  - 14—Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.
  - 15—Costs.
  - 16—Court fees.
  - 17—Recovery of court fees from pauper.
  - 18—Procedure.
-

## ORDER 34

## INTERPLEADER

*Rule*

- 1—Practice under this Order.
- 2—Averments to be proved by applicant.
- 3—Stay of suit.
- 4—Order upon summons.
- 5—Summary procedure.
- 6—Costs and other orders.
- 7—Order upon a claimant's failure to appear.
- 8—Questions of law.
- 9—Adverse title of claimants.

## ORDER 35

## PROCEEDINGS BY AGREEMENT OF PARTIES

*Rule*

- 1—Power to state case for court's opinion.
- 2—Where value of subject-matter must be stated.
- 3—Agreement to be filed and registered as suit.
- 4—Parties to be subject to court's jurisdiction.
- 5—Hearing and disposal of case.

## ORDER 36

## SUMMARY PROCEDURE

*Rule*

- 1—Summary judgment.
  - 2—Defendant may show cause.
  - 3—Application by Government.
  - 4—Time for defence.
  - 5—Judgment for part of claim.
  - 6—Procedure where more than one defendant.
  - 7—Leave to defend.
  - 8—Costs.
  - 9—Forms.
  - 10—Setting aside of judgment.
-

[Subsidiary]

## ORDER 37

### ORIGINATING SUMMONS

#### *Rule*

- 1—Who may take out originating summons and in respect of what matters.
- 2—Order for administration of estate or trust.
- 3—Summons by vendor or purchaser of land.
- 4—Summons by a mortgagee, mortgagor and others.
- 5—Caveats.
- 6—Extension of limitation period.
- 7—Adverse possession.
- 8—Application under the Registered Land Act.
- 9—Application under Chattels Transfer Act.
- 10—Summons by a member of a partnership.
- 11—Summons by persons interested in deeds or wills.
- 12—Variation of trusts.
- 13—Discretion upon summons for construction of document.
- 14—Forms.
- 15—Summons to be filed and registered.
- 16—Directions.
- 17—Procedure.
- 18—Evidence and directions upon hearing of summons.
- 19—Powers of court upon hearing of summons.
- 20—Court may make orders as to costs incurred by any party.

## ORDER 38

### SELECTION OF TEST SUIT

#### *Rule*

- 1—Staying several suits against the same defendant.
- 2—Staying similar suits upon application by defendant.

## ORDER 39

### ARREST AND ATTACHMENT BEFORE JUDGMENT

#### *Rule*

- 1—Where defendant may be called upon to furnish security for appearance.
  - 2—Security.
  - 3—Procedure on application by surety to be discharged.
  - 4—Procedure where defendant fails to furnish security or find
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[Subsidiary]

- fresh security.
- 5—Where defendant may be called upon to furnish security for production of property.
  - 6—Attachment where cause not shown or security not furnished.
  - 7—Mode of making attachment.
  - 8—Investigation or claim to property attached before judgment.
  - 9—Removal of attachment when security furnished or suit dismissed.
  - 10—Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.
  - 11—Property attached before judgment not to be re-attached in execution of decree.

## ORDER 40

## TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

*Rule*

- 1—Cases in which temporary injunction may be granted.
- 2—Injunction to restrain breach of contract or other injury.
- 3—Consequence of breach.
- 4—Notice of application.
- 5—Ruling of the court.
- 6—Lapse of injunction.
- 7—Order for injunction may be discharged, varied, or set aside.
- 8—Injunction against a corporation binding on its officers.
- 9—Power to order interim sale.
- 10—Detention, preservation and inspection of property.
- 11—Deposit of money and other deliverables.

## ORDER 41

## APPOINTMENT OF RECEIVERS

*Rule*

- 1—Appointment of receivers.
  - 2—Remuneration.
  - 3—Duties.
  - 4—Enforcement of receiver's duties.
  - 5—Removal.
-

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[Subsidiary]

## ORDER 42

## APPEALS

*Rule*

- 1—Form of appeal.
  - 2—Filing of decree or order.
  - 3—Amendment of memorandum of appeal.
  - 4—Grounds which may be taken in appeal.
  - 5—One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.
  - 6—Stay in case of appeal.
  - 7—Security in case of order for execution of decree appealed from.
  - 8—No security to be required from the Government.
  - 9—Exercise of powers in appeal from order made in execution of decree.
  - 10—Register and filing of appeals.
  - 11—Directions under section 79B.
  - 12—Service of memorandum.
  - 13—Directions before hearing.
  - 14—Security for costs.
  - 15—Notice to be given where decree appealed from.
  - 16—Filing declaration and written submissions.
  - 17—Service of hearing notice.
  - 18—Contents of notice.
  - 19—Right to begin.
  - 20—Dismissal of appeal for appellant's default.
  - 21—Re-admission of appeal dismissed for default.
  - 22—Power to adjourn hearing and direct persons appearing interested to be made respondents.
  - 23—Re-hearing on application of respondent against whom ex parte decree made.
  - 24—Remand of cases.
  - 25—Where evidence on record sufficient appellate court may determine case finally.
  - 26—Power to order new trial.
  - 27—Production of additional evidence in appellate court.
  - 28—Mode of taking additional evidence.
  - 29—limits to be defined and recorded.
  - 30—Where court consists of more than one judge.
  - 31—What judgment may direct.
  - 32—Power of appellate court on appeal.
  - 33—Preparation and contents of decree.
  - 34—Certified copy of decree to be sent to court whose decree
-

appealed from.  
35—Dismissal for want of prosecution.

## ORDER 43

## APPEALS FROM ORDERS

*Rule*

- 1—Appeals from Orders.
- 2—Procedure.
- 3—Saving.

## ORDER 44

## PAUPER APPEALS

*Rule*

- 1—Who may appeal as a pauper.
- 2—Inquiry into pauperism.

## ORDER 45

## REVIEW

*Rule*

- 1—Application for review of decree or order.
- 2—To whom applications for review may be made.
- 3—Application where rejected, where granted.
- 4—Application where more than one judge hears.
- 5—Re-hearing upon application granted.
- 6—Bar of subsequent applications.

## ORDER 46

ARBITRATION UNDER ORDER OF A COURT AND OTHER ALTERNATIVE  
DISPUTE RESOLUTION*Rule*

- 1—Parties to a suit may apply for arbitration.
  - 2—Appointment of arbitrator.
  - 3—Form of order.
  - 4—Provisions where two or more arbitrators.
-

[Subsidiary]

- 5—Power to appoint arbitrator.
- 6—Power of arbitrator or umpire appointed by court.
- 7—Summoning witnesses and default.
- 8—Extension of time for making award.
- 9—Where umpire may arbitrate in lieu of arbitrators.
- 10—Award to be signed, dated and filed.
- 11—Time for reading award may be fixed.
- 12—Statement of special case by arbitrators or umpire.
- 13—Costs of arbitration.
- 14—Power to modify or correct award.
- 15—Power to remit for reconsideration.
- 16—Grounds for setting aside award.
- 17—Time for application.
- 18—Judgment on award.
- 19—Forms.
- 20—Alternative dispute resolution

#### ORDER 47

##### DISTRICT REGISTRIES

###### *Rule*

- 1—Institution of suits in High Court.
- 2—Schedule of District Registries and areas.
- 3—Title of suits filed in a District Registry.
- 4—Suits filed in a registry remain there when all defendants reside within that area.
- 5—Proceedings against the Government.
- 6—Place of trial.
- 7—All preliminary steps taken before the District Registrar.
- 8—Appeal from decision of District Registrar.
- 9—Taxation in District Registries.
- 10—Appeals from subordinate courts.

#### ORDER 48

##### MISCELLANEOUS

###### *Rule*

- 1—Process to be served at expense of party issuing.
  - 2—Service of orders, notices and documents.
  - 3—Use of forms.
  - 4—Special rules of procedure not contained in these Rules.
-

## ORDER 49

## SPECIAL POWERS OF REGISTRARS

*Rule*

- 1—Registrar to be ministerial officer.
- 2—when Judgment may be entered by Registrar.
- 3—Consent orders.
- 4—No judgment against Government in default of pleading without leave of court.
- 5—Execution may be ordered by Registrar.
- 6—Registrar a Civil Court.
- 7—Hearing of applications.

## ORDER 50

## TIME

*Rule*

- 1—Month means calendar month.
- 2—Exclusion of Sundays and public holidays.
- 3—Time expiring on Sunday or day offices closed.
- 4—When time does not run.
- 5—Time for giving security for costs, when not to be reckoned.
- 6—Power to enlarge time.
- 7—Enlargement of time by consent.
- 8—Computation of days.
- 9—Time of day of service.

## ORDER 51

## APPLICATIONS

*Rule*

- 1—Procedure.
  - 2—Applications under Section 25 (2) of the Government Proceedings Act.
  - 3—Notice to parties.
  - 4—Contents of notice.
  - 5—Dismissal or adjournments for want of notice.
  - 6—Adjournment of hearing.
  - 7—Service of notice on defendant served with summons to enter appearance but not appearing.
-

[Subsidiary]

- 8—Transfer from court to chambers.
- 9—Transfer from chambers to court.
- 10—Provision under which application is made to be stated.
- 11—Costs and other relief.
- 12—When application are deemed to be made.
- 13—Signature on applications and service.
- 14—Grounds of opposition to application in High Court.
- 15—Setting aside an ex parte order.
- 16—Court may limit time for submissions.

## ORDER 52

### THE ADVOCATES ACT

#### *Rule*

- 1—Interpretation.
- 2—Appeals to the Chief Justice.
- 3—Applications with respect to remuneration.
- 4—Power to order advocate to deliver accounts and documents.
- 5—Application for taxation by third parties.
- 6—Application for charging order.
- 7—Application for order for enforcement of an undertaking.
- 8—Title and service of appeal.
- 9—Discontinuance of appeal.
- 10—Procedure.

## ORDER 53

### APPLICATIONS FOR JUDICIAL REVIEW

#### *Rule*

- 1—Applications for mandamus, prohibition and certiorari to be made only with leave.
  - 2—Time for applying for certiorari in certain cases.
  - 3—Application to be by notice of motion.
  - 4—Statements and affidavits.
  - 5—Applicant to have right to begin.
  - 6—Right to be heard in opposition.
  - 7—Provisions as to orders of certiorari for the purpose of quashing proceedings.
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[Subsidiary]

ORDER 54

REVOCATION AND TRANSITIONAL PROVISIONS

*Rule*

1—Revocation.

2—Transitional provisions.

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[Subsidiary]

## ORDER 1

## PARTIES TO SUITS

[Order 1, rule 1.]  
Who may be joined  
as plaintiffs.

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.

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

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.

[Order 1, rule 3.]  
Who may be joined  
as defendants.

