

**HIGH COURT (CIVIL PROCEDURES) RULES, 2004**

**(CI 47)**

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## **HIGH COURT (CIVIL PROCEDURES) RULES, 2004**

IN exercise of the powers conferred on the Rules of Court Committee by clause (4) of article 33 and clause (2) of article 157 of the Constitution these Rules are made this 1st day of June, 2004.

### GENERAL PROVISIONS

#### ORDER 1—PRELIMINARY MATTERS

##### Rule 1—Application of Rules

(1) These Rules shall apply to all civil proceedings in the High Court and the Circuit Court, except that the application by the Circuit Court shall be with such modifications as may be necessary.

(2) These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided.

##### Rule 2—Publicity of Proceedings

(1) All proceedings of the Court including the announcement of its decision shall be held in public except as may be otherwise ordered by the Court in the interest of public morality, safety or public order.

(2) Sub-rule (1) shall have effect subject to the provisions of the Constitution and any other enactment in force.

(3) Where in the exercise of its powers the Court orders that any proceedings shall not be heard in public it shall specify the reason in the Record Book and those proceedings shall be held by the Judge in the presence of only the parties, their lawyers and officers of the Court.

##### Rule 3—Conduct of Proceedings by a Person other than a Party

(1) A public officer may in any proceedings represent any of the following parties,

(a) the Republic;

(b) the President;

(c) the Government; or

(d) a person employed by the Government or a public authority whose costs are being defrayed by the Government or that authority.

(2) Where in any proceedings the Court is satisfied that a party not represented by a lawyer is unable to attend the Court in person for good and sufficient reason, the Court may permit the party to be represented by a member of that person's family or one of that person's employees or that person's employer, if the representative satisfies the Court that the representative has the authority of the absent party to represent the party absent.

##### Rule 4—Acting without Authority

A person who without authority knowingly acts or takes any proceedings in the Court in the name of or on behalf of another person shall be liable to committal for contempt of court.

#### ORDER 2—COMMENCEMENT OF PROCEEDINGS

#### Rule 1—Title of Parties

Subject to any existing enactment to the contrary, the party who commences civil proceedings shall be described as "plaintiff" and the opposing party shall be described as "defendant".

#### Rule 2—Commencement of Proceedings

Subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a writ of summons.

#### Rule 3—Contents of Writ

(1) Every writ shall be as in Form 1 in the Schedule and shall be endorsed with a statement of the nature of the claim, relief or remedy sought in the action.

(2) The occupational and residential address of the parties shall be stated on the writ and the address of the plaintiff rather than the address of the lawyer of the plaintiff shall be used in the writ.

(3) Where the plaintiff's claim is for a liquidated demand only, the writ shall include in addition to the amount claimed in respect of the demand a statement that further proceedings will be stayed if within the time limited for appearance the defendant pays the amount claimed

(a) to the plaintiff or the plaintiff's lawyer; or

(b) into court if the plaintiff is resident outside the country or is acting on behalf of a person so resident or if the defendant is making the payment by an order or on behalf of a person resident outside the country.

#### Rule 4—Indorsement as to Capacity

(1) Before a writ is filed it shall be indorsed

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which the plaintiff sues; or

(b) where a defendant is sued in a representative capacity, with a statement of the capacity in which the defendant is sued.

(2) Before a writ is filed by a plaintiff who acts by an order or on behalf of a person resident outside Ghana, the writ shall be indorsed with a statement of that fact and with the address of the person so resident.

#### Rule 5—Indorsement as to Plaintiff

(1) Before a writ is filed by a plaintiff it shall be indorsed

(a) where the plaintiff sues in person, with the occupational and residential address of the plaintiff or if the plaintiff resides outside the country, the address of a place in the country to which documents for the plaintiff may be served; or

(b) where the plaintiff sues by a lawyer, the plaintiff shall, in addition to the residential and occupational address of the parties, provide at the back of the writ the lawyer's firm name and business address in Ghana and also, if the lawyer is the agent of another, the firm name and business address of his principal.

(2) The address for service of a plaintiff shall be

(a) where the plaintiff sues by a lawyer, the business address of the plaintiff or the plaintiff's lawyer or the plaintiff's lawyer's agent as indorsed on the writ; or

(b) where the plaintiff sues in person, the plaintiff's address in the country as indorsed on the writ.

(3) Where a lawyer's name is indorsed on the writ, the lawyer shall declare in writing whether the writ was filed by the lawyer or with the authority or consent of the plaintiff, if any defendant who has been served with or who has filed appearance to the writ, requests the lawyer in writing to do so.

(4) If the lawyer declares in writing that the writ was not filed by the lawyer or with the authority or consent of the plaintiff, the Court may, on application by any defendant who has been served with or who has filed appearance to the writ, strike out the writ.

(5) Where the address of the defendant after diligent search is not known, the plaintiff shall indicate on the writ that the plaintiff shall direct service.

#### Rule 6—Writ and Statement of Claim

Every writ shall be filed together with a statement of claim as provided for in Order II and no writ shall be issued unless a statement of claim is filed with it.

#### Rule 7—Issue of Writ

(1) The issue of a writ shall take place upon being sealed by the Registrar.

(2) No writ shall be sealed unless at the time it is filed for sealing, the person filing it leaves with the Registrar a copy signed by the plaintiff, if the plaintiff sues in person or by, or on behalf of the plaintiff's lawyer.

(3) The officer receiving the copy shall file it and make an entry in the Cause Book.

(4) Every writ shall be dated on the day on which it is issued.

(5) No writ, notice of which is to be served out of the jurisdiction, shall be issued without leave of the Court as provided in Order 8.

#### Rule 8—Concurrent Writs

(1) At the request of the plaintiff, one or more Concurrent writs may be issued at the time when the original writ is issued or at any later time after the original writ is issued and before the original writ ceases to be valid.

(2) Without prejudice to the generality of subrule (1), a writ for service within the jurisdiction may be issued as a Concurrent writ with a writ, notice of which is to be served out of the jurisdiction; and a writ, notice of which is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original writ with such difference, if any, as are necessary having regard to the purpose for which the writ is issued.

(4) A concurrent writ shall be sealed by being marked "concurrent" with an official stamp, and with the date on which it is issued.

#### Rule 9—Duration and Renewal of Writ

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

(2) Where a writ has not been served on a defendant within the time limited for its service by this rule, the Court may by order extend its validity from time to time for a period as may be specified in the order, not exceeding twelve months at a time, beginning with the day following that on which it would

otherwise expire, if an application for extension is made to the Court before that day or such later day as the Court may allow.

(3) An application for an order under subrule (2) shall be supported by an affidavit showing all the circumstances relied on, including the date of issue of the original writ and if it has already been renewed the date of the last renewal, and a full explanation as to why it has not already been served.

(4) Before a writ whose validity has been extended under this rule is served, it shall be marked with an official stamp showing the period for which its validity has been extended.

(5) Where the validity of a writ is extended by an order made under this rule, the order shall operate in relation to any other writ, whether original or concurrent, issued in the same action which has not been served so as to extend the validity of that writ until the expiration of the period specified in the order.

## ORDER 3—VENUE AND TRANSFER

### Rule 1—Venue of Proceedings

(1) Every cause or matter that relates to immovable property or any interest in it or for any damage to it shall be commenced in the Region in which the immovable property or any part of it is situated.

(2) Every cause or matter that relates to movable property distrained or seized for any cause shall be commenced in the Region in which the distraint or seizure takes place.

(3) Every cause or matter against a public officer to recover penalty or forfeiture shall be commenced in the Region where the cause of action arises.

(4) Every cause or matter for specific performance of a contract or in respect of breach of contract, shall be commenced in the Region in which the contract ought to have been performed or in which the defendant resides or carries on business.

(5) All other causes or matters shall be commenced in the Region in which the defendant resides or carries on business.

(6) If there are two or more defendants resident in different Regions the cause or matter may be commenced in any of the Regions.

### Rule 2—Transfer of Proceedings

(1) Where a cause or matter is commenced in a Region other than that in which it ought to have been commenced under rule 1, it may continue in the Region in which it was commenced unless

(a) the defendant raises an objection to the jurisdiction before or at the time the defendant is required to file a defence in the proceedings; or

(b) the Court reports to the Chief Justice that in its opinion the proceedings ought to be transferred and the Chief Justice orders the transfer.

(2) No proceedings taken prior to an objection to the jurisdiction with regard to venue raised by the defendant under paragraph (a) of subrule (1) of this rule shall be affected by the objection, but the Court if satisfied that the objection is well founded, shall inform the Chief Justice that in its opinion the cause or matter ought to be transferred to the Region in which it ought to have been commenced, and the Chief Justice may upon that, make such order as the Chief Justice considers appropriate.

## ORDER 4—PARTIES AND CAUSES OF ACTION

### Rule 1—Right to take Proceedings

(1) Subject to these Rules, any person may begin and carry on proceedings in person or by a lawyer.

(2) A body corporate shall not begin or carry on proceedings except by a lawyer, unless permitted to do so by an express provision of any enactment.

(3) A next friend or guardian ad litem of a person with disability shall act by a lawyer.

#### Rule 2—Joinder of Causes of Action

(1) Subject to rule 4 of this Order, a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action

(a) if the plaintiff claims, and the defendant is alleged to be liable in respect of all the causes of action;

(b) if the plaintiff claims and the defendant is alleged to be liable,

(i) in the capacity of executor or administrator of an estate or successor under customary law in respect of one or more of the causes of action; and

(ii) in the defendant's personal capacity but with reference to the same estate in respect of all the others; or

(c) in any other case, with leave of the Court.

(2) An application for leave under subrule (1)(c) shall be made ex-parte before the issue of the writ and shall be supported by an affidavit stating the grounds for the application.

#### Rule 3—Joinder of Parties

(1) Subject to rule 4 of this Order, two or more persons may be joined together in the same action as plaintiffs or as defendants without leave of Court, where

(a) if separate actions were brought by or against each of them, some common question of law or fact would arise in all the actions; and

(b) all rights to relief claimed in the action whether they are joint, several or in the alternative are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action, other than a probate action, claims any relief to which any other person is entitled jointly with the plaintiff, all persons so entitled shall, subject to the provisions of any enactment and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff shall, subject to any order made by the Court on an application for leave under this subrule, be made a defendant.

(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person, not severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons who are liable are added as defendants.

#### Rule 4—Court may Order Separate Trials

If claims in respect of two or more causes of action are included by a plaintiff in the same action, or if two or more plaintiffs or defendants are parties to the same action and it appears to the Court that the joinder of causes of action or of parties may embarrass or delay the trial or is otherwise inconvenient, the Court may

(a) order separate trials;

(b) confine the action to some of the causes of action and exclude others;

- (c) order the plaintiff or plaintiffs to elect which cause of action should be proceeded with;
- (d) order which plaintiff shall remain as plaintiff or shall cease to be such plaintiff;
- (e) order a defendant to be struck out so as not to embarrass the defendant or cause the defendant any expense by being required to attend proceedings in which the defendant has no interest; or
- (f) make such other order as may be just.

#### Rule 5—Misjoinder and Non-joinder of Parties

(1) No proceedings shall be defeated by reason of misjoinder or non-joinder of any party; and the Court may in any proceeding determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the proceedings.

(2) At any stage of proceedings the Court may on such terms as it thinks just either of its own motion or on application

(a) order any person who has been improperly or unnecessarily made a party or who for any reason is no longer a party or a necessary party to cease to be a party;

(b) order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party.

(3) No person shall be added as a plaintiff without that person's consent, signified in writing or in such other manner as may be authorised by the Court.

(4) Any application by any person for an order under subrule (2) to add that person as a party shall be made by motion supported by an affidavit showing the person's interest in the matter in dispute before or at the trial.

(5) When an order is made under subrule (2), the writ shall within fourteen days after the making of the order or such other period as may be specified in the order, be amended accordingly and indorsed with a reference to the order in pursuance of which the amendment is made and with the date on which the order for the amendment is made.