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.

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

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.

[Order 1, rule 5.]  
Defendant need not  
be interested in all  
relief claimed.

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

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

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.

[Order 1, rule 7.]  
When plaintiff in  
doubt from whom  
redress to be sought.

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.

[Subsidiary]

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 against any one or more of them as representing all or as representing all except one or more of them. [Order 1, rule 8.] One person may sue or defend on behalf of all in same interest.

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

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. [Order 1, rule 10.] Substitution and addition of parties.

(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.

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**[Subsidiary]**

[Order 1, rule 11]  
Government  
proceedings.

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).

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

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

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

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.

[Order 1, rule 14.]  
Practice.

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.

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

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.

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[Subsidiary]

(3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court, be filed within fourteen days of service, 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.

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.

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

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:

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

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. In the case of third-party proceedings against the Government,

[Order 1, rule 18.]

**[Subsidiary]**

Default of appearance  
by Government as  
third party.

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.

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

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.

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

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.

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

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.

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

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

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

24. (1) Where a defendant desires to claim against another person who is already a party to the suit— [Order 1, rule 24.]  
Defendant claiming  
against a co-  
defendant.

(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. Applications under rules 10 and 19 may be made orally in Court or by summons in chamber. [Order 1, rule 25.]  
Procedure.

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## ORDER 2

## PLEADINGS GENERALLY

[Order 2, rule 1.]  
Pleadings generally.

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.

[Order 2, rule 2.]  
Formal requirements.

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.

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

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.

(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

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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. (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—

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

- (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. 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.

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

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.

[Order 2, rule 6.]  
Departure.

(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. (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.

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

(2) Where in an action for libel or slander the defendant alleges

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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.

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

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.

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

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

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

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.(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.

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

(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.

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

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.

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

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.

[Order 2, rule 14.]  
Technical objection.

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

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

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

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

17. An application under section 25 (2) of the Government Proceedings Act may be made at any time before trial or during the trial. [Order 2, rule 17]  
Proceedings *in rem*.  
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### ORDER 3

#### FRAME AND INSTITUTION OF SUIT

1. (1) Every suit shall be instituted by presenting a plaint to the Court, or in such other manner as may be prescribed. [Order 3, rule 1]  
Commencement of  
suit and case track  
allocation.

(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, involving not more than two parties and whose monetary value does not exceed Kshs. 49,999/-;

(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;

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- (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;

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

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 rule 1 (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.

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

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.

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

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

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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. (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.

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

(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. No cause of action shall, except with the leave of the court, be joined with a suit for the recovery of immovable property, except—

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

(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 rules.

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.

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

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

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.

[Order 3, rule 9.]  
Declaratory  
judgment.

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

[Order 4, rule 1.]  
Particulars of plaintiff.

1. (1) The plaintiff 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 plaintiff.

(2) The plaintiff 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

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

[Order 4, rule 2.]  
Money suit.

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

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

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

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

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

5. The plaintiff 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.

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

6. Every plaintiff 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.

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

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.

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

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

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

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[Order 4, rule 9.]

Return of plaint.

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.

## ORDER 5

### ISSUE AND SERVICE OF SUMMONS

[Order 5, rule 1.]

Issue of summons.

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 subrule (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 or notification, whichever is later, failing which the suit shall abate.

[Order 5, rule 2.]

Duration and renewal of summons.

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.

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

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

- (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 postal 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.

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

[Order 5, rule 4.]  
Concurrent

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summons.

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.

**[Order 5, rule 5.]**

Delivery or  
transmission of  
summons for service.

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 or to an officer appointed under the Administration Police Act; or

(e) to a licensed courier service provider approved by the court.

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(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.

**[Order 5, rule 6.]**

Mode of service.

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.

**[Order 5, rule 7.]**

Service on several  
defendants.

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

**[Order 5, rule 8.]**

Service to be on  
defendant in person  
or on his agent.

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.

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9. (1) The provisions of this Order shall have effect subject to section 13 of the Government Proceedings Act, 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.

[Order 5, rule 9.)  
Mode of service on  
the Government.  
Cap. 40.

(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
- (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. (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.

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

(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. 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.

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

12. Where in any suit, after a reasonable number of attempts have been made to serve the defendant, and defendant cannot be found,

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

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adult. 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.

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

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.

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

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.

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

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.

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

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.

[Order 5, rule 17.]  
Substituted service.

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

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

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

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

(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 of a summons or notice of a summons may be allowed by the court whenever— [Order 5, rule 21.]  
Service out of Kenya.

(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 other-wise 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
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suit properly brought against some other person duly served in Kenya.

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

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

- (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 neither a Commonwealth citizen nor residing within the Commonwealth, 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, 29 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.

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

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

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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.

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

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.

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

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 a Commonwealth citizen or a British protected person or not, and the grounds on which the application is made; and no such leave shall be granted unless it is made sufficiently to appear to the court that the case is a proper one for service out of Kenya under this Order.

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

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.

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

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.

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

28. (1) Where the defendant is neither a Commonwealth citizen as aforesaid nor resides in any of the countries referred to in rule 27, notice of the summons and not the summons itself shall be served upon him.

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

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

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—

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- (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 proœcipe 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 proœcipe 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.
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[Order 5, rule 30.]  
Extension of  
procedure to any  
order or notice.

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.

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

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**

[Order 5, rule 32.]  
Procedure.

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 or 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;
- (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;

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and such certificate shall be in Form No. 11 of Appendix A.

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

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

(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. 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. [Order 6, rule 1]  
Time for appearance.

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

(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

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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.

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

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.

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

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.

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

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.

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

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. 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. [Order 7, rule1.]  
Defence.
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. [Order 7, rule2.]  
Defence of tender.
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. [Order 7, rule 3.]  
Set-off and counterclaim.
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. [Order 7, rule 4.]  
Set-off or counterclaim in proceedings by Government.
5. The defence and counterclaim filed under rule 1 and 2 shall be accompanied by— [Order 7, rule 5.]  
Documents to accompany defence or counter-claim.
- (a) an affidavit under Order 4 rule 1(2) where there is a counterclaim;
- (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.
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## [Subsidiary]

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

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. 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.

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

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.

[Order 7, rule 14.]  
Judgment for  
balance.

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.

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

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.

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

(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. (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.

[Order 7, rule 17.]  
Subsequent  
pleadings.

(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

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subject to the rules applicable to defence.

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

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.

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

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

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

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

## ORDER 8

### AMENDMENT OF PLEADINGS

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

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 plaint 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 plaint 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 subrules (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. (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.

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

## [Subsidiary]

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

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

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.

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

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.

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

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.

[Subsidiary]

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.

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

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.

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

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

[Order 8, rule 8.]  
Procedure.

## ORDER 9

### RECOGNIZED AGENTS AND ADVOCATES

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:

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

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 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. The recognized agents of parties by whom such appearances, [Order 9 rule 2.]

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**[Subsidiary]**

Recognized agents. 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 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.

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

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.

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

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.

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

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.

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

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).

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[Subsidiary]

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. [Order 9, rule 7.]  
Notice of appointment of advocate.
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. [Order 9, rule 8.]  
Notice of intention to act in person.
- (2) The address for service given under subrule (1) shall comply with Order 6, rule 3.
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— [Order 9, rule 9.]  
Change to be effected by order of court or consent of parties.
- (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. 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. [Order 9, rule 10.]  
Procedure.
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. [Order 9, rule 11.]  
Power to act in person or through new advocate.
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 [Order 9, rule 12.]  
Removal of advocate from record at instance of another party.
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[Subsidiary]

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.

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

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 —

- (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

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[Subsidiary]

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. (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.

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

(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. 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.

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

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.

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

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.

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

(2) Where the plaintiff makes a liquidated demand together with

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**[Subsidiary]**

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.

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

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.

[Order 10, rule 6.]  
Interlocutory  
judgment.

6. Where the plaintiff's claim 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.

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

7. Where the plaintiff's claim 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.

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

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.

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

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.

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

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

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

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.

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## ORDER 11

## PRE-TRIAL DIRECTIONS AND CONFERENCES

1. This Order shall apply to all suits except small claims or such other suits as the court may by order exempt from this requirement. [Order 11, rule 1.]  
Application.

2. After the close of the pleadings parties shall within ten days complete, file and serve the pre-trial questionnaire as provided in Appendix B. [Order 11, rule 2.]  
Pretrial  
questionnaire.

3. (1) With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall— [Order 11, rule 3.]  
Case Conference.

(a) consider compliance with Order 3 rule 2 and Order 7 rule 5;

(b) identify contested and uncontested issues;

(c) explore methods to resolve the contested issues;

(d) where possible secure parties' agreement on a specific schedule of events in the proceedings;

(e) narrow or resolve outstanding issues;

(f) create a timetable for the proceedings;

(g) change the track of a case;

(h) consider consolidation of suits;

(i) identify a test suit and order stay of other suits.

(2) In addition to any other general power the court may at the case conference—

(a) deal with any interlocutory applications or create a suitable timetable for their expeditious disposal;

(b) order the filing and service of any necessary particulars within a specific period;

(c) order admission of statements without calling of the makers

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[Subsidiary]

as witnesses where appropriate and the production of any copy of a statement where the original is unavailable;

- (d) order the giving of evidence on the basis of affidavit evidence or give orders for discovery or production or inspection or interrogatories which may be appropriate to the case;
- (e) order for the examination of any witness by an examiner or by the issue of Commission outside court and for the admission of any such examination as evidence in court;
- (f) make any procedural order;
- (g) by consent of the parties, or where appropriate on its own motion make an order for interlocutory relief;
- (h) make a referral order for alternative dispute resolution;
- (i) convene a hearing;
- (j) give any suitable directions to facilitate expeditious disposal of the suit or any outstanding issues;
- (k) encourage the parties to co-operate with each other in the conduct of the proceedings;
- (l) help the parties to settle the whole or part of the case; (m) consider whether the likely benefits of taking a particular step justifies the cost of taking it;
- (n) deal with as many aspects of the case as it can on the same occasion;
- (o) make any such orders as may be appropriate including —
  - (i) striking out the action or defence;
  - (ii) making an award of costs;
  - (iii) striking out of any document or part of it; or
  - (iv) creating or amending a case timetable.

[Order 11, rule 4.]  
Case conference  
order.

4. Upon conclusion of the case conference the court shall issue a Case Conference Order in terms of Appendix C.

[Subsidiary]

5. (1) With a view to providing an opportunity for settlement in every suit to which this Order applies the court shall within sixty days of the case conference in the case of a fast track case, and ninety days in the case of multi-track case, convene a settlement conference for the purpose of—

[Order 11, rule 5.]  
Settlement  
conference Order.

- (a) settling the case or issues in the case; and
- (b) providing the parties and their advocates an opportunity to appear before the court to settle the suit or narrow down the issues.

(2) Each party shall at least seven days before the date appointed for the settlement conference prepare and exchange a Settlement Conference Brief which should include the following—

- (a) a concise summary of the facts including the agreed facts and admissions;
- (b) a concise summary of the issues and the law to be relied upon by each party including their rights and interests;
- (c) a final list of witnesses and a summary of each witness's statements; and
- (d) expert reports and the relevant portions of documents relied upon.

6. Each party shall at least ten days before the trial conference, complete, file and exchange trial conference questionnaire form in Appendix D.

[Order 11, rule 6.]  
Trial conference

7. (1) At least thirty days before the hearing date of the suit a Trial Conference shall be convened by the court for the following purposes—

[Order 11, rule 7.]  
Trial Conference.

- (a) planning of trial time;
  - (b) exploring the most expeditious way to introduce evidence and define issues;
  - (c) granting leave to amend pleadings within a specific period not exceeding fourteen days;
  - (d) ordering the admission of statements without the calling of the makers as witnesses where appropriate and the production
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[Subsidiary]

of any copy of a statement where the original is unavailable;

- (e) ordering the giving of evidence on the basis of affidavit evidence;
- (f) ordering for the examination of any witness by the issue of Commission outside court and for the admission of any such examination as evidence in court;
- (g) making appropriate orders relating to experts reports including their exchange and admissibility at the trial;
- (h) making appropriate orders concerning the receiving in evidence of any exhibit; and
- (i) making a referral order for alternative dispute resolution.

(2) It shall be the duty of every party and or his advocate to strictly comply with the provisions of rule 3(2) and to give such information as the judge may require, including but not limited to the number of the witnesses expected to be called and the nature of their evidence, to enable the court to consider and settle the length of time which will probably be required for the hearing of the suit.

(3). Any party or his advocate who wilfully fails or omits to comply with the provisions of this Order shall be deemed to have violated the overriding objective as stipulated in Section 1A and 1B of the Act and the court may order costs against the defaulting party unless for reasons to be recorded, the court orders otherwise.

(4)At the conclusion of the Trial Conference—

- (a) parties or their advocates shall sign a memorandum as prescribed in Appendix E hereto setting out the results of the conference; and
- (b)The court may make such order or orders as it considers necessary with respect to the conduct of the suit.

[Order 11, rule 8.]  
Trial Conference  
Order.

8. The memorandum and order stipulated in rule 4 (4) shall bind the parties unless the court otherwise orders.

[Order 11, rule 9]  
Case managers.

9. For the purposes of this Order, the Chief Justice may appoint case management judges and such number of case managers as he shall deem necessary.

[Subsidiary]

## ORDER 12

## HEARING AND CONSEQUENCE OF NON-ATTENDANCE

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. [Order 12, rule 1.]  
When neither party attends.
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— [Order 12, rule 2.]  
When only plaintiff attends.
- (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. (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. [Order 12, rule 3.]  
When only defendant attends.
- (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. If only some of the plaintiffs attend, the court may either proceed with the suit or make such other order as may be just. [Order 12, rule 4.]  
When some only of plaintiffs attend.
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. [Order 12, rule 5.]  
When some only of defendants attend.
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. [Order 12, rule 6.]  
Effect of dismissal.
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[Subsidiary]

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

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

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

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

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.

(Order 13, rule 2.)  
Judgment on  
admissions.

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

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

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; the date on which it was produced; and
- (c) 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.

## [Subsidiary]

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.

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

(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) (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. (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.

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

(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. 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.

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

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,

[Order 14, rule 5]  
Return of admitted documents.

[Subsidiary]

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.

[Order 14, rule 6.]  
Court may send for records of its own or of other Court.

6. (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.

[Order 14, rule 7.]  
Provisions as to documents applied to material objects.

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

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[Subsidiary]

## ORDER 15

## ISSUES

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. [Order 15, rule 1.] Framing of issues.

(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. The court may frame the issues from all or any of the following materials— [Order 15, rule 2] Materials from which issues may be framed.

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

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. [Order 16, rule 2.] Expenses of witnesses to be paid into court on applying for summons.

## [Subsidiary]

(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.

[Order 16, rule 3.]  
Tender of expenses  
or notification of sum  
lodged.

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.

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

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.

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

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.

[Order 16, rule 6.]  
Summons to produce  
documents.

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.

[Subsidiary]

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 [Order 16, rule 7.]  
Power to require persons present in court to give evidence or produce document.
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. [Order 16, rule 8.]  
Summons, how served
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. [Order 16, rule 9.]  
Time for serving summons.
- (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. (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. [Order 16, rule 10.]  
Procedure where witness fails to comply with 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. Where, at any time after the attachment of his property, such [Order 16, rule 11.]

**[Subsidiary]**

If witness appears attachment may be withdrawn.

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.

[Order 16, rule 12.]  
Procedure if witness fails to appear.

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.

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

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.

[Order 16, rule 14.]  
Duty of persons summoned to give evidence or produce document.

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.

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

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. 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.

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

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.

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

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.

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

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

## ORDER 17

### PROSECUTION OF SUITS

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.

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

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

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.

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

(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

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[Subsidiary]

in sub-rule 1.

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

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

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.

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

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

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

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

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

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.

[Order 18, rule 3.]  
Witnesses to be

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

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examined in open court.

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. 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:

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

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. 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.

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

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.

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

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

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

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.

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

(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. (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

[Order 18, rule 9.]  
Power to examine

**[Subsidiary]**

witness immediately.

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.

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

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.

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

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

## ORDER 19

## AFFIDAVITS

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

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.

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

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.

[Order 19, rule 3.]  
Matters to which affidavits shall be confined.

3. (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

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

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

6. The court may order to be struck out from any affidavit any matter which is scandalous, irrelevant or oppressive. [Order 19, rule 6.]  
Striking out matter.

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

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

9. Applications under this Order may by chamber summons or orally in court. [Order 19, rule 9.]  
Procedure.

## ORDER 20

### APPLICATION FOR AN ACCOUNT

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

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

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(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.

[Order 20, rule 3.]  
Procedure.

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.

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

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

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

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.

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

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.

[Order 21, rule 3.]  
Judgment to be  
signed.

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.

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(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. 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.

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

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.

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

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.

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

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.

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

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

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

(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

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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.

[Order 21, rule 9.]  
Costs.

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 under section 68A of the Advocates (Remuneration) Order; or
- (d) taxed by the court,

Sub-Leg Cap. 16.

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

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(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.

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

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. 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.

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

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.

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

(2) After passing of any such 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.

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—

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

- (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. (1) Where a suit is for an account in respect of any property or for its due administration under the decree of the court, the court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other

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

[Subsidiary]

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.

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

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.

[Order 21, rule 16.]  
Decree in suit for  
account between  
principal and agent.

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.

[Order 21, rule 17.]  
Special directions as  
to accounts.

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.

[Order 21, rule 18.]  
Decree in suit  
for partition of  
property or separate  
possession of a share.

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.

[Order 21, rule 19.]  
Decree where set-off  
is allowed.

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

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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. 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:

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

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. (1) All money payable under a decree or order shall be paid as follows—

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

(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. (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.

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

(3) 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,

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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.

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

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.

[Order 22, rule 4.]  
Procedure where court desires that its own decree shall be executed by another court.

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.

[Order 22, rule 5.]  
Court receiving copies of decree to file same without proof.

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.

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

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 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.

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

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, or by the sale without attachment, of any property;
    - (iii) by the arrest and detention in prison of any person;
    - (iv) by the appointment of a receiver;
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(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.

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

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.

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

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.

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

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.

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

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.

[Order 22, rule 12.]  
Application for execution by

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:

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transferee of decree.

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. (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.

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

(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:

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. (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—

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

- (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

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(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.

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

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.

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

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.

[Order 22, rule 17.]  
Simultaneous  
execution.

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

[Order 22, rule 18.]

18. (1) Where an application for execution is made—

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Notice to show cause against execution in certain cases.

- (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. (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.

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

(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.

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[Order 22, rule 20.]  
Process of execution.

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.

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

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.

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

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.

(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.

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

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. 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.

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

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.

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

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.

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

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.

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

(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. (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

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

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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.

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

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.

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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.

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

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.

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

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

33. (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.

[Order 22, rule 33.]  
Subsistence allowance.

(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:

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Provided that the judgment-debtor shall not be detained in prison or arrested on account of any sum so disbursed.

[Order 22, rule 34.]  
Proceedings on  
appearance of  
judgment-debtor in  
obedience to notice  
or after arrest.

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.

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

[Order 2, rule 35.]  
Examination of judgment-debtor as to his property.

- (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. 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.

[Order 22, rule 36.]  
Attachment in case of decree for rent, or mesne profits, or other matter.

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:

[Order 22, rule 37.]  
Attachment of movable property other than agricultural produce, in possession of judgment-debtor.

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

[Order 22, rule 38.]  
Attachment of agricultural produce.

- (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,

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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.

[Order 22, rule 39.]  
Provisions as to  
agricultural produce  
under attachment.

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.

(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. (1) In the case of—

[Order 22, rule 40.]  
Attachment of share  
and other property  
not in possession of  
judgment-debtor.

(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

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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. 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.

[Order 22, rule 41.]  
Attachment of share  
in movables.

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.

[Order 22, rule 42.]  
Attachment of salary  
or allowance.

(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

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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.

[Order 22, rule 43.]  
Attachment of  
partnership property.

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.

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(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.

(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.

[Order 22, rule 44.]

44. (1) Where a decree has been passed against a firm, execution

may be granted—

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Execution of decree  
against firm.

- (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. 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.

[Order 22, rule 45.]  
Attachment  
of negotiable  
instrument.

46. 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:

[Order 22, rule 46.]  
Attachment of  
property in custody  
of court.

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.

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**[Subsidiary]**

[Order 22, rule 47.]  
Attachment of  
decree.

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.

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[Subsidiary]

(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. (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.

[Order 22, rule 48.]  
Attachment of  
immovable property.

(2) A copy of the order shall be affixed on a conspicuous part of the property.

49. Where—

[Order 22, rule 49.]  
Removal of  
attachment after  
satisfaction of decree.

(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. 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.

[Order 22, rule 50.]  
Determination of  
attachment.

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.

[Order 22, rule 51.]  
Objection to  
attachment.

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(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.

[Order 22, rule 52.]  
Stay of execution.

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.

[Order 22, rule 53.]  
Raising of attachment.

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.

[Order 22, rule 54.]  
Notice of intention to proceed.

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.

[Order 22, rule 55.]  
Power to order property attached to be sold and proceeds to be paid to person entitled.

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.

[Order 22, rule 56.]  
Sale, by whom conducted and how made.

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

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of the property and for the enforcement of such payment.

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.