(6) Where under this rule a person is ordered to be made a defendant, the person on whose application the order is made shall procure it to be noted in the Cause Book by the Registrar and after it is so noted

(a) the amended writ shall be served on the person ordered to be made a defendant; and

(b) the defendant so served shall thereafter file an appearance.

(7) A person ordered under this rule to be added as a party shall not become a party until the writ is amended in relation to the person under this rule and, if the person is a defendant, the writ has been served on the person.

#### Rule 6—Change of Parties by Reason of Death or Bankruptcy

(1) Where a party dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, for the effective and complete determination of the matters in dispute, order that other person to be substituted for the first-named party.

(3) An application for an order under this rule may be made ex-parte.

(4) Where an order is made under this rule for a person to be made a party and the person is already a party on the other side of the record, the order shall be treated as containing a direction that the person shall cease to be a party on that side.

(5) When an order is made under this rule for a person to be made a party and the person is already on the same side but in a different capacity, the order may contain a direction that the person shall cease to be a party in that other capacity.

(6) The person on whose application an order is made under this rule shall procure it to be noted in the Cause Book by the Registrar and after it is so noted the person shall unless the Court otherwise directs, serve the order on every other party to the proceedings or who becomes or ceases to be a party by virtue of the order.

(7) A person may, within fourteen days after the person is served with an order made ex-parte under this rule, apply to the Court to discharge or vary the order.

(8) A person ordered under this rule to be substituted as a party shall not become a party until the order is served on the person under subrule (6) or, if no order is required to be served on the person, it has been noted in the Cause Book; and where the person becomes a party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old; except that filing of appearance by the old party shall not dispense with filing of appearance by the new party.

(9) Where under this rule a person is ordered to be made a defendant, the person shall file an appearance, and for this purpose the time limited for filing shall begin from the date on which the order is served on the person under subrule (6) or, if the order is not required to be served on the person, from the date on which it is noted in the Cause Book.

#### Rule 7—Failure to Proceed after Death

(1) If after the death of a plaintiff the cause of action survives, but no order is made under rule 6 substituting as plaintiff any person in whom the cause of action vests, the defendant may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order, the action of the plaintiff who has died shall be struck out.

(2) The Court shall not make an order under subrule (1) unless it is satisfied that due notice of the application has been given to the personal representatives or the customary successor or head of family of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(3) The cost of the application under subrule (1) of this rule shall be borne by the estate of the deceased plaintiff.

#### Rule 8—Actions for Possession of Land

(1) Without prejudice to rule 5, the Court may in an action for possession of immovable property at any stage of proceedings order any person who is not a party to the action but who is in possession of the immovable property, whether personally in possession or by a tenant or agent, to be made a defendant.

(2) An application under this rule by a person in possession of an immovable property in dispute may be made on notice to the plaintiff supported by an affidavit showing that the person is in possession of the immovable property in question and if by a tenant or agent, naming that tenant or agent.

#### Rule 9—Representation of Stools and Families

(1) The occupant of a stool or skin or, where the stool or skin is vacant, the regent or caretaker of that stool or skin may sue and be sued on behalf of or as representing the stool or skin.

(2) The head of a family in accordance with customary law may sue and be sued on behalf of or as representing the family.

(3) If for any good reason the head of a family is unable to act or if the head of a family refuses or fails to take action to protect the interest of the family any member of the family may subject to this rule sue on behalf of the family.

(4) Where any member of the family sues under subrule (3) a copy of the writ shall be served on the head of family.

(5) A head of family, served under subrule (4) may within three days of service of the writ apply to the Court to object to the writ or to be substituted as plaintiff or be joined as plaintiff.

(6) If the head of a family is sued as representing the family but it appears that he or she is not properly protecting the interests of the family, any member of the family may apply to the Court to be joined as a defendant in addition to or in substitution for the said head.

(7) An application under subrule (5) or (6) shall be made on notice to the parties in the action and shall be supported by an affidavit verifying the identity of the applicant and the grounds on which the applicant relies.

#### Rule 10—Dispute as to Personal Representative or Customary Successor

If any dispute arises as to who is the personal representative or customary successor of a deceased plaintiff, the Court may decide that dispute at or before the hearing of the action who shall be admitted as such personal representative or successor or where circumstances so require stay proceedings until that fact has been determined in another action.

#### Rule 11—Representative Proceedings

(1) Where numerous persons have the same interest in any proceedings, other than proceedings mentioned in rule 13 of this Order, 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 some of them.

(2) At any stage of proceedings under this rule the Court may on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons to represent all the defendants or some of the defendants.

(3) Where in the exercise of its powers under subrule (2) the Court appoints a person not named as a defendant it shall make an order under rule 5 adding the person as a defendant.

(4) A judgment or order given in proceedings under this rule shall bind all the persons acting as representatives of the parties, but shall not be enforced against a person not a party to the proceedings except with leave of the Court.

(5) Notice of the application for the grant of leave under subrule (4) shall be served personally on the persons against whom it is sought to enforce the judgment or order unless the Court otherwise orders.

(6) A person bound by the judgment or order, against whom an application is made under subrule (4) may nevertheless dispute liability to have the judgment or order enforced against that person on the ground that that person is entitled to be exempted from the liability by reason of facts and matters peculiar to that person's case.

(7) The Court hearing an application for the grant of leave under subrule (4), may order the question whether the judgment or order is enforceable against the person against whom it is made, to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

#### Rule 12—Representation of Interests of Persons who cannot be Ascertained

(1) Subject to subrule (2), in any proceedings that concerns

(a) the administration of the estate of a deceased person;

(b) property subject to a trust; or

(c) the construction of a written instrument including an enactment, the Court, if satisfied that it is expedient to do so, may appoint one or more persons to represent any person, including an unborn child, or class of persons who is or may be interested, whether presently or for any future or contingent or unascertained interest, in or affected by the proceedings.

(2) The Court shall not exercise its power under subrule (1) unless it is satisfied

(a) that the person, class or some member of the class cannot readily be ascertained; or

(b) that the person, class or some member of the class, though ascertained, cannot be found; or

(c) that though the person or class and its members can be ascertained and found, it is expedient, having regard to all the circumstances including the amount at stake and the degree of difficulty of the point to be determined, to exercise the power for the purpose of saving time.

(3) Where the Court exercises its power under subrule (1), a judgment or order of the Court given or made when the person or persons appointed in the exercise of that power are before the Court shall bind the person or class of persons represented by the person or class of persons so appointed.

(4) Where, in any proceedings to which this rule applies, a compromise is proposed and some of the persons who are interested in, or who may be affected by the compromise are not parties to the proceedings, including unborn and unascertained persons, but

(a) there is some other person with the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; and

(b) the absent persons are represented by a person appointed under subrule (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient for it to exercise this power, may approve the compromise and order that it shall bind the absent persons, and they shall be bound accordingly unless the order was obtained by fraud or non-disclosure of material facts.

#### Rule 13—Representation of Beneficiaries by Trustees

(1) Trustees, executors or administrators may sue and be sued in their capacity as such without joining any of the persons who have beneficial interest in the trust or estate.

(2) A judgment or order given or made in such proceedings shall bind those persons, unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators could not or did not in fact represent the interests of those persons in the earlier proceedings.

(3) This rule is without prejudice to the power of the Court to order a person who has a beneficial interest to be made a party to the proceedings or to make an order under rule 12.

#### Rule 14—Representation of the Interest of a Deceased Person in Proceedings

(1) There in any proceedings it appears to the Court that a deceased person was interested in the matter in question and that the person has no personal representative or customary successor or head of family, the Court may on the application of any party to the proceedings, proceed in the absence of a representative of the estate or the deceased or may by order appoint a person to represent that estate for the purpose of the proceedings.

(2) Any such order and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as if a personal representative or customary successor or head of family of that person had been a party to the proceedings.

(3) Before making an order under this rule the Court may require notice of the application for the order to be given to any of the persons who has an interest in the estate.

#### ORDER 5—PERSONS WITH DISABILITY

##### Rule 1—Definition and Effect of Disability

(1) For the purposes of judicial proceedings under these Rules a person with disability means a person under the age of eighteen years or a person who is certified by a medical officer to be incapable of managing and administering his or her property and affairs by reason of mental disorder or infirmity of mind

(2) The Court may where it considers it desirable in any action, order a medical examination of the person claimed to be a person with disability.

(3) Subject to these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by these Rules to be done by a party to the proceedings shall, if the party is a person with disability, be done by his or her next friend or guardian ad litem.

(4) A next friend or guardian ad litem shall act by a lawyer.

##### Rule 2—Appointment of next Friend or Guardian ad litem

(1) No order for the appointment of a next friend or guardian ad litem shall be necessary except where any of these Rules provides.

(2) Except where a friend or guardian ad litem has been appointed by the Court, the name of a person shall not be used, and a person shall not be entitled to act, in any cause or matter, as next friend or guardian ad litem of a person with disability unless the lawyer of the person with disability has filed in the registry

(a) a written consent of the person proposing to be next friend or guardian ad litem to act in that capacity; and

(b) a certificate made by the lawyer for the person with disability certifying that the lawyer knows or believes the person to whom the certificate relates is a person with disability, and that the person named in the certificate as next friend or guardian ad litem is a proper person to act as such and has no interest in the cause or matter adverse to that of the person with disability.

(3) Where there is any doubt or dispute as to whether a person is a person with disability, the Court shall determine that issue and make an appropriate order.

(4) Where a person has been or is next friend or guardian ad litem of a person with disability in any proceedings, no other person shall be entitled to act as next friend or guardian ad litem in those proceedings, unless the Court makes an order appointing that person as friend or guardian in substitution for the person previously acting in that capacity.

(5) The Court may for good cause remove a person acting as next friend or guardian ad litem and appoint another person in that person's place.

(6) If a person acting as next friend or guardian ad litem dies or for some good reason is unable to continue the proceedings on behalf of the person with disability, the Court shall appoint another person to act as next friend or guardian ad litem to continue the proceedings.

##### Rule 3— Attainment of 18 Years

(1) If a party with disability by virtue only of being under the age of eighteen years attains the age of eighteen years before judgment, the party shall file a notice in the registry of the Court that he or she has attained the age of eighteen years and serve a copy on the other party to the suit.

(2) On attaining the age of eighteen years, the party may, with the leave of the Court, repudiate proceedings carried on by the next friend or guardian ad litem.

#### Rule 4—Mental Disorder of a Party after Proceedings are Begun

(1) Where a party suffers mental disorder after proceedings have begun, the lawyer for the party shall immediately he or she becomes aware of this fact, file a notice in the Court to that effect and all further proceedings shall then cease until a next friend or guardian ad litem is appointed by the Court to act for the person with disability.

(2) The notice to be filed under subrule (1) shall state the date on which the party suffered the disability and shall be served on the other party to the proceedings.

(3) The lawyer who files a notice under subrule (1) shall, not later than seven days after filing the notice, apply to the Court for the appointment of a next friend or guardian ad litem.

(4) If the lawyer of a plaintiff with disability fails to comply with any of the provisions of subrule (1), (2) or (3) of this rule, the defendant may apply to the Court to dismiss the plaintiff's action and the lawyer shall be personally liable to pay any costs incurred by the defendant in any proceedings taken in the suit without a next friend by the plaintiff after the disability occurred; provided that upon an application to dismiss the plaintiff's action under this subrule, the Court instead of dismissing the action may make an order for the appointment of a next friend.

(5) If the lawyer of a defendant with disability fails to comply with any of the provisions of subrule (1), (2) or (3) of this rule, the plaintiff may apply to the Court to appoint a guardian ad litem for the defendant and the lawyer shall personally be liable to pay any costs incurred by the plaintiff in any proceedings taken in the action without a guardian ad litem after the defendant suffered the disability.