[Order 22, rule 57.]  
Notification of sale  
by public auction.

(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. 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

[Order 22, rule 58.]  
Time of sale.

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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.

[Order 22, rule 59.]  
Adjournment or  
stoppage of sale.

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.

[Order 22, rule 60.]  
Defaulting purchaser  
answerable for loss  
on re-sale.

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.

[Order 22, rule 61.]  
Decree-holder not  
to bid for or buy  
property without  
permission.

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

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may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

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. [Order 22, rule 62.]  
Restriction on bidding or purchase by officers.

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. [Order 22, rule 63.]  
Negotiable instruments and shares in corporations.

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. [Order 22, rule 64.]  
Sales by public auction.

(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. 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. [Order 22, rule 65.]  
Irregularity not to vitiate sale, but any person injured may sue.

66. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser. [Order 22, rule 66.]  
Delivery of movable property, debts and shares.

(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

## [Subsidiary]

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.

[Order 22, rule 67.]  
Vesting order in case  
of other property.

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.

[Order 22, rule 68.]  
Sale of immovable  
property.

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

[Order 22, rule 69.]  
Deposit by purchaser  
and re-sale on  
default.

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.

[Order 22, rule 70.]  
Payment of purchase-  
money.

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

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otherwise orders.

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.

[Order 22, rule 71.]  
Procedure in default of payment.

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.

[Order 22, rule 72.]  
Notification on re-sale.

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.

[Order 22, rule 73.]  
Bid of co-sharer to have preference.

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—

[Order 22, rule 74.]  
Application to set aside sale on deposit.

(a) for payment to the purchaser, a sum equal to ten percent 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. 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:

[Order 22, rule 75.]  
Application to set aside sale on ground of irregularity or fraud.

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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.

[Order 22, rule 76.]  
Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

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.

[Order 22, rule 77.]  
Sale, when to become absolute or be set aside.

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.

[Order 22, rule 78.]  
Return of purchase-money in certain cases.

78. 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.

[Order 22, rule 79.]  
Certificate to purchaser.

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.

[Order 22, rule 80.]  
Delivery of property in occupancy of judgment-debtor.

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

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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. 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.

[Order 22, rule 81.]  
Delivery of property  
in occupancy of  
tenant.

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.

[Order 22, rule 82.]  
Resistance or  
obstruction to  
possession of  
immovable property.

(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. 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.

[Order 22, rule 83.]  
Resistance or  
obstruction by  
judgment-debtor.

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.

[Order 22, rule  
84.] Resistance or  
obstruction by *bona  
fide* claimant.

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.

[Order 22, rule 85.]  
Rules not applicable  
to transferee  
*pendente lite*.

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

[Order 22, rule 86.]  
Order conclusive

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subject to regular  
suit.

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

[Order 23, rule 1.]  
Order for the  
attachment of debts.

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.

[Order 23, rule 2.]  
Attachment of  
deposits.

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;

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(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. 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. [Order 23, rule 3.]  
Effect of garnishee order.

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. [Order 23, rule 4.]  
Execution against garnishee.

5. 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. [Order 23, rule 5.]  
Trial of liability of garnishee.

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. [Order 23, rule 6.]  
Claim of third person.

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. [Order 23, rule 7.]  
Trial of claim of third person.

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. [Order 23, rule 8.]  
Payment by or execution on the garnishee is a valid discharge.

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## [Subsidiary]

[Order 23, rule 9.]  
Record of  
proceedings.

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

[Order 23, rule 10.]  
Costs of proceedings.

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

[Order 24, rule 1.]  
No abatement by  
party's death if right  
survives.

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

[Order 24, rule 2.]  
Procedure where one  
of several plaintiffs  
or defendants dies  
and right to sue  
survives.

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.

[Order 24, rule 3.]  
Procedure in case  
of death of one of  
several plaintiffs or  
of sole plaintiff.

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.

[Order 24, rule 4.]

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.

[Subsidiary]

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

(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. 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.

[Order 24, rule 5.]  
Determination of question as to legal representative.

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.

[Order 24, rule 6.]  
When plaintiff's bankruptcy bars suit.

(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. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

[Order 24, rule 7.]  
Effect of abatement or dismissal.

(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. (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.

[Order 24, rule 8.]  
Procedure in case of assignment before final order in suit.

[Subsidiary]

(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).

[Order 24, rule 9.]  
Application of Order  
to appeals.

9. 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.

[Order 24, rule 10.]  
Application of  
Order to execution  
proceedings.

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

[Order 25, rule 1.]  
Withdrawal by  
plaintiff.

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.

[Order 25, rule 2.]  
Discontinuance.

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.

[Order 25, rule 3.]  
Costs.

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.

[Order 25, rule 4.]  
Stay of subsequent  
suit.

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.

[Order 25, rule 5.]

5. (1) Where it is proved to the satisfaction of the court, and the

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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.

Compromise of a suit.

(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. 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.

[Order 26, rule 1.]  
Security for costs.

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.

[Order 26, rule 2.]  
Application before defence.

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.

[Order 26, rule 3.]  
Where two or more defendants.

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.

[Order 26, rule 4.]  
Claims by non-resident plaintiff.

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.

[Order 26, rule 5.]  
Effect of failure to give security.

(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. (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

[Order 26, rule 6.]  
Investment of security.

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names of their respective advocates when advocates are acting.

## ORDER 27

### PAYMENT INTO COURT AND TENDER

[Order 27, rule 1.]  
Payment into court.

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.

[Order 27, rule 2.]  
Acceptance of  
payment.

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

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court.

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.

[Order 27, rule 3.]  
Money remaining in court.

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.

[Order 27, rule 4.]  
Payment into where several 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. 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.

[Order 27, rule 5.]  
Payment into on a counterclaim.

6. (1) Unless a defence of tender before action or a plea under section 12 of the Defamation Act is pleaded, the fact that a payment into court has been made under this Order shall not be mentioned in any pleading.

[Order 27, rule 6.]  
Confidentiality of payments into court.  
*Cap. 36.*

(2) Subject to rule 3, no communication of such fact may be

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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.

[Order 26, rule 7.]  
Register of payments  
to be kept.

7. The registrar of every court shall maintain a register containing details of every payment into court made under this Order.

[Order 27, rule 8.]  
Investment of  
payment.

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.

[Order 27, rule 9.]  
Money paid in under  
order of court.

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.

[Order 27, rule 10.]  
Moneys recovered by  
infants or persons of  
unsound mind.

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;

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(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. 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. [Order 28, rule 1.]  
Cases in which court may issue commission to examine witnesses.

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. [Order 28, rule 2.]  
Where witness resides within court's jurisdiction.

3. (1) Any court may in any suit issue a commission for the examination of— [Order 28, rule 3.]  
Persons for whose examination commission may issue.

(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. 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. [Order 28, rule 4]  
Request to examine witness abroad.

5. Every court in Kenya receiving a commission for the [Order 28, rule 5.]

**[Subsidiary]**

Court to examine witness pursuant to commission.

examination of any person shall examine him or cause him to be examined pursuant thereto.

[Order 28, rule 6.]

Return of commission with deposition of witness.

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.

[Order 28, rule 7.]

Commissions to make investigations.

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.

[Order 28, rule 8.]

Procedure of commissioner.

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.

[Order 28, rule 9.]

Examination of accounts by referee.

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.

[Order 28, rule 10.]

Instructions to referee.

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

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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. 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. [Order 28, rule 11.]  
Partition of immovable property.

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. [Order 28, rule 12.]  
Procedure upon partition.

(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. 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. [Order 28, rule 13.]  
Expenses of commission to be paid into court.

14. Any person appointed under this Order may, unless otherwise directed by the order of appointment— [Order 28, rule 14.]  
Powers of commissioner.

(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

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to the subject of the inquiry; or

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

[Order 28, rule 15.]  
Attendance and  
examination of  
witnesses before  
commissioner.

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.

[Order 28, rule 16.]  
Parties to appear  
before commissioner.

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.

[Order 28, rule 17.]  
Commissions issued  
by foreign courts.

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.

[Order 28, rule 18.]  
Evidence in  
proceedings by  
or against the  
Government.

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

[Order 29, rule 1.]  
Interpretation.

1. (1) The expressions “civil proceedings by the Government”, “civil proceedings against the Government” and “civil proceedings by

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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. (1) Except as provided by the Government Proceedings Act 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.

[Order 29, rule 2.]  
Rules to apply  
to proceedings  
by or against the  
Government.  
*Cap. 40*

(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. Any application for a certificate under section 21 of the

[Order 29, rule.3.]

**[Subsidiary]**

Application for a certificate under section. 21 of the Government Proceedings Act.

*Cap.40.*

[Order 29, rule 4.]  
Attachment of debts or appointment of a receiver.

Government Proceedings Act (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. (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.

(4) (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

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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. 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.

[Order 30, rule 1.]  
Suing of partners in  
name of firm.

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.

[Order 30, rule 2.]  
Disclosure of  
partners' names.

(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.

(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.

**[Subsidiary]**

[Order 30, rule 3.]  
Service.

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 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.

[Order 30, rule 4.]  
Notice in what  
capacity served.

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.

[Order 30, rule 5.]  
Appearance of  
partners.

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.

[Order 30, rule 6.]  
No appearance  
except by partners.

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.

[Order 30, rule 7.]  
Appearance in action  
against firms.

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—

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- (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. 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.

[Order 30, rule 8.]  
Suits between firm and partners.

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 30, rule 9.]  
Suit against persons carrying on business in name other than his own.

## ORDER 31

### SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

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.

[Order 31, rule 1.]  
Representation of beneficiaries in suits concerning property vested in trustees.

2. Where there are several trustees, executors or administrators,

[Order 31, rule 2.]

**[Subsidiary]**

Joinder of trustees,  
executors and  
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

[Order 32, rule 1.]  
Minor to sue by next  
friend.

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.

[Order 32, rule 2.]  
Where suit is  
instituted without  
next friend.

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.

[Order 32, rule 3.]  
Guardian *ad litem*.

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.

(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

[Subsidiary]

be urged on behalf of any person served with notice under this subrule.

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*:

[Order 32, rule 4.]  
Who may act as  
next friend or be  
appointed guardian  
for the suit.

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. (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*.

[Order 32, rule 5.]  
Representation of  
minor by next friend  
or guardian for the  
suit.

(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. (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 —

[Order 32, rule 6.]  
Receipt of properties  
or money on behalf  
of minor.

(a) by way of compromise before decree or order; or

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[Subsidiary]

(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.

[Order 32, rule 7.]  
Agreement or  
compromise of suit  
on behalf of minor.

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.

[Order 32, rule 8.]  
Retirement of next  
friend.

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.

[Order 31, rule 9.]  
Removal of next  
friend.

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

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to the costs already incurred in the suit as it thinks fit.

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.

[Order 32, rule 10.]  
Stay of proceedings.

(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. (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.

[Order 32, rule 11.]  
Retirement, removal,  
or death of guardian  
*ad litem*.

(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. (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.

[Order 32, rule 12.]  
Procedure where  
minor attains  
majority.

(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.

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-

[Order 32, rule 13.]  
Where minor co-

**[Subsidiary]**

plaintiff attaining majority desires to repudiate suit.

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.

[Order 32, rule 14.]  
Unreasonable or improper suit.

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.

[Order 32, rule 15.]  
Application of rules to persons of unsound mind.

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

[Order 33, rule 1.]  
Suits may be instituted by a pauper.

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.

[Order 33, rule 2.]  
Contents of application.

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

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signing of pleadings.

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.

[Order 33, rule 3.]  
Presentation of  
application.

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.

[Order 33, rule 4.]  
Examination of  
applicant.

5. The court shall reject an application for permission to sue as a pauper—

[Order 33, rule 5.]  
Rejection of  
application.

- (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. 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.

[Order 33, rule 6.]  
Notice of day for  
receiving evidence of  
applicant's  
pauperism.

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.

[Order 33, rule 7.]  
Procedure at hearing.

(2) The court shall also hear any argument which the parties may

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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.

[Order 33, rule 8.]  
Procedure if  
application admitted.

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.

[Order 33, rule 9.]  
Dispaupering.

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.

[Order 33, rule 10.]  
Costs where pauper  
succeeds.

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.

[Order 33, rule 11.]  
Procedure where  
pauper fails.

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 court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

[Order 33, rule 12.]  
Government may  
apply for payment of  
court fees.

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.

[Order 33, rule 13.]  
Government to be

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.

[Subsidiary]  
deemed a party.

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.

[Order 33, rule 14.]  
Refusal to allow  
applicant to sue  
as pauper to  
bar subsequent  
application of like  
nature.

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.

[Order 33, rule 15.]  
Costs.

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.

[Order 33, rule 16.]  
Court fees.

(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. 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.

[Order 33, rule 17.]  
Recovery of court  
fees from pauper.

18. Applications under this Order shall be in writing addressed to the court.

[Order 33, rule 18.]  
Procedure.

## ORDER 34

### INTERPLEADER

1. An application for relief under this Order shall be made by originating summons unless made in a pending suit in which case it

[Order 34, rule 1.]  
Practice under this

**[Subsidiary]**

Order . shall be made by summons in the suit.

[Order 34, rule 2.]  
Averments to be  
proved by applicant.

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.

[Order 34, rule 3.]  
Stay of suit

3. If the application is made by a defendant in a suit the court may stay all further proceedings in the suit.

[Order 34, rule 4.]  
Order upon  
summons.

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.

[Order 34, rule 5.]  
Summary procedure.

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.

[Order 34, rule 6.]  
Costs and other  
orders.

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.

[Order 34, rule 7.]  
Order upon a  
claimant's failure to  
appear.

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

[Subsidiary]

than seven days before the return day.

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. [Order 34, rule 8.]  
Questions of law.

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 34, rule 9.)  
Adverse title of claimants.

## ORDER 35

### PROCEEDINGS BY AGREEMENT OF PARTIES

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— [Order 35, rule 1.]  
Power to state case for court's opinion.

(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

(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. [Order 35, rule 2.]  
Where value of subject-matter must be stated.

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. (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. [Order 35, rule 3.]  
Agreement to be filed and registered as suit.

[Subsidiary]

(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.

[Order 35, rule 4.]  
Parties to be  
subject to court's  
jurisdiction.

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.

[Order 35, rule 5.]  
Hearing and disposal  
of case.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of Order 10B 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.

## ORDER 36

### SUMMARY PROCEDURE

[Order 36, rule 1.]  
Summary judgment.

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

[Subsidiary]

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. The defendant may show either by affidavit, or by oral evidence, or otherwise that he should have leave to defend the suit.

[Order 36, rule 2.]  
Defendant may show cause.

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.

[Order 36, rule 3.]  
Application by Government.

(2) No application under rule 1 shall be made against the Government.

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.

[Order 36, rule 4.]  
Time for defence.

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.

[Order 36, rule 5.]  
Judgment for part of claim.

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.

[Order 36, rule 6.]  
Procedure where more than one defendant.

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.

[Order 36, rule 7.]  
Leave to defend.

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## [Subsidiary]

[Order 36, rule 8.]  
Costs.

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.

[Order 36, rule 9.]  
Forms.

9. Form Nos. 24 and 25 of Appendix A, adapted to circumstances, shall be utilised for the respective purposes for which they are designed.

[Order 36, rule 10.]  
Setting aside of  
judgment.

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

[Order 37, rule 1.]  
Who may take out  
originating summons  
and in respect of  
what matters.

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;

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- (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. Any of the persons named in rule 1 may in like manner apply for and obtain an order for—

[Order 37, rule 2.]  
Order for administration of estate or trust.

- (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. 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).

[Order 37, rule 3.]  
Summons by vendor or purchaser of land.

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.

[Order 37, rule 4.]  
Summons by a mortgagee, mortgagor and others.

5. An application under section 116 of the Government Lands Act or section 57 of the Registration of Titles Act shall be made by

[Order 37, rule 5.]  
Caveats.

**[Subsidiary]**

Cap. 280 and Cap. 281.

originating summons unless there is pending a suit involving the same lands when the application may be made by summons in that suit.

[Order 37, rule 6.]  
Extension of  
limitation period.

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.

[Order 37, rule 7.]  
Adverse possession.

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.

[Order 37, rule 8.]  
Application under the  
Registered Land Act.  
Cap. 300.

8. An application under the Registered Land Act other than under sections 120, 128, 133, 138, 143 and 150 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.

[Order 38, rule 9.]  
Application under  
Chattels Transfer Act.  
Cap. 28.

9. An application under section 9 of the Chattels Transfer Act shall be made by originating summons *ex parte* supported by an affidavit setting out the grounds relied upon.

[Order 37, rule 10.]  
Summons by  
a member of a  
partnership.

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.

[Order 37, rule 11.]  
Summons by persons  
interested in deeds  
or wills.

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.

[Order 37, rule 12.]  
Variation of trusts.

12. An application for an order under the Trustee Act shall be made by originating summons returnable before the judge sitting in

[Subsidiary]

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. 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.

[Order 37, rule 13.]  
Discretion upon  
summons for  
construction of  
document.

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.

[Order 37, rule 14.]  
Forms.

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.

[Order 37, rule 15.]  
Summons to be filed  
and registered.

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.

[Order 37, rule 16.]  
Directions.

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.

[Order 37, rule 17.]  
Procedure.

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.

[Order 37, rule 18.]  
Evidence and  
directions upon  
hearing of summons.

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.

[Order 37, rule 19.]  
Powers of court upon  
hearing of summons.

[Subsidiary]

(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 plaint.

(4) Any reference in these Rules to proceedings begun by a plaint shall, unless the context otherwise requires, be construed as including a reference to a cause proceeding under an order made under subrule (1).

[Order 37, rule 20.]  
Court may make orders as to costs incurred by any party.

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

[Order 38, rule 1.]  
Staying several suits against the same defendant.

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.

[Order 38, rule 2.]  
Staying similar suits upon application by defendant.

2. Where a plaintiff has instituted two or more suits, and under rule 3 of Order I 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

[Order 39, rule 1.]  
Where defendant

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,

[Subsidiary]  
may be called upon  
to furnish security for  
appearance.

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. (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.

[Order 39, rule 2.]  
Security.

(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. (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

[Order 39, rule 3.]  
Procedure on

**[Subsidiary]**

application by surety to be discharged.

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.

**[Order 39, rule 4.]**

Procedure where defendant fails to furnish security or find fresh security.

4. 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.

**[Order 39, rule 5.]**

Where defendant may be called upon to furnish security for production of property.

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; or

(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.

[Subsidiary]

(3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

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.

[Order 39, rule 6.]  
Attachment where cause not shown or security not furnished.

(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. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

[Order 39, rule 7.]  
Mode of making attachment.

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.

[Order 39, rule 8.]  
Investigation or claim to property attached before judgment.

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.

[Order 39, rule 9.]  
Removal of attachment when security furnished or suit dismissed.

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.

[Order 39, rule 10.]  
Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.

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 39, rule 11.]  
Property attached before judgment not to be re-attached in execution of decree.

[Subsidiary]

## ORDER 40

## TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

[Order 40, rule 1]  
Cases in which  
temporary injunction  
may be granted.

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.

[Order 40, rule 2.]  
Injunction to restrain  
breach of contract or  
other injury.

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.

[Order 40, rule 3.]  
Consequence of  
breach.

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.

[Subsidiary]

(3) An application under this rule shall be made by notice of motion in the same suit.

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*. [Order 40, rule 4.]  
Notice of application.

(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. 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; [Order 40, rule 5]  
Ruling of the court.

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. 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. [Order 40, rule 6.]  
Lapse of injunction.

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. [Order 40, rule 7.]  
Order for injunction may be discharged, varied, or set aside.

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. [Order 40, rule 8.]  
Injunction against corporation binding on its officers.

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**[Subsidiary]**

[Order 40, rule 9.]  
Power to order  
interim sale.

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.

[Order 40, rule 10.]  
Detention,  
preservation,  
inspection of  
property.

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.

[Order 40, rule 11.]  
Deposit of  
money and other  
deliverables.

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

[Order 41, rule 1.]  
Appointment of  
receivers.

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;

[Subsidiary]

- (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. The court may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver. [Order 41, rule 2.]  
Remuneration.

3. Every receiver so appointed shall—

[Order 41, rule 3.]  
Duties.

- (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. Where a receiver—

[Order 41, rule 4.]  
Enforcement of  
receiver's duties.

- (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.

## [Subsidiary]

[Order 41, rule 5.]  
Removal.

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

[Order 42, rule 1.]  
Form of appeal.

1. (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.

[Order 42, rule 2.]  
Filing of decree or order.

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.

[Order 42, rule 3.]  
Amendment of memorandum of appeal.

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.

[Order 42, rule 4.]  
Grounds which may be taken in appeal.

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.

[Order 42, rule 5.]  
One of several plaintiffs or defendants may obtain reversal of

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.

[Subsidiary]  
whole decree where  
it proceeds on ground  
common to all.

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.

[Order 42, rule 6.]  
Stay in case of  
appeal.

(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. (1) Where an order is made for the execution of a decree from [Order 42, rule 7.]

**[Subsidiary]**

Security in case of order for execution of decree appealed 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.

[Order 42, rule 8.]  
No security to be required from the Government.

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.

[Order 42, rule 9.]  
Exercise of powers in appeal from order made in execution of decree.

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.