#### Rule 5—Default of Appearance by Person with Disability

(1) Where a defendant who is a person with disability is served with a writ but no appearance is filed on the defendant's behalf within the time limited for appearance, the plaintiff shall apply to the Court for an order that a proper person be appointed guardian ad litem for the person with disability, and until the appointment, there shall be no further proceedings in the action.

(2) An application for the appointment of a guardian ad litem shall be made by the defendant or the person who serves a third party notice in the action

(a) where a person with disability who is not already a party to an action is served with a defence and counterclaim but no appearance is filed on the person's behalf; and

(b) where a third party notice is served on a person with disability who is not already a party to the action but no appearance is filed on behalf of the person with disability.

(3) At any stage of proceedings in any cause or matter, of which notice has been served on a person with disability, the Court may, if no appearance is filed for that person, appoint a guardian ad litem for that person in the cause or matter or direct that an application be made for the appointment of such a guardian.

(4) An application under this rule for the appointment of a guardian ad litem shall be supported by an affidavit or other evidence which states

(a) that the person to whom the application relates is with disability;

(b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the cause or matter adverse to that of the person with disability;

(c) that the writ, defence and counterclaim or third party notice as the case may be was duly served on the person with disability; and

(d) subject to subrule (5), that notice of the application was served on the person with disability after the expiration of the time limited for appearance and at least seven days before the day stated in the notice for hearing the application.

(5) The Court may direct that notice of an application for the appointment of a guardian ad litem under this rule need not be served on the person with disability.

#### Rule 6—Application to Discharge or Vary Certain Orders

An application to the Court on behalf of a person with disability served with an order made ex-parte under Order 4 rule 6, for the discharge or variation of the order shall be made

(a) within fourteen days after service of the order if a next friend or guardian ad litem is acting for the person with disability; or

(b) within fourteen days after the appointment of such a friend or guardian to act for the person with disability if there is no next friend or guardian ad litem acting for that person in the cause or matter.

#### Rule 7—Admission by Person with Disability not to be Implied from Pleading

Notwithstanding any other provision in these Rules, a person with disability shall not be taken as admitting the truth of any allegation made in the pleading of the opposite party by reason only that the person with disability has not traversed it in his or her own pleadings.

#### Rule 8—Compromise or Settlement by Person with Disability

(1) Where before any proceedings are begun in which a claim is made by or on behalf of a person with disability, whether alone or jointly with any other person, an agreement is reached for the settlement or compromise of the claim, an application shall be made to the Court for the approval of the settlement or compromise and the Court may make an order approving the settlement and give directions for carrying out the settlement or alternatively for the further prosecution of the claim.

(2) No settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall be valid in so far as it relates to a person with disability, unless it is approved by the Court.

(3) Where in any proceedings

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person with disability; or

(b) money paid into court is accepted by or on behalf of a person with disability,

the money shall be dealt with in accordance with the directions of the Court.

(4) The Court may give directions as to

(a) how the money is to be applied or dealt with; and

(b) the payment of any sum to any person or to a next friend or guardian ad litem in respect of moneys paid or expenses incurred for and on behalf of the person with disability or for the benefit of the person with disability or to the lawyer of the person with disability.

(5) The Court may in giving directions, order that the whole of the money or part of it shall be invested in such manner as the Court thinks fit and may consider any proposal for investment submitted by or on behalf of the person with disability.

(6) Where money is invested by order of the Court under subrule (5) the money shall be held and applied or otherwise dealt with for the person with disability as the Court may from time to time direct.

(7) Where in pursuance of directions given under this rule, money is paid into court to be invested or otherwise dealt with, the money, including any interest on it shall not be paid out, nor shall any securities in which the money is invested be sold or transferred or the dividend on it be paid or the money be paid out of court except by order of the Court.

#### Rule 9—Service of Documents on Persons with Disability

(1) Where in any cause or matter a document is required to be served personally and the person on whom it is to be served is with disability, the document shall be deemed to have been duly served if served on the father or mother or guardian of the person with disability or the person with whom the person with disability resides or under whose care the person with disability is.

(2) Notwithstanding anything in subrule (1), the Court may order that a document which has been or is to be served on a person with disability or on a person other than a person mentioned in that subrule shall be deemed to be duly served if served on the person with disability.

(3) Notwithstanding anything in these Rules, a judgment or order that requires a person to do or refrain from doing any act, a notice or application for the committal of any person, and a writ of subpoena against any person, shall, if that person is with disability, be served personally on that person, unless the Court otherwise orders.

(4) Subrule (3) shall not apply to an order for interrogatories or for the discovery or inspection of documents.

#### ORDER 6—ACTIONS BY AND AGAINST PARTNERS

##### Rule 1—Actions by and against Firms within the Jurisdiction

Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable as partners in respect of a cause of action and carrying on business within the jurisdiction, may sue and be sued in the name of the firm of which they were partners at the time when the cause of action accrued.

##### Rule 2—Disclosure of Partners' Names

(1) Any defendant in an action brought by partners in the name of a firm may serve on the plaintiffs or their lawyer a notice requiring them or their lawyer forthwith to give the defendant a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with, the Court may order the plaintiffs or their lawyer to give the defendant such a statement and to verify it on oath or otherwise as may be specified in the order or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under subrule (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiff's in the writ.

(3) Subrule (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively.

##### Rule 3—Service of Writ

(1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except as specified in subrule (2), be served

(a) on any one or more of the partners; or

(b) at the principal place of business of the partnership within the jurisdiction on any person who has at the time of service the control or management of the partnership business there.

(2) Where service of the writ is effected in accordance with subrule (1), the writ shall be deemed to have been duly served on the firm, whether any member of the firm is out of the jurisdiction or not.

(3) Where a partnership has, to the knowledge of the plaintiff been dissolved before an action against the firm is begun, the writ by which the action is begun shall be served on every person within the jurisdiction sought to be made liable in the action.

(4) Every person on whom a writ is served under subrule (1) shall at the time of service be given a written notice as in Form 2 in the Schedule stating whether the person is served as a partner or as a person who has the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is served but to whom no such notice is given shall be deemed to be served as a partner.

#### Rule 4—Filing of Appearance

(1) Where persons are sued as partners in the name of their firm, appearance may not be filed in the name of the firm but only by the partners in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as partner and the person denies that he or she was a partner or liable as such at any material time, the person may file appearance in the action and state in the notice of appearance that he or she does so as a person served as a partner in the defendant firm but denies having been a partner at any material time.

(3) Where appearance has been filed for a defendant in accordance with subrule (2), the defendant may within fourteen days of filing appearance either apply to the Court to set aside the service of the writ on the defendant, on the ground that the defendant was not a partner or liable as such at any material time or may at the proper time serve a defence to the plaintiff's claim.

(4) The Court may, at any stage of the proceedings in an action in which a defendant has filed appearance in accordance with subrule (2), on the application of the plaintiff or of the defendant, order that the issue as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ is served on a person as one who has the control or management of the firm, the person may not file appearance in the action unless the person is a member of the firm sued.

#### Rule 5—Enforcing Judgment or Order against a Firm

(1) Where a judgment is given or an order is made against a firm, execution of the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or an order is made against a firm, execution of the judgment or order may, subject to rule 6 and subrule (3) of this rule, issue against any person who

(a) filed an appearance in the action as a partner;

(b) having been served as a partner with the writ, failed to file appearance in the action;

(c) admitted in that person's pleading that, that person is a partner; or

(d) was adjudged to be a partner.

(3) Execution of a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless that member

(a) filed appearance in the action as a partner; or

(b) was served within the jurisdiction with the writ as a partner; or

(c) was, with leave of the Court given under Order 8, served out of the jurisdiction with notice of the writ as a partner;

and except as provided by subrule (1) and this subrule, a judgment or order given or made against a firm shall not render liable or release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, and notice of the application shall be served personally on that person.

(5) Where the person against whom an application under subrule (4) is made does not dispute liability, the Court hearing the application may, subject to subrule (3), give leave to issue execution against the person, and, where the person disputes liability, the Court may order that the issue or question of liability be tried and determined in any manner in which any issue or question in an action may be tried and determined.

#### Rule 6—Enforcement in Actions between Partners

(1) Execution of a judgment or order given or made in

(a) an action by a firm in the name of the firm against a member of the firm;

(b) an action against a firm in the name of the firm by a member of the firm; or

(c) an action by a firm in the name of the firm against another firm in the name of that firm where those firms have one or more members in common,

shall not issue except with leave of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

#### Rule 7—Attachment of Debts Owed by a Firm

(1) An order may be made under Order 46 rule 1 in relation to debts due to or accruing from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm are resident out of the jurisdiction.

(2) An order to show cause under Order 46 rule 1 relating to such debts shall be served on a member of the firm within the jurisdiction or on some other person who has the control or management of the partnership business.

(3) Where an order made under Order 46 rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes sufficient compliance with the order.

#### Rule 8—Person Carrying on Business in Another Name

An individual carrying on business within the jurisdiction in a name or style other than in that individual's own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 7 shall, as far as applicable, apply as if the individual were a partner and the name in which he or she carries on business were the name of his or her firm.

#### Rule 9—Application for Order Charging Partner's Interest

(1) Notice of every application to the Court by a judgment creditor of a partner for an order under section 20 of the Incorporated Private Partnerships Act, 1962 (Act 152), and every order made on such an application shall be served on the judgment debtor and on such of the debtor's partners as are within the jurisdiction.

(2) Notice of every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application, and every order made on such an application, shall be served on

(a) the judgment creditor;

(b) the judgment debtor; and

(c) such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction.

(3) Notice of an application, or an order, served in accordance with this rule on some of the partners of a partnership shall be deemed to have been served on all the partners of the partnership.

#### ORDER 7—SERVICE OF PROCESS GENERALLY

##### Rule 1—Person to Serve a Document

A document which is required to be served on a person shall be served by a bailiff of the Court or a process server registered with the Court; but a party may direct the service.

##### Rule 2—Personal Service

(1) A document which is required to be served on a person shall be served personally unless the express provisions of these Rules otherwise provide or the Court otherwise directs.

(2) This rules shall not affect the power of the Court under any provision of these Rules to dispense with the requirement of personal service.

##### Rule 3—How Personal Service is Effected

(1) Personal service of a document shall be effected by leaving a duplicate or attested copy of the document with the person to be served.

(2) Where personal service of a document on any person is hindered by the violence or threats or other acts of obstruction of that person or of any other person with or under that person, it shall be sufficient for the person effecting service to leave it as near that person as may be practicable.

##### Rule 4—Documents not Served Personally

(1) Service of a document not required to be served personally may be effected

(a) by leaving it at the proper address of the person to be served; or

(b) by sending it by registered post bearing a return address and addressed to the person to be served at the address of the person; or

(c) in such other manner as the Court may direct.

(2) For the purpose of this rule, the proper address of a person on whom a document is to be served shall be the address provided by the person, but if at the time when service is effected the person has no address for service, the proper address of the person shall be

- (a) in the case of an individual, his or her usual or last known place of residence or business; or
  - (b) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm in this country; or
  - (c) in the case of a body corporate, its registered or principal office; or
  - (d) in any other case, the business address of any lawyer who is acting for the person in the cause or matter in connection with which the document is to be served.
- (3) Nothing in this rule shall be taken as prohibiting the personal service of any documents or as affecting any enactment which provides for any other manner in which documents may be served on bodies corporate.

#### Rule 5—Service on Particular Persons

- (1) Service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it on the chairman, president, or other head of the body, or on the managing director, secretary, treasurer or other similar officer of it.
- (2) Service of a document on a stool or skin may be effected by serving it
- (a) on the occupant of that stool or skin or on any secretary, clerk or linguist of that stool or skin; or
  - (b) where the stool or skin is vacant, on the regent or caretaker of that stool or skin.
- (3) Service of a document on a family as constituted by customary law may be effected by serving it
- (a) on the head of the family; or
  - (b) on any member of the family who is, or is acting as caretaker of any property of that family or on any person who is a principal member of the family.
- (4) Service of a document on a person who is in prison or detention may be effected by serving it on any person apparently in charge of the prison or place of detention, or, if access cannot be readily had to the person apparently in charge of the prison or place of detention, then on any warder, guard or similar officer of that prison or place of detention.
- (5) Service on a Minister of State in his or her capacity as such or a Ministry or Government Department may be effected by serving it on the administrative head of that Ministry or that Department.
- (6) Service of a document on a person under disability may be effected in accordance with Order 5 rule 9.