[Order 42, rule 10.]  
Register and filing of appeals.

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.

[Order 42, rule 11.]  
Directions under section 79B.

11. Upon filing of the appeal the appellant shall within thirty days, cause the matter to be listed before a judge for directions under section 79B of the Act.

[Order 42, rule 12.]  
Service of memorandum.

12. After the refusal of a judge to reject 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.

[Subsidiary]

13. (1) On notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the appellant shall cause the appeal to be listed for the giving of directions by a judge in chambers.

[Order 42, rule 13.]  
Directions before  
hearing.

(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).

14. (1) At any time after the memorandum of appeal has been [Order 42, rule 14.]

**[Subsidiary]**

Security for costs.

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.

[Order 42, rule 15.]  
Notice to be given where decree appealed from.

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

[Order 42 rule 16.]  
Filing declaration and written submissions.

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.

[Order 42, rule 17.]  
Service of hearing notice.

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.

[Order 42, rule 18.]  
Contents of notice.

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*.

[Order 42, rule 19.]  
Right to begin.

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,

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hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

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.

[Order 42, rule 20.]  
Dismissal of appeal for appellant's default.

(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. 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.

[Order 42, rule 21.]  
Re-admission of appeal dismissed for default.

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.

[Order 42, rule 22.]  
Power to adjourn hearing and direct interested persons to be made respondents.

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.

[Order 42, rule 23.]  
Re-hearing on application of respondent against whom *ex parte* decree made.

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 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.

[Order 42, rule 24.]  
Remand of cases.

25. Where the evidence upon the record is sufficient to enable the court to which the appeal is preferred to pronounce judgment, the

[Order 42, rule 25.]  
Where evidence on

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record sufficient  
appellate court may  
determine case  
finally.

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.

[Order 42, rule 26.]  
Power to order new  
trial.

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.

[Order 42, rule 27.]  
Production of  
additional evidence  
in appellate court.

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.

[Order 42, rule 28.]  
Mode of taking  
additional evidence.

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.

[Order 42, rule 29.]  
Limits to be defined  
and recorded.

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.

[Order 42, rule 30.]  
Where court consist  
of more than one  
judge.

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.

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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. [Order 42, rule 31.]  
What judgment may direct.
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. [Order 42, rule 32.]  
Power of appellate court on appeal.
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. [Order 42, rule 33.]  
Preparation and contents of decree.
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. [Order 42, rule 34.]  
Certified copy of decree to be sent to court whose decree appealed from.
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. [Order 42, rule 35.]  
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. (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— [Order 43, rule 1.]  
Appeals from Orders.
- (a) Order 1 (parties to suits);

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- (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);
  - (t) Order 39, rules 2, 4 and 6 (furnishing security);
  - (u) Order 40, rules 1, 2, 3,7 and 11 (temporary injunctions);
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- (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. The rules of Order 42 shall apply, so far as may be, to appeals from orders. [Order 43, rule 2.]  
Procedure.

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 43, rule 3.]  
Saving.

## ORDER 44

### PAUPER APPEALS

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: [Order 44, rule 1.]  
Who may appeal as a pauper.

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.

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[Order 44, rule 2.]  
Inquiry into  
pauperism.

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

[Order 45, rule 1.]  
Application for  
review of decree or  
order.

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.

[Order 45, rule 2.]  
To whom  
applications for  
review may be made.

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

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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. (1) Where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application.

[Order 45, rule 3.]  
When court may grant or reject 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. (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.

[Order 45, rule 4.]  
Application where more than one judge hears.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

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.

[Order 45, rule 5.]  
Re-hearing upon application granted.

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 45, rule 6.]  
Bar of subsequent applications.

## ORDER 46

### ARBITRATION UNDER ORDER OF A COURT AND OTHER ALTERNATIVE DISPUTE RESOLUTION

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.

[Order 46, rule 1.]  
Parties to a suit may apply for arbitration.

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(Order 46, rule 2.)  
Appointment of  
arbitrator.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

[Order 46, rule 3.]  
Form of order.

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.

[Order 46, rule 4.]  
Provisions where two  
or more arbitrators.

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.

[Order 46, rule 5.]  
Power to appoint  
arbitrator.

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,

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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. 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.

[Order 46, rule 6.]  
Power of arbitrator or umpire appointed by court.

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.

[Order 46, rule 7.]  
Summoning witnesses and default.

(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. (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.

[Order 46, rule 8.]  
Extension of time for making award.

(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 an umpire has been appointed he may enter on the reference in the place of the arbitrators—

[Order 46, rule 9.]  
Where umpire may arbitrate in lieu of arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

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(b) if they have delivered to the court or to the umpire a notice in writing stating that they cannot agree.

[Order 46, rule 10.]  
Award to be signed,  
dated and filed.

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.

[Order 46, rule 11.]  
Time for reading  
award may be fixed.

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.

[Order 46, rule 12.]  
Statement of special  
case by arbitrators or  
umpire.

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.

[Order 46, rule 13.]  
Costs of arbitration.

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.

[Order 46, rule 14.]  
Power to modify or  
correct award.

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.

[Order 46, rule 15.]  
Power to remit for  
reconsideration.

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—

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- (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 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. (1) The court may set aside an award on the following grounds only—

[Order 46, rule 16.]  
Grounds for setting  
aside award.

- (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. 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.

[Order 46, rule 17.]  
Time for application.

18. (1) The court shall on request by any party with due notice to other parties enter judgment according to the award—

[Order 46, rule 18.]  
Judgment on 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
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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).

[Order 46, rule 19.]  
Forms.

19. Form Nos. 28 to 32 of Appendix A shall be used for the respective purposes therein mentioned.

[Order 46, rule 20.]  
Alternative dispute  
resolution.

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

[Order 47, rule 1.]  
Institution of suits in  
High Court.

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.

[Order 47, rule 2.]  
Schedule of District  
Registries and areas.

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.

[Order 47, rule 3.]  
Title of suits filed in

3. Suits filed in a District Registry shall be intituled as suits in “The High Court of Kenya at.....(District Registry)”, and shall be

serially numbered in that Registry.

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a District Registry.

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.

[Order 47, rule 4.]  
Suits filed in a registry remain there when all defendants reside within that area.

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.

[Order 47, rule 5.]  
Proceedings against the Government.

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.

[Order 47, rule 6.]  
Place of trial.

(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. 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.

[Order 47, rule 7.]  
All preliminary steps taken before the District Registrar.

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.

[Order 47, rule 8.]  
Appeal from decision of District Registrar.

(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

## [Subsidiary]

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.

[Order 47, rule 9.]  
Taxations in District  
Registries.

9. 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.

[Order 47, rule 10.]  
Appeals from  
subordinate courts.

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

[Order 48, rule 1.]  
Process to be served  
at expense of party  
issuing.

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.

[Order 48, rule 2.]  
Service of Orders,  
notices and  
documents.

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.

[Order 48, rule 3.]  
Use of forms.

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.

[Order 48, rule 4.]  
Special rules of  
procedure.

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.

[Subsidiary]

## ORDER 49

## SPECIAL POWERS OF REGISTRARS

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. [Order 49, rule 1.]  
Registrar to be ministerial officer.
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: [Order 49, rule 2.]  
When Judgment may be entered by Registrar.
- (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. 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. [Order 49, rule 3.]  
Consent orders.
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. [Order 49, rule 4.]  
No judgment against Government in default of pleading without leave of court.
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. [Order 49, rule 5.]  
Execution may be ordered by Registrar.
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. [Order 49, rule 6.]  
Registrar a Civil Court.
-

**[Subsidiary]**

[Order 49, rule 7.]  
Hearing of  
applications.

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

[Order 50, rule 1.]  
Month means  
calendar month.

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

[Subsidiary]

is part of any legal procedure under these Rules, such time shall be computed by calendar months unless otherwise expressed.

2. 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.

[Order 50, rule 2.]  
Exclusion of Sundays  
and public holidays.

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.

[Order 50, rule 3.]  
Time expiring on  
Sunday or day offices  
closed.

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:

[Order 50, rule 4.]  
When time does not  
run.

Provided that this rule shall not apply to any application in respect of a temporary injunction.

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.

[Order 50, rule 5.]  
Time for giving  
security for costs,  
when not to be  
reckoned.

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:

[Order 50, rule 6.]  
Power to enlarge  
time.

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. 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

[Order 50, rule 7.]  
Enlargement of time  
by consent.

[Subsidiary]

to the court.

[Order 50, rule 8.]  
Computation of days.

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.

[Order 50, rule 9.]  
Time of day of  
service.

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

[Order 51, rule 1.]  
Procedure.

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.

[Order 51, rule 2.]  
Applications under  
section 25 (2) of  
the Government  
proceedings Act.  
*Cap. 40*

2. Any application such as is referred to in section 25 (2) of the Government Proceedings Act, shall be made in the manner prescribed in rule 1.

[Order 51, rule 3.]  
Notice to parties.

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

[Subsidiary]

set it aside.

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

[Order 51, rule 4.]  
Contents of notice.

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.

[Order 51, rule 5.]  
Dismissal or  
adjournments for  
want of notice.

6. The hearing of any application may from time to time be adjourned upon such terms as the court thinks fit.

[Order 51, rule 6.]  
Adjournment of  
hearing.

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.

[Order 51, rule 7.]  
Service of notice on  
defendant served  
with summons to  
enter appearance but  
not appearing.

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.

[Order 51, rule 8.]  
Transfer from court  
to chambers.

9. Any judge may adjourn into court any application made to him at chambers which he deems more convenient to be considered in court.

[Order 51, rule 9.]  
Transfer from  
chambers to court.

10. (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.

[Order 51, rule 10.]  
Provision under  
which application is  
made to be stated.

(2) No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.

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.

[Order 51, rule 11.]  
Costs and other  
relief.

(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.

**[Subsidiary]**

[Order 51, rule 12.]

When application are deemed to be made.

12. All applications or other process shall be deemed to have been made when filed in court.

[Order 51, rule 13.]

Signature on application and service.

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.

[Order 51, rule 14.]

Grounds of opposition to application in High Court.

14. (1) Any respondent who wishes to oppose any application may file t 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*.

[Order 51, rule 15.]

Setting aside *ex parte* order.

15. The court may set aside an order made *ex parte*.

[Order 51, rule 16.]

Court may limit time for submission.

16. The court may, in its discretion, limit the time for oralsubmissions by the parties or their advocates or allow written submissions.

## ORDER 52

## THE ADVOCATES ACT

1. In this Order—

“the Act” means the Advocates Act;

[Order 52, rule 1.]  
Interpretation.  
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. (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.

[Order 52, rule 2.]  
Appeals to the Chief  
Justice.

(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. (1) Any application under section 45 of the Act shall be intitled in the matter of the Act and shall be supported by affidavit.