#### Rule 6—Substituted Service

- (1) If a document is required to be served personally on any person and it appears to the Court
- (a) that three or more attempts have been made without success to effect personal service, and that any further attempt to effect personal service may result in undue delay; or
  - (b) that it is otherwise impracticable for any reason to serve the document personally, the Court may make an order for substituted service of that document.
- (2) An application for an order for substituted service shall be made ex-parte and shall be supported by an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

(4) Without prejudice to the generality of subrule (3), the Court may direct substituted service to be effected in any of the following ways

(a) by service in accordance with rule 4 of this Order; or

(b) by delivery of the document to an agent of the person to be served or some other person, if there is reasonable ground to believe that the document will through that person, come to the knowledge of the person to be served; or

(c) by sending the document by registered post addressed to the person to be served at an address to be specified in the affidavit made under rule 9 (2) at which there is reasonable ground to believe that it will reach the person; or

(d) by notice put up at the Court or some other public place in the Region in which the cause or matter is commenced or at the usual or last known place of residence or business of the person to be served; or

(e) by advertisement in the media within the jurisdiction of the Court.

(5) An order for substituted service may be varied at any time with respect to the method of service directed by the order.

#### Rule 7—When Personal Service is not Required

Where by virtue of these Rules a document is required to be served on any person but is not required to be served personally, and at the time when service is to be effected that person is in default as to entry of appearance or has no address for service, the document need not be served on the person unless the Court otherwise directs or any of these Rules otherwise provides.

#### Rule 8—Computation of Time for Service

(1) Subject to subrules (2) and (3), computation of any period of time after service of a document shall commence on the day on which service is effected.

(2) Any document which is served under rule 3 (1) of this Order on a day on which the courts are closed for business shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the first available working day.

(3) A document which in accordance with rule 4 (1) (b) or 6 (4) (c) is sent by registered post to the person to be served at that person's proper address and which is not returned by the post office as undelivered shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on that person twenty-one days after the day of posting that letter.

#### Rule 9—Affidavit of Service

(1) Subject to subrule (2), an affidavit of service of a document must state by and on whom the document was served, the day of the week and the date and the hour on which it was served, where served and how.

(2) An affidavit of service of a document sent by registered post in accordance with rule 4 (1) (b) or rule 6 (4) (c), shall state by whom the document was posted, the registered number of the letter and the name of the person to whom the document was posted and the address to which the document was posted; and the certificate of posting issued by the post office shall be exhibited with the affidavit.

(3) An affidavit of service signed by the person who effects service shall, on production without proof of signature, be prima facie evidence of service.

#### Rule 10—Bailiff to Compare Copy with Original

When a bailiff or a process server duly registered with the Court receives a document for service, the person shall compare the copy or duplicate for service with the original, so as to enable him or her prove that the copy or duplicate is a correct copy of the original.

#### Rule 11—Record and Proof of Service by Bailiff

(1) A Process Book, in such form as the Judicial Secretary may direct, shall be kept at every Court for recording service of process by bailiffs and process servers.

(2) Every entry in a Process Book or an office copy of it shall be prima facie evidence of the matters stated in it.

#### Rule 12—Service of Writ

(1) Subject to these Rules and any other enactments, a writ shall be served separately on each defendant.

(2) Where a lawyer undertakes in writing to accept service of a writ on behalf of a defendant, the writ shall be deemed to have been duly served on that defendant when served on the lawyer.

(3) Where a writ is not duly served on a defendant but the defendant files an unconditional appearance, the writ shall be deemed to have been duly served on the defendant and to have been served on the date on which the defendant filed the appearance.

(4) Where a writ is duly served on a defendant other than by virtue of subrule (2) or (3), then until the person serving it indorses on it the date on which it is served, the person on whom it is served and where the person is not the defendant, the capacity in which the person is served, the plaintiff shall not be entitled to enter any judgment against that defendant in default of appearance or in default of defence.

#### Rule 13—Service of Writ on Agent of Principal outside Ghana

(1) Where the Court is satisfied on an ex-parte application

(a) that a contract has been entered into in Ghana with or through an agent who resides or carries on business in Ghana or a body corporate that has its registered office or place of business in Ghana; and

(b) that the principal for whom the agent was acting at the time the contract was entered into was neither a person residing nor carrying on business in Ghana or a corporate body having a registered office or place of business in Ghana; and

(c) that at the time of the application

(i) the agent's authority has not been revoked; or

(ii) the agent is still in business relation with the principal,

the Court may make an order authorising service of the writ beginning an action relating to the contract, to be effected on the agent instead of the principal.

(2) An order under subrule (1) authorising service on a defendant's agent shall state a time within which the defendant shall file appearance.

(3) A copy of the order and of the writ shall be sent by registered post to the defendant at the address of the defendant outside Ghana if known.

#### Rule 14—Service of Writ in Pursuance of a Contract

Where

(a) a contract contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract or, apart from any such term, the Court has jurisdiction to hear and determine any such action; and

(b) the contract provides that in the event of any action in respect of the contract being commenced the process by which it is commenced may be served on the defendant or on any other person on behalf of the defendant as may be specified in the contract or in such manner or at such place, whether in or outside Ghana, as may be so specified,

then, if an action in respect of the contract is commenced and the writ is served in accordance with the contract, the writ shall, subject to Order 8, be deemed to have been duly served on the defendant.

#### Rule 15—Service of Writ in Certain Cases Relating to Land

Where a writ is indorsed with a claim for the possession of immovable property and the Court is satisfied on an ex-parte application that no person appears to be in possession of that property, the Court may

(a) if satisfied that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ on a conspicuous part of the immovable property; and

(b) if satisfied that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ on such conspicuous part of the immovable property shall be treated as good service on that defendant.

#### ORDER 8—SERVICE OUT OF JURISDICTION

##### Rule 1—Notice of a Writ or other Processes may be Served out of Jurisdiction

(1) No writ shall be served out of the jurisdiction.

(2) Notwithstanding subrule (1), notice of a writ as in Form 3 in the Schedule may be served out of the jurisdiction with leave of the Court.

##### Rule 2—Application to be Supported by Affidavit

(1) An application for the grant of leave under rule 1 (2) shall be supported by an affidavit stating the grounds on which the application is made and stating that in the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is or may probably be found.

(2) No such leave shall be granted unless it is made sufficiently to appear to the Court

(a) that the case is a proper one for service out of the jurisdiction; and

(b) that the case falls within one of the provisions of rule 3.

##### Rule 3—Cases where Leave may be Granted

(1) Service out of the jurisdiction of notice of a writ may be effected with leave of the Court in the following cases

(a) if the whole subject-matter of the action begun by the writ is immovable property situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to any such property;

(b) if an act, deed, will, contract, obligation or liability affecting immovable property situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ;

(c) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident within the jurisdiction;

(d) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;

(e) if the action begun by the writ is for the execution, as to property situated within the jurisdiction, of the trusts of a written instrument, being trusts that ought to be executed according to the laws of this country and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;

(f) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident within the jurisdiction to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract which.

(i) was made within the jurisdiction; or

(ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or

(iii) is by its terms, or by implication governed by the laws of this country;

(g) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident within the jurisdiction, in respect of a breach

(i) committed within the jurisdiction of a contract made within or out of the jurisdiction; and

(ii) notwithstanding the fact that the breach is preceded or accompanied by a breach committed out of the jurisdiction that renders impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;

(h) if the action begun by the writ is founded on a tort committed within the jurisdiction;

(i) if in the action begun by the writ, an injunction is sought that orders the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);

(j) if the action begun by the writ is properly brought against a person duly served within the jurisdiction, but a person out of the jurisdiction is a necessary or proper party to it;

(k) if the action begun by the writ is by a mortgagee of immovable property situated within the jurisdiction and seeks the sale of the property, foreclosure of the mortgage or delivery by the mortgagor of possession of the property but not an order for payment of any moneys due under the mortgage;

(l) if the action begun by the writ is by a mortgagor of immovable property situate within the jurisdiction and seeks redemption of the mortgage, discharge of the mortgage or delivery by the mortgagee of possession of the property but not a personal judgment; or

(m) if the action begun by the writ is in respect of a contract which contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract.

(2) In this rule, "mortgage" includes a charge or lien; "mortgagee" means a person entitled to or interested in a mortgage; and "mortgagor" means a person entitled to or interested in property subject to a mortgage.

Rule 4—Order Granting Leave to Fix Time for Appearance

An order granting leave to serve notice of a writ out of the jurisdiction shall provide a time limit within which the defendant to be served shall file appearance.

#### Rule 5—Methods of Service

(1) Subject to this rule and to rule 9 of this Order, Order 7 rules 12 and 15 shall apply to the service of notice of a writ out of the jurisdiction.

(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the laws of that country.

(3) Notice of a writ which is to be served out of the jurisdiction,

(a) need not be served personally on the person required to be served so long as it is served on the person in accordance with the laws of the country in which service is effected; and

(b) need not be served by the plaintiff or the agent of the plaintiff if it is served by a method provided for in rule 6.

#### Rule 6—Authorities to Effect Service

(1) Where by these Rules notice of a writ is to be served on a defendant in a country with respect to which there exists a Civil Procedure Convention that provides for service in that country of process of the Court (in this Order referred to as "as a Convention"), the notice may be served

(a) through the judicial authorities of that country; or

(b) through a Ghana consul in that country subject to any provision of a Convention as to the nationality of persons who may be so served.

(2) Where by these Rules notice of a writ is to be served on a defendant in a country with respect to which a Convention does not exist, the notice may be served

(a) through the Government of that country, where that Government is willing to effect service; or

(b) through a Ghana consul in that country, except where service through such an authority is contrary to the laws of that country.

#### Rule 7—Documents to be Lodged

(1) Where leave is granted to serve notice of a writ out of the jurisdiction, the person who requires the service shall lodge in the registry

(a) a request for service abroad, as in Form 4 in the Schedule;

(b) the document to be served, and a translation of it in the official language of the country in which service is to be effected, certified by the person making it to be a correct translation; and

(c) a copy of the document and a translation of it for each person to be served.

(2) Where a Convention exists with respect to the country in which service is to be effected, the request for service abroad shall specify whether service is to be effected through the judicial authority of that country or through a Ghana consul in that country.

(3) Where a Convention does not exist with respect to that country, the request for service abroad shall specify whether service is to be effected through the Government of that country or through a Ghana consul in that country.

(4) Every request lodge under this rule shall contain an undertaking by the person making the request to be personally responsible for all expenses incurred by the Minister for Foreign Affairs in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Registrar for transmission to the Minister for Foreign Affairs.

(5) A translation need not be lodged under subrule (1) if the official language of the country concerned is English or if the document is to be served by a Ghana consul unless by the terms of a Convention such a translation is required.

#### Rule 8—Sending of Documents

Documents duly lodged under rule 7 shall be sealed with the seal of the High Court, and the Registrar shall forward them to the Minister for Foreign Affairs with a request that the Minister arranges for the notice of the writ to be served by the method indicated in the request lodged under rule 7 or, where alternative methods are indicated, by the most convenient of the methods.

#### Rule 9—Evidence of Service

(1) Where a document has been sent to another country in pursuance of rule 8, an official certificate sent to the Court by the Government or judicial authority of that country or by a Ghana consul in that country, and stating that the document has been served on the person personally or in accordance with the laws of that country on a specified date, shall be evidence of the facts so stated.

(2) A document purporting to be such certificate shall, until the contrary is proved, be deemed to be such certificate.