[Order 52, rule 3.]  
Applications  
with respect to  
remuneration.

(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. (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—

[Order 52, rule 4.]  
Power to order  
advocate to deliver

**[Subsidiary]**

accounts and documents.

- (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.

[Order 52, rule 5.]  
Application for taxation by third parties.

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.

[Order 52, rule 6.]  
Application for charging order.

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.

[Order 52, rule 7.]  
Application for order for enforcement of an undertaking.

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

[Subsidiary]

undertaking within a time fixed by the order, and only thereafter may an order in enforcement be made.

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. [Order 52, rule 8.]  
Title and service of appeal.

(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. (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. [Order 52, rule 9.]  
Discontinuance of appeal.

(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. (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. [Order 52, rule 10.]  
Procedure.

(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. (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. [Order 53, rule 1.]  
Applications for mandamus, prohibition and certiorari to be made only with leave.

(2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the

[Subsidiary]

facts relied on.

(3) The judge may, in granting leave, 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.

(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.

[Order 53, rule 2.]  
Time for applying for certiorari in certain cases.

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.

[Order 53, rule 3.]  
Application to be by notice of motion.

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

[Subsidiary]

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. (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.

[Order 53, rule 4]  
Statements and  
affidavits.

(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.

(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. On the hearing of any such motion as aforesaid, the applicant shall have the right to begin.

[Order 53, rule 5.]  
Applicant to have  
right to begin.

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.

[Order 53, rule 6.]  
Right to be heard in  
opposition.

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.

[Order 53, rule 7.]  
Provisions as to  
orders of certiorari  
for the purpose  
of quashing  
proceedings.

[Subsidiary]

(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

[Order 54 Rule 1.]  
Revocation of Civil  
Procedure Rules.  
*Sub. leg.*

1. The Civil Procedure Rules are revoked.

Order 54 Rule 2.]  
Transitional  
provisions.

2. 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.

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[Subsidiary]

APPENDIX

APPENDIX A

PROCESS

No. 1

Third Party Notice

(O. 1, r. 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

is sued pursuant to the order of the court dated....., 20.....)
of: 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
contribution", "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
of 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
by any judgment given in the suit.

dated the .....day of ....., 20 .....

(Signed) G.H.,
Advocate for the Defendant C.D.

[Subsidiary]

Note.-\* Delete this paragraph if the notice is served on a party who has already appeared in the suit.

\_\_\_\_\_

No. 2

Request for Particulars

O. 2 r. 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).

\_\_\_\_\_

No. 3

Particulars

(O. 2, r. 10 (6))

(Title)

The defendant (or plaintiff) in answer to the Request for Particulars dated the ..... day of ..... , 20....., gives particulars

\_\_\_\_\_

[Subsidiary]

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).

No. 4

Affidavit of Service

(O. 5. r. 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).

[Subsidiary]

SWORN by the said .....this .....  
day.....of ....., 20.....

Before me.....

A Commissioner of Oaths/Magistrate.

\_\_\_\_\_

No. 5

Substituted Service by Advertisement

(O.5, r. 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.

\_\_\_\_\_

No. 6

Notice of Summons

(O. 5, r. 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).

\_\_\_\_\_

[Subsidiary]

Unless you enter an appearance within .....days , the case will be heard in your absence.

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No. 7

Letter Forwarding Request for Service Abroad

(O. 5, r. 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.

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No. 8

Request For Service Abroad

(O. 5, r. 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.

---

[Subsidiary]

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

.....  
(Signature of Advocate)

No. 9

## Order to Bespeak Request for Substituted Service Abroad

(O. 5, r. 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.....

No. 10

## Letter Forwarding Request for Substituted Service

(O. 5, r. 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)

[Subsidiary]

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.

---

No. 11

Certificate of Service of Foreign Process

(O. 5, r. 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.

And I certify that the costs of effecting such service amounts to the sum of £ .....

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

---

No. 12

Memorandum of Appearance

(O. 6, r. 2 (1))

(Title)

---

[Subsidiary]

Please enter an appearance for 1 .....

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.

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

[Subsidiary]

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.

\_\_\_\_\_  
No. 13

Request for Judgment

(O. 10, r. 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.

\_\_\_\_\_  
No. 14

Application for Execution of Decree

(O. 22, r. 6)

---

[Subsidiary]

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)

[Subsidiary]

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 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:



[Subsidiary]

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.*

\_\_\_\_\_

No. 15

Notice by Advertisement of Sale

(O. 22, r. 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)*

\_\_\_\_\_

No. 16

Garnishee Order (Absolute) where Garnishee Owes More than Judgment-debt

(O. 23, r. 1(4))

REPUBLIC OF KENYA

In the ..... Court

at .....

[Subsidiary]

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.*

[Subsidiary]

No. 17

Garnishee Order (Absolute) where Garnishee Owes less than

Judgment-debt

(O. 23, r. 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

[Subsidiary]

(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.

\_\_\_\_\_

No. 18

Garnishee Order (Absolute) Where Garnishee Owes Less Than Judgment-Debt

(O. 23, r. 4)

REPUBLIC OF KENYA

In the.....Court  
.....at

Civil Suit No. ....of 20.....

Between

Decree-holder

and

Judgment-debtor

and

Garnishee

\_\_\_\_\_

[Subsidiary]

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

\_\_\_\_\_

No. 19

Notice of Payment into Court

(O. 27, r. 1(3))

\_\_\_\_\_

[Subsidiary]

(Title)

Take notice that the defendant ..... (name) has paid the sum of Sh. .... into court.

No. 20

Notice of payment into Court

(O. 27, r.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) .....

[Subsidiary]

Advocate for .....

No. 21

Notice of Acceptance of Payment into Court

(O. 27, r. 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.....

No. 22

Certificate Of Order Against The Government

(O. 29, r. 3)

(Title)

By a judgment (decree) (order) of this court dated the ..... day of ....., 20....., it was adjudged (decreed) (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.)

[Subsidiary]

\* 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.

\_\_\_\_\_  
No. 23

Certificate of Order for Costs Against the Government

(O. 29, r. 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 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

\_\_\_\_\_  
No. 24

Affidavit

(O. 36, r. 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.

\_\_\_\_\_

[Subsidiary]

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. ....

\_\_\_\_\_  
No. 25

Order for Leave to Defend

(O. 36, r. 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.....

\_\_\_\_\_  
No. 26

General Form of Originating Summons

(O. 37, r. 14)

In the ..... Court at .....

In the matter of .....

Between

A.B. .... Plaintiff

and

[Subsidiary]

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.

No. 27

General Form of Originating Summons not Inter Parties

(O. 37, r. 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

[Subsidiary]

think just and expedient.

No. 28

Application for an Order of Reference

(O. 46, r. 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.)

---

No. 29

Order of Reference (O. 46, r. 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.

\_\_\_\_\_

No. 30

Order for appointment of arbitrator

(O. 46, r. 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.

\_\_\_\_\_

No. 31

Special Case

(O. 46, r. 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 .....

\_\_\_\_\_

[Subsidiary]

Secondly, whether .....

X.

Y.

Dated the .....day of ....., 20.....

No. 32

A ward

(O. 46, r. 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.....

[Subsidiary]

## Appendix B

PRE TRIAL QUESTIONARE  
(Order 11, rule 2)  
QUESTIONANSWER  
(TICK ONE)

	YES	NO
1. Identify the relevant track for the case	YES	NO
2. Have you or your advocate made contact with the other party of parties in these proceedings with a view to settling the case or to narrow down the issues	YES	NO
3. Have given full disclosure of documents to the other party or parties	YES	NO
4. If not within what period can disclosure be given?	YES	NO
5. Is there need for inspection of any documents or copies thereof and is so how soon can you do the inspection?	YES	NO
6. Is there need to serve interrogatories and if so have you specified the necessary interrogatories.	YES	NO
7. If defendant, have you answered the interrogatories by attaching the questionnaire and affidavit with the answer?	YES	NO
8. Have you filed and exchanged all witness 'statements'?	YES	NO
9. Have you identified any issues which require a written report of an expert?	YES	NO
10. Have you agreed on a single expert to prepare joint report?	YES	NO
11. If the answer to question 10 is in the negative do you require directions relating to the payment of the expert's fee and expenses?	YES	NO
12. In which disciplines do you require an expert?		
13. Have the experts agreed on their respective reports? If not have they held without prejudice discussions in order to narrow down the issues with a summary of the reasons for any disagreements?	YES	NO
14. Have you filed and served an updated schedule of loss and damage including future loss and if defendant, have you filed and served a counter- schedule?		

[Subsidiary]

15. Have you filed this questionnaire together with the answer including the experts' joint statement of issues including witness statements?	YES	NO
16. Have you considered whether oral evidence of any witness can be dispensed with?	YES	NO
17. Have you so far discharged your duty of co-operating with the other party or parties in preparing the case expeditiously including attempting to limit the issues in dispute?	YES	NO
18. Are you aware that you are under an obligation to inform the court immediately if the case is settled?	YES	NO
19. Have you prepared a bundle documents for trial together with a case summary?	YES	NO
20. Are you aware that you have an obligation to file and serve any skeleton argument to be used in the case of list 3 days before the hearing date day?	YES	NO

Appendix C

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT.....

CIVIL CASE NO..... OF 20.....

BETWEEN.....

.....PLAINTIFF(S)

AND.....DEFENDANT(S)

AND

..... THIRD PARTY

CASE CONFERENCE ORDER

(Order 11 rule 4)

UPON HEARING THE PARTIES HEREIN at the above-mentioned Court on day

[Subsidiary]

of.....20 .... At.....a.m the Honourable Judge in Chambers makes the following  
PRE-TRIAL DIRECTIONS:

#### TRACK

1. This case is allocated
  - Fast Track
  - Multi-Track

#### SETTLEMENT OUT OF COURT

2. The Plaintiff/each party shall give to the other parties standard disclosure of documents by serving copies together with disclosure statement by 5.00 p.m on..... day of .....20.....

#### INSPECTION

3. Inspection of documents be done by 5.00 p.m on .....day of.....20

#### INTERROGATORIES

#### WITNESS STATEMENTS

#### EXPERT EVIDENCE

1. The expert evidence on the issue of ..... Shall be limited to the written report of a single expert jointly instructed by the parties.
  2. If the parties cannot agree by 5.00pm on ..... who the expert is to be or about payment of his/her fees, either party may apply to the court for further directions.
  3. Unless the parties agree in writing or the court otherwise orders, the fees and expenses of the single expert shall be paid by the parties equally.
  4. The plaintiff has permission to use in evidence the written reports(s) of an expert in the discipline of/each of the following disciplines..... and any such reports(s) to be served by 5.00pm on.....
  5. The Defendant has permission to use in evidence the written report of an expert in the discipline of/each of the following disciplines..... And any such report to be served by 5.00 pm on.....
-

[Subsidiary]

- 6. The written reports of the experts shall be agreed if possible and if not agreed, the experts do hold without prejudice discussions and do prepare and serve a statement of issues agreed and issues not agreed with a summary of the reasons for any disagreement by 5.00pm on..... DAMAGES
- 7. The plaintiff do file and serve an updated schedule of loss and damage including future loss by 5.00pm on.....
- 8. The Defendant do file and serve a counter schedule by 5.00pm on.....