(3) Where a certificate is produced in relation to the service of a document under this Order, Order 7 rule 12(4) shall not apply in relation to that service.

#### Rule 10—Service of Notices or Proceedings

(1) Service out of the jurisdiction of any notice or order given or made in any cause or matter may be effected with leave of the Court.

(2) Rule 2 of this Order shall, as far as applicable, apply to an application for the grant of leave under this rule as it applies to an application for the grant of leave under rule 1 (2) of this Order.

(3) Rules 5 to 9 of this Order shall apply to any document in respect of which leave has been granted for service out of the jurisdiction under this rule as they apply to a notice of a writ.

(4) Where a person is to be served with a document under this rule, a copy shall be served on the person, together with an intimation in writing that a process in the form of the copy has been issued or otherwise initiated.

#### Rule 11—Service by Airmail

The Court, in giving leave to serve a document out of the jurisdiction under this Order, may in an appropriate case direct that airmail shall be used by the party effecting the service.

### ORDER 9—APPEARANCE

#### Rule 1—Who may File Appearance

(1) Subject to Order 5 rule 1 of these Rules a defendant to an action may, whether or not the defendant is sued in a personal capacity or as a trustee or as a personal representative or in any other representative capacity, file appearance in the action and defend it in person or by a lawyer.

(2) The residential and occupational address of the defendant shall be stated on the appearance whether the defendant defends in person or by a lawyer and whether this is stated on the writ or not.

(3) Where the defendant defaults in stating the defendant's residential and occupational address on the appearance form the plaintiff may apply to the court on notice to compel the defendant to do so and the cost involved shall be borne by the defendant and where the defendant fails to comply with the Court's order within the stipulated time, the defendant shall be considered to have not entered appearance.

#### Rule 2—Method of Filing Appearance

(1) Appearance is filed by completing a notice of appearance in triplicate in compliance with the rule 3 of this Order and handing it in at, or sending it by post to, the registry together with two stamped envelopes, one addressed to the plaintiff's lawyer or to the plaintiff, if acting in person, at the plaintiff's address for service, and the other addressed to the defendant filing the appearance.

(2) If two or more defendants to an action file appearance by the same lawyer and at the same time, only one set of notices in triplicate need be completed and delivered for those defendants.

(3) Where persons are sued as partners in the name of their firm they shall appear individually in their own names; but all subsequent proceedings shall continue in the name of the firm.

#### Rule 3—Contents of Notice

(1) The notice of appearance shall be as in Form 5 in the Schedule and shall specify an address for service which shall be

(a) the defendant's place of residence in this country or, if the defendant has no place of residence, the address of a place in this country at or to which documents for the defendant may be delivered or sent; and

(b) where the defendant appears by a lawyer, the business address of that lawyer in this country.

(2) A notice of appearance shall be dated on the day on which it is handed in at, or sent by post to the registry, and shall be signed by the defendant if the defendant appears in person or by the lawyer of the defendant.

(3) Where the defendant files appearance by a lawyer who is acting as agent for another lawyer who has a place of business in the country, the notice of appearance shall state that the first-named lawyer so acts and shall also state the name and address of the other lawyer.

(4) If the Court is satisfied on application by the plaintiff that any address specified in the notice of appearance is not genuine, the Court may set aside the appearance.

#### Rule 4—Procedure on Receipt of Notice

On the day on which the notice of appearance in triplicate is received at the registry, the Registrar shall

(a) stamp each copy of the notice with an official stamp showing the date and time on which it is received;

(b) enter the appearance in the Cause Book;

(c) file the first copy of the notice;

(d) send by post or otherwise serve on the plaintiff or the lawyer of the plaintiff at the address for service indorsed on the writ, the second copy of the notice and certificate duly stamped; and

(e) send by post or otherwise return to the defendant or the defendant's lawyer the third copy of the notice duly stamped.

#### Rule 5—Time Limited for Appearance

In these Rules references to the time limited for appearance are references

(a) in the case of a writ served in the country, to eight days after the service of the writ or where that time has been extended by the Court, within that time as extended; and

(b) in the case of notice of a writ served outside the country, to the time limited by an order of the Court under Order 7 rule 13(2) or Order 8 rule 4 or, where that time has been extended, to the extended time.

#### Rule 6—Late Appearance

(1) A defendant may not file appearance after judgment has been entered in the action except with leave of the Court.

(2) Except as provided by subrule (1), nothing in these Rules shall be construed as precluding a defendant from filing appearance after the time limited for appearance, but if the defendant does so the defendant shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later if the defendant had appeared within that time.

#### Rule 7—Conditional Appearance

(1) A defendant may file a conditional appearance.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as unconditional appearance unless the defendant applies to the Court within the time limited for the purpose, for an order under rule 8 and the Court makes an order under that rule.

#### Rule 8—Application to Set Aside Writ

A defendant may at any time before filing appearance, or, if the defendant has filed a conditional appearance, within fourteen days after filing appearance, apply to the Court for an order to

(a) set aside the writ or service of the writ;

(b) declare that the writ or notice of it has not been served on the defendant; or

(c) discharge any order that gives leave to serve the notice on the defendant outside the country.

#### ORDER 10—DEFAULT OF APPEARANCE

##### Rule 1—Claim for Liquidated Demand

(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, apply to enter final judgment against the defendant for a sum not exceeding that claimed by the writ and for costs, and proceed with action against other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand, by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such rate shall be calculated from the date of the writ to the date of entering judgment or final payment at the same rate as the prevailing commercial bank rate.

##### Rule 2—Claim for Unliquidated Demand

Where the plaintiff's claim against a defendant is for an unliquidated demand only, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, apply to enter interlocutory judgment against that defendant for damages and proceed with the action against other defendants, if any.

### Rule 3—Claim in Detinue

(1) Where the plaintiff's claim against a defendant relates to the detention of goods only, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance; apply to enter judgment against the defendant

(a) for the delivery of the goods or their value to be assessed and costs; or

(b) for the delivery of the goods and costs; or

(c) for the value of the goods to be assessed and costs

and proceed with the action against other defendants, if any.

(2) Where the plaintiff enters interlocutory judgment for damages under rule 2 or for the value of goods under this rule, the Court shall fix the date on which the damages or value shall be assessed and direct that notice of it shall be given to the defendant against whom the interlocutory judgment has been entered.

(3) A defendant who is served with such a notice is entitled to attend at the assessment and be heard on the issue of damages only.

### Rule 4—Claim for Possession of Immovable Property

(1) Where the plaintiff's claim against a defendant is for possession of immovable property only, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, apply for judgment for possession of the immovable property and costs as against the defendant; provided that the plaintiff may proceed with the action against other defendants, if any, who have filed appearance.

(2) Where there are defendants who have been sued jointly, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the immovable property has been entered against all the defendants.

(3) This rule shall not apply where possession is claimed by virtue of a mortgage.

### Rule 5—Mixed Claims

Where the plaintiff makes two or more of the claims to which rules 1 to 4 apply against a defendant, and there is no other claim, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, apply for judgment against that defendant in respect of any such claim as the plaintiff would be entitled to apply for under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

### Rule 6 —Actions not Specifically Provided for

(1) Where the plaintiff makes a claim of a description not mentioned in rules 1 to 4 against a defendant, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance and upon filing an affidavit proving due service of the writ and statement of claim on the defendant, proceed with the action as if the defendant had filed appearance.

(2) Where the plaintiff makes a claim of a description not mentioned in rules 1 to 4 but because the defendant satisfies the claim or complies with the demands or for any other similar reason it becomes unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, apply for the award of costs against that defendant.

(3) Notice of an application for leave to enter judgment under subrule (2) shall be served on the defendant against whom it is sought to enter judgment.

### Rule 7—Proof of Service of Writ

(1) Judgment shall not be entered against a defendant under this Order unless

(a) the plaintiff files an affidavit proving due service of the writ or notice of the writ on the defendant; or

(b) the plaintiff produces the writ indorsed by the defendant's lawyer with a statement that the lawyer accepts service of the writ on behalf of the defendant.

(2) Where in an action an application is made to the Court for an order affecting a party who has failed to file appearance, the applicant shall satisfy the Court that the party is in default of appearance.

#### Rule 8—Setting Aside Judgment

The Court may, on such terms as it thinks fit, set aside or vary any judgment entered in pursuance of this Order.

#### Rule 9—Moneylender's Actions

(1) In an action brought by a moneylender or an assignee for the recovery of money lent by the moneylender or for the enforcement of any agreement or security relating to any such money, no judgment shall be given in default of appearance except by leave of the court.

(2) An application for leave to enter judgment in such an action shall be made by notice returnable not less than three clear days after service of the notice and after filing an affidavit of service of the writ.

(3) At the hearing of the application, whether the defendant appears in Court or not, the Court may

(a) exercise the powers of the Court under the Moneylenders Ordinance, 1940 (Cap. 176); and

(b) if satisfied by affidavit or otherwise that notice has been duly served, give leave to enter judgment for the whole or part of the claim; and

(c) as regards any part of the claim to which leave to enter final judgment is refused, give such directions or make such order as may be necessary for further proceedings in the action, and upon such terms as may be considered just.

#### Rule 10—Actions on Mortgages

(1) In any action in which the plaintiff claims any of the following reliefs:

(a) payment of moneys secured by a mortgage or charge;

(b) sale of property subject to a mortgage or charge;

(c) delivery of possession of mortgaged property to the mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge or by any other person in, or alleged to be in possession of the property;

(d) redemption of property subject to a mortgage or charge;

(e) discharge of a mortgage; or

(f) delivery of possession of a mortgaged property by a mortgagee,

judgment shall not be entered in default of appearance except by leave of the Court.

(2) The Court may require the application for leave to be supported by evidence which entitles the applicant to relief and may direct that notice of the application shall be given to the defendant and to such other person as the Court may consider proper.

## ORDER 11—PLEADINGS

### Rule 1—Service of Statement of Claim

(1) The plaintiff shall serve a statement of claim on each defendant at the same time as the writ or notice of the writ is served on that defendant.

(2) Where the plaintiff fails to serve a statement of claim on a defendant, that defendant may apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it considers just.

### Rule 2—Service of Defence

(1) A defendant who files appearance and intends to defend the action shall, unless the Court gives leave to the contrary, file a defence for service on the plaintiff before the expiration of fourteen days after the time limited for appearance.

(2) Where notice of an application for summary judgment under Order 14 is served on a defendant before the defendant files a defence, subrule (1) shall not apply to that defendant, but if by the order made on the application the defendant is given leave to defend the action, the defendant shall file a defence for service on the plaintiff within fourteen days after the order is made or within such other period as may be specified in the order.

### Rule 3—Service of Reply

(1) A plaintiff on whom a defence is served shall file a reply if that is necessary for compliance with rule 8, and if no reply is filed, rule 14(1) shall apply.

(2) A reply to any defence shall be filed by the plaintiff before the expiration of seven days after the service on the plaintiff of that defence.

### Rule 4—Subsequent Pleadings

No pleading subsequent to a reply shall be filed except with leave of the Court.

### Rule 5—Service of Pleadings during Long Vacation

Notwithstanding Order 80 rule 2 pleadings may be filed during the Long Vacation.

### Rule 6—Formal Requirements of Pleadings

(1) Every pleading in an action shall bear on its face

(a) the year in which the writ in the action was issued and the number of the action;

(b) the title of the action;

(c) the Court, the Region and the town to which the action is assigned;

(d) the description of the pleading; and

(e) the time and date when it was filed.

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

(3) Dates, sums and other numbers may be expressed in a pleading in figures or in words or both.

(4) Every pleading of a party shall be indorsed

(a) where the party sues or defends in person with the name and address of the person; or

(b) in any other case, with the name or firm and business address of the lawyer by whom it is issued and where the lawyer is the agent of another, the name or firm and business address of the lawyer's principal.

(5) Every pleading of a party shall be signed by a lawyer, if settled by the lawyer, and, if not, by the party.

#### Rule 7—Facts not Evidence to be Plead

(1) Subject to this rule, and rules 10 to 12, every pleading shall contain only a statement in a summary form of the material facts on which the party pleading relies for the 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 that party's pleading.

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

#### Rule 8—Matters to be Specifically Plead

(1) A party shall in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any limitation provision, fraud or any fact showing illegality

(a) which the party alleges makes any claim or defence of the opposite party not maintainable; or

(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 possession of immovable property shall plead specifically every ground of defence on which the defendant relies, and a plea that the defendant is in possession of the immovable property in person or by a tenant shall not be sufficient.

#### Rule 9—New Facts may be Plead

Subject to rules 7 (1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or after the issue of the writ.

#### Rule 10—Departure

(1) A party shall not in any pleading make any allegation of fact or raise any new ground or claim, inconsistent with a previous pleading made by the party.

(2) Subrule (1) shall not be taken as limiting the right of a party to amend or apply for leave to amend previous pleading of the party in order to plead allegations or claims in the alternative.

#### Rule 11—Points of Law

(1) A party may in pleading raise any point of law.

(2) Where the party pleading relies on a rule of customary law, the rule shall be stated in the pleading with sufficient particulars to show the nature and effect of the rule in question and the geographical area and ethnic group to which it relates.

#### Rule 12—Particulars of Pleading

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

(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 conditions of the mind of any person, whether of 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) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed pages, they may be set out in a separate document referred to in the pleading and the pleading shall state whether the document has already been served and, if so, when, or if it is to be served with the pleading.

(3) The Court may order a party to file particulars of any claim, defence or other matter stated in the party's pleading, or in any affidavit, or a statement of the nature of the case on which the party relies, and the order may be made on such terms as the Court considers fit.

(4) Where a party alleges as a fact that person has knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of subrule (3), the Court may, on such terms as it considers just, order that party to file,

(a) where the party alleges knowledge, particulars of the facts on which the party relies; and

(b) where the party alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant plead or for some other special reason.

(6) Before applying for an order for particulars under this rule, a party may apply to the other party for such particulars by letter.

(7) Where the applicant for an order under this rule does not apply by letter for the particulars the applicant requires, the Court may refuse to make the order unless it is of the opinion that there are sufficient reasons for the application not having been made by letter.

#### Rule 13—Admissions and Denials

(1) Subject to subrule (4) of this rule, any allegation of fact made by a party in the party's pleading shall be deemed to be admitted by the opposite party unless it is traversed by that party in pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a 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 statement of claim or counterclaim which the party on whom it is served does not intend to admit shall be specifically traversed by the party in the party's defence or defence to counterclaim and a general statement of non-admission shall not be a sufficient traverse of them.

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

#### Rule 14—Denial by Joinder of Issue

- (1) If there is no reply to a defence, there shall be a joinder of issue on that defence.
- (2) Subject to subrule (3),
  - (a) there shall be at the close of pleadings a joinder of issue on the pleading last served; and
  - (b) a party may in the party's pleading expressly join issue on the preceding pleading.
- (3) There shall be no joinder of issue on a statement of claim or counterclaim.
- (4) A joinder of issue shall operate as a denial of every material allegation of fact made in the pleading 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.

#### Rule 15—Statement of Claim

- (1) A statement of claim shall state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.
- (2) A statement of claim shall not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but subject to that, a plaintiff may in the plaintiff's statement of claim alter, modify or extend any claim made by the plaintiff in the indorsement of the writ without amending the indorsement.

#### Rule 16—Defence of Tender

Where in any action a defence of tender before action is pleaded, the defendant shall pay into court in accordance with Order 18 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.

#### Rule 17—Defence of Set-off

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied upon as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

#### Rule 18—Striking out Pleadings

- (1) The Court may at any stage of the proceedings order any pleading or anything in any pleading to be struck out on the grounds that
  - (a) it discloses no reasonable cause of action or defence; 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 action to be stayed or dismissed or judgment to be entered accordingly.
- (2) No evidence whatsoever shall be admissible on an application under subrule (1) (a).

#### Rule 19—Close of Pleadings

(1) The pleadings in an action are closed,

(a) at the expiration of seven days after service of the reply or, if there is no reply but only a defence to a counterclaim, after service of the defence to counterclaim; or

(b) if neither a reply nor a defence to counterclaim is served, at the expiration of seven days after service of the defence.

(2) The pleadings in an action are closed at the time provided by subrule (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

## ORDER 12—COUNTERCLAIMS

### Rule 1—Counterclaim Against Plaintiff

(1) A defendant who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in an action in respect of any matter, whenever and however arising, may, instead of bringing a separate action, make a counterclaim in respect of that matter.

(2) The defendant shall add the counterclaim to the defence.

### Rule 2—Defence to Counterclaim

(1) A plaintiff on whom a defendant serves a counterclaim shall, if the plaintiff intends to defend it, file a defence to the counterclaim.

(2) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, the plaintiff shall include them in the same document.

(3) A defence to counterclaim shall be filed by the plaintiff before the expiration of fourteen days after the service on the plaintiff of the counterclaim to which it relates.

### Rule 3—Application of Rules of Pleading

Without prejudice to the general application of Order 11 to a counterclaim and a defence to counterclaim or to any provision of it which applies to either of those pleadings specifically

(a) rule 1 of this Order shall apply to a counterclaim as if it were a statement of claim and the defendant making it a plaintiff; and

(b) Orders 13, 14 and 46 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

### Rule 4—Proceedings on Counterclaim

(1) A counterclaim may be proceeded with although judgment is given for the plaintiff in the action or the action is stayed, discontinued or dismissed.

(2) Where a defendant establishes a counterclaim against the claim established by the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, but without prejudice to the Court's discretion in respect of costs.

### Rule 5—Counterclaim Against Additional Parties

(1) Where a defendant who makes a counterclaim against the plaintiff alleges that any other person, whether a party to the action or not, is liable to the defendant together with the plaintiff in respect of the subject-matter of the counterclaim; or claims against such other person any relief relating to or connected with the original subject-matter of the action, the defendant may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom the defendant makes a counterclaim, the defendant shall add that person's name to the title of the action and serve that person a copy of the counterclaim.

(3) Where a copy of the counterclaim is to be served on a person who is already a party to the action, the defendant shall serve it within the period within which, under these Rules, the defendant shall serve on the plaintiff the defence to which the counterclaim is added.

(4) Where a copy of the counterclaim is to be served on a person who is not already a party to the action, a copy of the writ and of the pleadings served in the action shall be served with the counterclaim.

(5) The provisions of these Rules relating to service of process, filing of appearance and default of appearance shall apply to the counterclaim and the proceedings arising from it as if

(a) the counterclaim were a writ and statement of claim and the proceedings arising from it, an action; and

(b) the party making the counterclaim were a plaintiff and the party against whom it is made, a defendant in that action.

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action shall be indorsed with a notice addressed to that person

(a) stating the effect of Order 9 rules 1 and 2 as applied to subrule (4) of this rule;

(b) specifying the registry at which that person shall file appearance to the counterclaim; and

(c) stating that the person may obtain forms of the requisite documents from that registry and stating how the person may do so.

(7) A person on whom a copy of a counterclaim is served under subrule (2) shall, if the person is not already a party to the action, become a party to it as from the time of service, with the same rights in respect of defence to the counterclaim and otherwise as if the person had been duly sued in the ordinary way by the person making the counterclaim.

(8) A person who is not already a party to the action shall file appearance to the counterclaim.

#### Rule 6—Joinder of Causes of Action

(1) A defendant may in one counterclaim, claim relief against the same plaintiff in respect of more than one cause of action where

(a) the plaintiff is alleged to be liable in the same capacity in respect of all the causes of action; or

(b) the plaintiff is alleged to be liable in the capacity of executor or administrator of an estate or successor under customary law in respect of one or more of the causes of action and in the plaintiff's personal capacity but with reference to the same estate with respect to all the others; or

(c) the Court grants leave upon application.

(2) An application for leave under subrule (1)(c) shall be made ex-parte before the filing of the counterclaim and supported by affidavit which shall state the grounds of the application.

#### Rule 7—Court may Order Separate Trials

(1) If claims in respect of two or more causes of action are included by a defendant in a counterclaim, and it appears to the Court that the joinder of causes of action may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other orders as may be just.

(2) If it appears on an application of any party against whom a counterclaim is made that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be just.

(3) Rules 1, 5 and 6 of this Order shall have effect subject to this rule.

#### Rule 8—Failure to Proceed after Death of Party

Where a counterclaim is made by a defendant, Order 4 rule 7 shall apply to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

#### ORDER 13—DEFAULT OF DEFENCE

##### Rule 1—Claim for Liquidated Demand

(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, and the defendant fails to file a defence to the claim, the plaintiff may, after the expiration of the period fixed by these Rules for filing the defence, apply, to enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such rate shall be computed from the date of the writ to the date of entering judgment or final payment at the prevailing commercial bank rate.

##### Rule 2—Claim for Unliquidated Demand

Where the plaintiff's claim against a defendant is for an unliquidated demand only, and the defendant fails to file a defence to the claim, the plaintiff may, after the expiration of the period fixed by these Rules for filing a defence, apply for leave to enter interlocutory judgment against the defendant for damages to be assessed and for costs, and proceed with the action against other defendants, if any.

##### Rule 3—Claim in Detinue

Where the plaintiff's claim against a defendant relates to the detention of goods only, and the defendant fails to file a defence to the claim, the plaintiff may, after the expiration of the period fixed by these Rules for filing the defence, apply to enter interlocutory judgment against the defendant

(a) for the delivery of the goods or their assessed value and costs;

(b) for the delivery of the goods and costs; or

(c) for the value of the goods and costs

and proceed with the action against other defendants, if any.

##### Rule 4—Claim for Possession of Immovable Property

(1) Where the plaintiff's claim against a defendant is for possession of immovable property only, and the defendant fails to file a defence to the claim, the plaintiff may, after the expiration of the period fixed by these Rules for filing a defence, apply to enter judgment for possession of the immovable property against the defendant and for costs, and proceed with the action against other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the immovable property has been entered against all the defendants.

(3) This rule shall not apply where possession is claimed by virtue of a mortgage.

#### Rule 5—Mixed Claims

Where the plaintiff makes against a defendant two or more claims to which rules 1 to 4 apply and does not make any other claim, and the defendant fails to file a defence to the claim, the plaintiff may, after the expiration of the period fixed by these Rules for filing the defence, apply to enter against the defendant such judgment in respect of the claim as the plaintiff would be entitled to enter under those rules, and proceed with the action against other defendants, if any.

#### Rule 6—Other Claims

(1) Where the plaintiff makes against a defendant a claim of a description not mentioned in rules 1 to 4 and the defendant fails to file a defence to the claim, the plaintiff may, after the expiration of the period fixed by these Rules for filing the defence, apply to the Court for judgment.

(2) On the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to by the statement of claim of the plaintiff.

(3) Where the plaintiff makes a claim to which subrule (1) applies against more than one defendant, and one of the defendants fails to file a defence to the claim, the plaintiff may

(a) if the claim against the defendant in default is severable from the claim against the other defendants, apply under subrule (1) for judgment, and proceed with the action against the other defendants; or

(b) set down the action on a motion for judgment against the defendant in default at the time when the action is set down for trial or is set down on a motion for judgment, against the other defendants.

#### Rule 7—Default of Defence to Counterclaim

(1) A defendant who counterclaims against a plaintiff shall be treated for the purposes of this Order as if the defendant were a plaintiff who has made against a defendant the claim in the counterclaim.

(2) Where the plaintiff or any other party against whom a counterclaim is made fails to file a defence to counterclaim, this Order shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if reference to the period fixed by these Rules for filing the defence were a reference to the period so fixed for filing of the defence to counterclaim.