GENERAL DIRECTION

DISCHARGE AND VARIATION OF THIS ORDER

- 4. Any part affected by this order may apply within 10 days of service of it upon him/her/it to have it varied, set aside or stayed. Dated this..... day of.....20.....

SIGNED BY THE PRE-TIRAL JUDGE\_\_\_\_\_

NOTE: Failure to comply with the directions may result in the case being adjourned and in the party of fault having to pay the costs. The parties are always encouraged to try and settle the case by negotiation with each other. The court must be informed if the case is settled before the hearing.

[Subsidiary]

Appendix D  
TRIAL CONFERENCE QUESTIONNAIRE  
(Order 11 rule 6)

QUESTION

ANSWER

- (a) State briefly how available trial time should be planned.
- (b) Have you considered the most expeditious way of introducing evidence at the trial and have you defined the issues?
- (c) Do you intend to amend your pleadings and if so which pleadings?
- (d) Do you seek the admission of witness statement or statements without calling the maker and why do you seek this order?
- (e) Do you seek an order for the production of a copy of the statement where the original is unavailable?
- (f) At the trial do you intend to rely on affidavit evidence?
- (g) Do you intend to apply for the examinations of any witness by issue of commission outside court and for the admission of any such examination as evidence in court?
- (h) Have you exchanged expert reports and have you discussed with other party or parties the admissibility of the reports at the trial?
- (i) Do you intend to produce any exhibit and if so, have you considered its admissibility?
- (j) Have you considered using alternative dispute resolution methods in this case?

DATED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20

SIGNED BY

PLAINTIFF/ADVOCATE \_\_\_\_\_

\_\_\_\_\_

[Subsidiary]

DEFENDANT/ADVOCATE \_\_\_\_\_

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

No. 1

Notice to Person to Whom the Court Considers Should be Added as Co-Plaintiff

(O.1, r. 10)

[Subsidiary]

(Title)

To (name, description and place of residence).

Whereas ..... has instituted the above suit again 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

\_\_\_\_\_

No. 2

Order For Transmission of Summons to be Served on a Prisoner

(O. 5, r. 18)

(Title)

To be superintendent of the G.K. Prison at.....

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

\_\_\_\_\_

No. 3

Order Fr Transmission of Summons To Be Served on a Public Servant or Soldier

\_\_\_\_\_

[Subsidiary]

(O. 5, r.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*

No. 4

Certificate of Execution of Decree Transferred to Another Court

(O22, r. 4)

(Title)

Number of suit and the court by which the decree was passed.

1

Names of parties.

2

Date of application for execution.

3

Number of the execution case.

4

Processes issued and dates of service thereof.

5

Costs of execution.

6

Sh.     cts.

Amount realised.

7

Sh.     cts

How the case is disposed of.

8

Remarks.

9

.....  
*Signature of Judge*

No. 5

Notice to Show Cause why Execution should not Issue

(O. 22, r. 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.....

No. 6

Attachment in Execution. - Prohibitory Order where the Property Consists of shares in the Capital of a Corporation

(O.22, r. 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*

[Subsidiary]

No. 7

Warrant of Committal

(O. 22, r. 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.

\_\_\_\_\_

No. 8

Summons to Legal Representative of a Deceased Defendant

(O. 24, r. 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.....

\_\_\_\_\_

[Subsidiary]

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*

[Subsidiary]

## Appendix G

**SCHEDULE**

<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

**THE CONSTITUTION OF KENYA****THE CIVIL PROCEDURE ACT***(Cap. 21)***PRACTICE DIRECTIONS RELATING TO THE FILING OF SUITS,  
APPLICATIONS AND REFERENCES IN PROPER COURTS**

IN EXERCISE of the powers conferred by section 65 (3) of the Constitution and in pursuance of sections 11 to 18 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya which make provisions for the place of suing according to (a) the pecuniary jurisdiction of the court; (b) the place where the subject matter or property is situate; (c) the place where the cause of action arose; and (d) where the defendants or any of them resides or works for gain, the Chief Justice makes the following practice directions:

1. The place of suing is to be determined in accordance with the provisions of sections 11 to 18 of the Civil Procedure Act and not according to the preference or convenience of the plaintiff. The Courts and the filing registries must strictly observe the provisions as to the place of suing by allowing only those that comply with the law and rejecting those that do not.

2. Where suits have already been filed in the wrong Court, the Court should exercise its authority under Order VII rule 9 of the Civil Procedure Rules to return the plaint to be presented to the court in which the suit should have been instituted, without prejudice to any other powers that it may possess under the law to strike out the pleadings as an abuse of the process of the Court.

3. The filing of appeals, bail applications, and references from the subordinate courts should be made at the High Court with corresponding Supervisory Jurisdiction according to the established judicial administrative districts as set out in the Schedule.

4. All Judicial Review proceedings under Order LIII of the Civil Procedure Rules and Constitutional applications and references shall be serially registered in a Special register(s) for Judicial Review and constitutional Application and Reference matters in the appropriate Registry, and be heard by the High Court for the respective area on priority basis and without delay.

5. All High Court stations are hereby directed to observe the provisions of Order XLVI of the Civil Procedure Rules with regard to the filing and hearing of suits in the High Court Central Registry and in the District Registries and to ensure their compliance and enforcement.

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[Subsidiary]

**SCHEDULE****HIGH COURT AND THE RESPECTIVE MAGISTRATE'S COURT AREAS OF SUPERVISION**

<i>Province</i>	<i>High Court Station</i>	<i>Magistrate Court areas</i>
Nairobi	Nairobi Law Courts	Chief Magistrate's Court, Makadara Magistrate's Court, Kibera Magistrate's Court, City Court, Children's Court, Kiambu Magistrate's Court, Githunguri Magistrate's Court, Limuru Magistrate's Court, Kikuyu Magistrate's Court, Gatundu Magistrate's Court, Thika Magistrate's Court,
Nairobi	Milimani Commercial Courts	Magistrate's Court Milimani,
Coast	Mombasa High Court	Mombasa Magistrate's Court, Tononoka Magistrate's Court, Kwale Magistrate's Court, Voi Magistrate's Court, Wundanyi Magistrate's Court, Taveta Magistrate's Court, Kaloleni Magistrate's Court, Mariakani Magistrate's Court,
Coast	Malindi High Court	Malindi Magistrate's Court, Kilifi Magistrate's Court, Hola Magistrate's Court, Lamu Magistrate's Court, Garsen Magistrate's Court,
Rift Valley	Nakuru High Court	Nakuru Magistrate's Court, Naivasha Magistrate's Court, Molo Magistrate's Court, Nyahururu Magistrate's Court, Maralal Magistrate's Court, Narok Magistrate's Court,
Rift Valley	Kericho High Court	Kericho Magistrate's Court, Sotik Magistrate's Court, Bomet Magistrate's Court,

[Subsidiary]

<i>Province</i>	<i>High Court Station</i>	<i>Magistrate Court areas</i>
Rift Valley	Eldoret High Court	Eldoret Magistrate's Court, Kapsabet Magistrate's Court, Iten Magistrate's Court, Kabarnet Magistrate's Court, Eldama Ravine Magistrate's Court,
Rift Valley	Kitale High Court	Kitale Magistrate's Court, Kapenguria Magistrate's Court, Lodwar Magistrate's Court,
Central	Nyeri High Court	Nyeri Magistrate's Court, Kigumo Magistrate's Court, Kangema Magistrate's Court, Kandara Magistrate's Court, Muran'ga Magistrate's Court, Karatina Magistrate's Court, Othaya Magistrate's Court, Mukurweini Magistrate's Court, Nanyuki Magistrate's Court,
Eastern	Machakos High Court	Machakos Magistrate's Court, Kangundo Magistrate's Court, Kithimani Magistrate's Court, Tawa Magistrate's Court, Kilungu Magistrate's Court, Makueni Magistrate's Court, Makindu Magistrate's Court, Kitui Magistrate's Court, Mwingi Magistrate's Court, Kajiado Magistrate's Court, Mutomo Magistrate's Court,
Eastern	Meru High Court	Meru Magistrate's Court, Nkubu Magistrate's Court, Chuka Magistrate's Court, Tigania Magistrate's Court, Maua Magistrate's Court, Isiolo Magistrate's Court, Marsabit Magistrate's Court, Moyale Magistrate's Court, Marimanti Magistrate's Court,
Eastern	Embu High Court	Embu Magistrate's Court,

[Subsidiary]

<i>Province</i>	<i>High Court Station</i>	<i>Magistrate Court areas</i>
		Kerugoya Magistrate's Court, Gichugu Magistrate's Court, Wang'uru Magistrate's Court, Baricho Magistrate's Court, Siakago Magistrate's Court, Runyenjes Magistrate's Court,
Western	Kakamega High Court	Kakamega Magistrate's Court, Hamisi Magistrate's Court, Vihiga Magistrate's Court, Butere Magistrate's Court, Butali Magistrate's Court, Mumias Magistrate's Court,
Western	Bungoma High Court	Bungoma Magistrate's Court, Webuye Magistrate's Court, Kimilili Magistrate's Court,
Western	Busia Sub-registry	Sirisia magistrate's Court, Busia Magistrate's Court,
Nyanza	Kisumu High Court,	Kisumu Magistrate's Court, Nyando Magistrate's Court, Winam Magistrate's Court, Tamu Magistrate's Court, Maseno Magistrate's Court, Siaya Magistrate's Court, Ukwala Magistrate's Court Bondo Magistrate's Court,
Nyanza	Kisii High Court	Kisii Magistrate's Court, Nyamira Magistrate's Court, Keroka Magistrate's Court, Kilgoris Magistrate's Court, Kehancha Magistrate's Court, Homabay Magistrate's Court, Migori Magistrate's Court, Rongo Magistrate's Court, Oyugis Magistrate's Court, Ndhiwa Magistrate's Court, Ogembo Magistrate Court,
North Eastern	Garissa Sub- registry	Garissa Magistrate's Court, Wajir Magistrate's Court,

[Subsidiary]

*Province*

*High Court Station*

*Magistrate Court areas*

Mandera Magistrate's Court.

Gazette Notice No. 300 of 19th day of January, 2007 is revoked.

Dated this 19th day of February, 2009.

**J. E. GICHERU,**  
*Chief Justice.*