#### Rule 8—Setting Aside Judgment

The Court may, on application by a party affected and on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

### ORDER 14—SUMMARY JUDGMENT

#### Rule 1— Application for Summary Judgment

Where in an action a defendant has been served with a statement of claim and has filed appearance, the plaintiff may on notice apply to the Court for judgment against the defendant on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or that the defendant has no defence to such a claim or part of a claim, except as to the amount of any damages claimed.

#### Rule 2—Method of Making Application

(1) The notice of the application shall set out the reliefs sought by the plaintiff.

(2) The notice shall be supported by an affidavit verifying the facts on which the relevant claim or part of a claim is based, and stating that in the deponent's belief there is no defence to that claim or part of a claim, or no defence except as to the amount of any damages claimed.

(3) Notice of the application, a copy of the affidavit in support and of any exhibit relating to it shall be served on the defendant not less than four clear days before the day named in the notice for hearing the application.

#### Rule 3—Defendant may Show Cause

(1) A defendant may show cause against the application by affidavit or otherwise to the satisfaction of the Court.

(2) Where the defendant proceeds to show cause, the Court may order the defendant or in the case of a body corporate, any director, manager, secretary or similar officer of it, or any person purporting to act in such capacity to attend and be examined on oath or to produce any document if it appears to the Court that special circumstances make this desirable.

#### Rule 4—Affidavits

Unless the Court otherwise directs, an affidavit filed under rule 2 or 3 may contain statements of information and belief with the sources and grounds on which they are based.

#### Rule 5—Hearing of Application

(1) On the hearing of the application the Court may

(a) give such judgment for the plaintiff against the defendant on the relevant claim or part of a claim as may be just having regard to the nature of the remedy or relief sought, unless the defendant satisfies the Court, with respect to that claim or part of it, that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part of it;

(b) give the defendant leave to defend the action with respect to the relevant claim or part of it either unconditionally or on terms such as giving security or otherwise; or

(c) dismiss the application with costs to be paid forthwith by the plaintiff, if it appears that the case is not within this Order or that the plaintiff knew that the defendant relied on a contention which would entitle the defendant to unconditional leave to defend the action.

(2) The Court may, subject to any conditions that the justice of the case requires, stay execution of a judgment given against a defendant under this rule until after the trial of any counterclaim raised by the defendant.

#### Rule 6—Directions

Where leave to defend is given or execution stayed under rule 5, the Court may give such directions as to the further conduct of the action as may be given on an application for directions, and may order the action to be set down for trial forthwith or at such date as the Court considers proper.

#### Rule 7—Delivery up of Chattel

Where the Court gives judgment under this Order for the delivery up of a specific chattel, it shall have the same power to order the defendant to deliver up the chattel without giving the defendant an option to retain it upon paying its assessed value, as if the judgment had been given after trial.

#### Rule 8—Relief against Forfeiture

Where the Court gives judgment under this Order for possession of land on the ground of forfeiture for non-payment of rent, a tenant shall have the same right to apply for relief as if the judgment had been given after trial.

#### Rule 9—Setting Aside Judgment

A judgment given against a defendant who does not appear at the hearing of an application under this Order may be set aside or varied by the Court on such terms as it considers just upon an application brought within fourteen days of the service on the defendant of notice of the judgment.

#### Rule 10—Summary Judgment on Counterclaim

(1) Where in an action the plaintiff is served with a counterclaim, the defendant may at any time after service of the counterclaim on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part of it.

(2) Rules 2 to 9 shall apply to an application under this rule with the following modifications

(a) references in the Rules to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;

(b) the references in rules 5 and 6 to the action shall be construed as references to the counterclaim to which the application made under this rule relates; and

(c) in rule 5 (2) the words after “trial” shall be omitted.

#### Rule 11—Right to Proceed with Remainder of Action or Counterclaim

(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or part of a claim against any defendant, the plaintiff may proceed with the action as regards any other claim or as regards the remainder of the claim or against any other defendant.

(2) Where on an application under rule 10, a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, the defendant may proceed with the counterclaim as regards any other claim or as regards the remainder of the claim against any other defendant to the counterclaim.

#### Rule 12—Actions and Claims Excluded

Summary judgment shall not be given under this Order with respect to

(a) Probate, matrimonial or maritime proceedings;

(b) a claim or counterclaim for defamation, malicious prosecution, seduction or breach of promise of marriage; or

(c) a claim or counterclaim based on an allegation of fraud.

#### ORDER 15—THIRD PARTY PROCEDURE

##### Rule 1—Third Party Procedure

(1) Where in any action a defendant claims against any person not already a party to the action, in this Order called the “third party”

(a) that the defendant is entitled to contribution or indemnity from the third party;

(b) that the defendant is entitled, as against the third party, to any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as the relief or remedy claimed by the plaintiff; or

(c) that any question or issue arising between the defendant and the third party relating to or connected with the subject matter is substantially the same as a question or issue arising between the plaintiff and the defendant and should be properly determined not only as between the plaintiff and the defendant but also as between the defendant and the third party or between any or either of them,

the Court may give leave to the defendant to issue and serve a third party notice.

(2) An application to issue and serve a third party notice shall be made ex-parte and shall be supported by an affidavit stating

(a) the nature of the claim made by the plaintiff in the action;

(b) the stage at which the proceedings have reached;

(c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined;

(d) the facts on which the proposed third party notice is based; and

(e) the name and address of the person against whom the third party notice is to be issued.

(3) The order granting leave to issue a third party notice may contain directions as to the period within which the notice shall be issued and if no directions are given the notice shall be issued not later than fourteen days after the date of the order granting leave.

#### Rule 2—Third Party Notice

(1) A third party notice shall contain a statement of the nature of the claim made against the defendant and of the nature and grounds of claim made by the defendant against the third party and the question or issue required to be determined.

(2) The notice shall be as in Form 6 in the Schedule.

(3) The issue of a third party notice takes place upon its being sealed by the Registrar.

(4) No third party notice shall be sealed unless at the time it is tendered for sealing the person tendering it leaves with the Registrar, a copy signed by the applicant or the applicant's lawyer.

#### Rule 3—Service of Notice and Filing of Appearance

(1) A copy of the writ and of the pleadings served in the action shall be served with every third party notice.

(2) Where a third party notice is served on the third party, the third party shall as from the time of the service be a party to the action with the same rights in respect of defence against any claim made against the third party in the notice as if the third party had been duly sued by writ by the defendant by whom the notice is issued.

(3) The third party may file appearance in the action within eight days after service or within such further time as may be directed by the Court and specified in the notice; provided that a third party failing to appear within the specified time may apply to the Court for leave to appear and leave may be given on such terms, if any, as the Court thinks fit.

(4) Appearance to a third party notice shall be filed in the registry of the Court in which the action is proceeding.

(5) Where a third party notice is issued in an action the notice shall be treated as if it were a writ and the proceeding begun thereby, an action, and the defendant issuing the notice shall be treated as if he were a plaintiff and the third party a defendant in that action.

(6) The provisions of these Rules relating to service of a writ and filing of appearance shall apply to a third party notice and to proceedings begun thereby.

#### Rule 4—Third Party Directions

(1) If the third party files appearance, the defendant who issued the third party notice shall by notice to be served on all the other parties to the action, apply to the Court for directions.

(2) If no notice is served on the third party under subrule (1), the third party may, not earlier than eight days after filing an appearance, by notice to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On the hearing of an application under this rule the Court may

(a) if the liability of the third party to the defendant who issued the third party notice is established, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant;

(b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or

(c) dismiss the application and terminate the proceedings on the third party notice, and may do so either before or after any judgment has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule, the Court may give the third party leave

(a) to defend the action, either alone or jointly with any defendant upon such terms as may be just; and

(b) to appear at the trial and participate in the trial as may be just,

and generally may make such orders or give such directions as appear to the Court proper for determining and enforcing in a just manner, the rights and liabilities of the parties including the extent to which the third party is to be bound by any judgment or decision in the action.

(5) The Court may at any time vary or rescind an order made or directions given under this rule.

#### Rule 5—Default of Third Party

(1) If a third party does not file an appearance or having been ordered to serve a defence fails to do so

(a) the third party shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action so far as it is relevant to any claim, question or issue stated in that third party notice; and

(b) the defendant who issues the third party notice, may if judgment in default is given against the defendant in the action

(i) at anytime after satisfaction of that judgment; or

(ii) with leave of the Court before satisfaction of the judgment,

enter judgment against the third party in respect of any contribution or indemnity claimed in the notice and with leave of the Court in respect of any other relief or remedy claimed in the action.

(2) If a third party or the defendant who issues a third party notice makes default in filing any pleading which the third party or the defendant is ordered to file, the Court may, on the application of the defendant or the third party, order such judgment to be entered for the applicant as the applicant is entitled to on the pleadings or make any other order as it considers necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under subrule (1) or (2) of this rule on such terms, if any, as it thinks fit.

#### Rule 6—Setting Aside Third Party Proceedings

The Court may, at any stage of an action set aside proceedings on a third party notice within the action.

#### Rule 7—Judgment between Defendant and Third Party

(1) Where in an action a defendant has served a third party notice, the Court may at or after the trial of the action, or if the action is decided otherwise than by trial, on an application made for that purpose, order such judgment as the nature of the case requires to be entered for the defendant against the third party or against the defendant.

(2) Where in any action judgment is given against a defendant in favour of the plaintiff and for the defendant against the third party, execution shall not issue against the third party without leave of the Court until the judgment against the defendant has been satisfied.

#### Rule 8—Claims and Issues between a Defendant and some other Party to the Action other than the Plaintiff

(1) Where a defendant who has filed an appearance claims against a person who is already a party to the action other than the plaintiff,

(a) any contribution or indemnity; or

(b) any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as the relief or remedy claimed by the plaintiff,

the defendant may subject to subrule (2) without leave, issue and serve on that person a notice containing a statement of the nature and grounds of the claim.

(2) Subrule (1) shall not apply to any claim a defendant may make in the nature of a counterclaim against a plaintiff.

(3) Where a defendant who has filed an appearance requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and some other person who is already a party to the action, the defendant may, without leave, issue and serve on that person a notice containing a statement of the question or issue required to be determined.

(4) No appearance to a notice served under subrule (3) shall be necessary if the person on whom it is served has filed appearance in the action or is a plaintiff in the action.

(5) The same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under the order if the person served with the notice

(a) were a third party and had filed appearance to the notice; or

(b) is a plaintiff or any other person who has filed appearance in the action.

(6) Rule 4 shall have effect in relation to proceedings on a notice issued under this rule.

#### Rule 9—Claims by third and subsequent parties

A person on whom a third party notice is served and who makes a claim for relief as mentioned in rule 8 (1) may issue a notice on some other person in the terms of those rules.

#### Rule 10—Offer of Contribution

(1) For the purpose of this rule, an offer of contribution means an offer to contribute to a specified extent to a debt or damages, made, without prejudice to one's defence, by a party to the action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, stands to be held liable in the action to another party to contribute towards any debt or damage which may be recovered against that other party in the action.

(2) An offer of contribution made by one party to another before the trial of an action shall not be brought to the notice of the Judge at the trial until after all questions of liability and account of debt or damages have been decided.

#### Rule 11—Third Party Proceedings in Relation to Defendant's Counterclaim

Where in any action a counterclaim is made by a defendant, the provisions of this Order shall apply to the counterclaim as if the counterclaim were a writ and statement of claim, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant, provided that such a plaintiff shall not be required to file appearance.

#### ORDER 16—AMENDMENT

##### Rule 1—Amendment of Writ without Leave

(1) The plaintiff may, without leave of the Court, amend the plaintiff's writ once at any time before the pleadings are closed.

(2) Where a writ is amended under this rule after it has been served, the amended writ shall be served on each defendant to the action unless on an application made ex-parte the Court otherwise directs.

##### Rule 2—Amendment of Notice of Appearance

A defendant shall not amend the defendant's notice of appearance without leave of the Court.

##### Rule 3—Amendment of Pleadings Without Leave

(1) A party may, without leave of the Court, amend any of the party's pleadings once at any time before the pleadings are closed and, where the party does so, the party shall cause the amended pleadings to be served on the parties on the other side.

(2) Where an amended statement of claim is served on a defendant

(a) the defendant, if a defence has been filed to the claim, whether amended or not, may amend the defence without leave of the Court to respond directly to the plaintiff's amendment; and

(b) the period for service of the defence or amended defence, shall be either the period fixed under these Rules for service of defence or a period of fourteen days after the amended statement of claim is served on the defendant, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant

(a) the plaintiff, if a reply has been filed, whether amended or not, may amend the reply without leave of the Court to respond directly to the defendant's amendment; and

(b) the period of service of the reply or amended reply shall be fourteen days after the amended defence is served on the plaintiff.

(4) In subrules (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.

(5) Where an amended counterclaim is served by a defendant 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 a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on the party under subrule (1), if the party does not amend the pleading under the foregoing provisions of this rule, the party shall be taken to rely on it in answer to the amended pleading, and Order 11 rule (2) shall have effect in such a case as if the amended pleading had been served at the time when the pleading, before its amendment under subrule (1), was served.

#### Rule 4—Application to Strike out Amendment made Without Leave

(1) Within fourteen days after the service on a party of a pleading amended under rule 3 (1), the party may apply to the Court to strike out the amendment.

(2) Where the Court, hearing an application under this rule, is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made, leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) An order made on an application under this rule may be made on such terms as to costs or otherwise as the Court considers just.

#### Rule 5—Amendment of Writ or Pleading with Leave

(1) Subject to Order 4 rules 5 and 6 and to the following provisions of this rule, the Court may at any stage of the proceedings upon an application by the plaintiff or any other party grant leave to

- (a) the plaintiff to amend the plaintiff's writ; or
- (b) any party to amend the party's pleading;

on such terms as to costs or otherwise as may be just and in such manner as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation has expired, the Court may nevertheless grant the leave in the circumstances mentioned in that application if it considers it just to do so.

(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 may be allowed under subrule (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

(5) An amendment may be allowed under subrule (2) notwithstanding that the effect of the amendment 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 action by the party applying for leave to make the amendment.

#### Rule 6—Amendment During Long Vacation

A party may amend the party's writ or pleadings under rule 1 or 3 (1) during the Long Vacation but, a writ or pleading shall not be amended during the Long Vacation unless the Court allows it under rule 5.

#### Rule 7—Amendment of Other Documents

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

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

#### Rule 8—Failure to Amend After Order

Where the Court makes an order giving a party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, within fourteen days after the order is made, the order shall cease to have effect but without prejudice to the power of the Court to extend the period.

#### Rule 9—Method of Amending

(1) Subject to subrule (2) of this rule, and to any direction given under rule 3 or 7, any amendments authorized under this Order to be made a writ, pleading or other document may be effected by making the necessary alterations to the document by hand writing and, in the case of a writ, causing it to be re-sealed and filing a copy of it.

(2) Where the authorized amendments are so numerous or of such nature or length that to make written alterations to the documents in order to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as authorized, shall be prepared and, in the case of a writ, re-issued.

(3) A writ, pleading or other document which has been amended under this Order shall be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the Judge who made the order authorizing the amendment and the date of the order or, if no such was made, the number of the rule of this Order under which the amendment was made.

#### Rule 10—Correction of Clerical Errors

Clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court either on its own motion on notice to the parties or on an application without an appeal.

#### Rule 11—Method of Applying for Leave

(1) An application for leave to amend a writ or a pleading shall be made on notice to all the other parties to the action.

(2) The application shall specify precisely the nature of the amendment intended to be made.

(3) An affidavit may be used in an application for leave to amend under this rule.

#### ORDER 17—WITHDRAWAL AND DISCONTINUANCE

##### Rule 1—Withdrawal of Appearance

A party who files an appearance in an action may withdraw the appearance at any time with leave of the Court.

##### Rule 2—Plaintiff may Discontinue Before Defence

(1) Except in the case of an interlocutory application, the plaintiff may at any time before service on the plaintiff of the defendant's defence or after the service of it and before taking other proceeding in the action, by notice in writing wholly discontinue the action against all or any of the defendants or

withdraw any part of the alleged cause of action and thereupon the plaintiff shall pay the defendant's costs of the action or if the action is not wholly discontinued, the costs occasioned by the withdrawal.

(2) Such costs shall be taxed, and the discontinuance or withdrawal shall not be a defence to any subsequent action.

(3) Except as provided in this rule, the plaintiff shall not be entitled to withdraw the record or discontinue the action without leave of the Court, but the Court may before, during or after the hearing or trial upon such terms as to costs and as to any other action as may be just, order the action to be discontinued or any part of the alleged cause of action to be struck out.

#### Rule 3—Withdrawal by Consent

An action may be withdrawn without leave of the Court at any time before trial where all the parties produce to the Registrar a written consent that the action be withdrawn.

#### Rule 4—Stay of Subsequent Action Until Costs are Paid

If any subsequent action is brought, before payment of the costs of a discontinued action for the same, substantially the same cause of action, the Court may if it thinks fit order a stay of the subsequent action until the costs are paid.

### ORDER 18—PAYMENT INTO AND OUT OF COURT

#### Rule 1— Payment into Court

(1) A defendant may pay a sum of money into court at any time after the defendant has filed an appearance in an action for debt or damages.

(2) The payment into court shall be in satisfaction of the cause of action claimed or where two or more causes of action are joined, the payment into court shall be a sum or sums of money in satisfaction of any or all of those causes of action.

(3) The defendant or the defendant's lawyer shall give notice as in Form 7 in the Schedule to the plaintiff or the plaintiff's lawyer; and every other defendant when making any payment or increasing any payment into court under this rule shall do the same.

(4) A defendant may, without leave, give notice of an increase in a payment made under this rule but subject to that and without prejudice to rule 7, a notice of payment may not be withdrawn or amended without leave of the Court and may be granted on such terms as may be just.

(5) Where two or more causes of action are joined in an action and money is paid into court under this rule in respect of all or only some of those causes of action, the notice of payment shall

(a) state that the money is paid in respect of all those causes of action or shall specify the cause of action in respect of which the payment is made; and

(b) specify the sum paid in respect of that caused or those causes of action where the defendant makes separate payments in respect of each or any two or more of those causes of action.

(6) If it appears to the Court that the plaintiff is confused by a payment where a single sum of money is paid into court under this rule in respect of two or more causes of action, the Court may order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

#### Rule 2—Payment into Court by Defendant who has Counterclaimed

Where a defendant who by a counterclaim makes a claim against the plaintiff for a debt or damages, pays a sum of money into court under rule 1, the notice of payment shall state that in making the payment the defendant has taken into account and intends to satisfy

- (a) the cause of action in respect of which the counterclaims is made; or
- (b) where two or more causes of action are joined in the counterclaim, which of them, if not all of them.

#### Rule 3—Acceptance of Money Paid into Court

(1) Within fourteen days after receipt of the notice of payment or, within fourteen days after receipt of the notice of the last payment or the amended notice, where more than one payment has been made or the notice has been amended, the plaintiff may where the money was paid in respect of

(a) the cause of action or all the causes of action in respect of which the plaintiff claims, accept the money in satisfaction of that cause of action or those causes of action; or

(b) some of the causes of action in respect of which the plaintiff claims accept in satisfaction of any of the causes of action the sum specified in respect of those causes of action in the notice of payment, by giving notice as in Form 8 in the Schedule to every defendant to the action.

(2) Where the plaintiff accepts any money paid into court, further proceedings in the action or in respect of the specified cause to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to the defendant, shall be stayed.

(3) Where money is paid into court by a defendant who makes a counterclaim and the notice of payment states that in making the payment the defendant has taken into account and satisfied the cause of action or the specified cause of action in respect of which the defendant claims, if the plaintiff accepts that sum, further proceedings on the counterclaim or in respect of the specified cause of action against the plaintiff shall be stayed.

(4) A plaintiff who has accepted a sum paid into court shall, subject to rules 4 and 9 and Order 5 rule 8(3), be entitled to receive payment of that sum in satisfaction of the cause of action to which the acceptance relates.

#### Rule 4—Order for Payment out of Court

(1) Where a plaintiff accepts a sum paid into court

(a) by some but not all of the defendants sued jointly or in the alternative by the plaintiff;

(b) with a defence of tender before action;

(c) in an action to which Order 5 rule 8 (3) applies; or

(d) in satisfaction of a cause of action arising under the Civil Liability Act, 1963 (Act 176) where more than one person is entitled to the money,

the money in court shall not be paid out except under subrule (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates.

(2) Where an order of the Court is required under subrule (1) (a) and before or after accepting the money paid into court the plaintiff discontinues the action against all the other defendants the sum may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun, a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause to which the acceptance relates are stayed by virtue of rule 3 (2), notwithstanding anything in subrule (2), the money shall not be paid out except under an order of the Court, and the order shall deal with the whole costs of the action.

#### Rule 5—Money Remaining in Court

If any money paid into court in an action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except under an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where the order is made before the trial or hearing of the action the money shall not be paid out except in satisfaction of the cause of action in respect of which it is paid in.

#### Rule 6—Payment into Court Where Counterclaim Made

(1) A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rules 1 and 3, except subrule (3) of rule 3; and rules 4 and 5 shall apply with the necessary modifications.

(2) Notice of payment into court in respect of a counterclaim shall be as in Form 9 in the Schedule.

#### Rule 7—Payment into Court not to be Disclosed

(1) The fact that money has been paid into court under the provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages, until all questions of liability and the amount of the debt or damages have been decided.

(2) Subrule (1) does not apply to an action in which a defence of tender before action is pleaded, or to an action in which all further proceedings are stayed by virtue of rule 3 (2) after the trial or hearing has begun.

#### Rule 8—Money Paid into Court under Order of Court

(1) Subject to subrule (2), money paid into court under an order of the Court shall not be paid out except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under these Rules,

(a) may be notice to the other party appropriate the whole or part of the money and any additional payment to any particular claim made in the writ or counterclaim and specified in the notice; or

(b) if the party pleads a tender, may by the pleading, appropriate the whole or part of the money as payment into court of the money alleged to have been tendered.

(3) Money appropriated in accordance with subrule (2) shall be taken to be money paid into court in accordance with rule 1 or 2 or money paid into court with a plea of tender, and this Order shall apply accordingly.

#### Rule 9—Person to be Paid

(1) Payment shall be made to the party entitled or on the written authority of the party to the lawyer of the party.

(2) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the Court.

#### Rule 10—Payment Out of Small Estates

Where a person entitled to a fund in court or a share of the fund, dies intestate and the Court is satisfied that no grant of administration of the person's estate has been made and that the assets of the estate do not exceed €2 million in value, including the value of the fund or share, the Court may order that the fund or share shall be paid, transferred or delivered to the person who, being a surviving spouse, child, father, mother, brother or sister of the deceased, would have the prior legal right to a grant of administration of the estate of the deceased.

Rule 11—Payment out Under Exchange Control Act, 1961 (Act 71)

(1) Where money has been paid into court in any cause or matter under the Exchange Control Act, 1961 (Act 71) or an order of the Court made under it, any party to the cause or matter may apply for that money to be paid out of court.

(2) Notice of the application shall be served on all interested parties.

(3) If any person in whose favour an order for payment under this rule is sought is resident outside Ghana or will receive payment by order or on behalf of a person resident outside Ghana, that fact shall be stated in the notice.

(4) If the consent of the Bank of Ghana authorising the proposed payment has been given unconditionally or on conditions which have been complied with, the fact shall be stated in the notice, and the consent shall be attached to the notice.

ORDER 19—APPLICATIONS

Rule 1—Applications to be Made by Motion

(1) Every application in pending proceedings shall be made by motion.

(2) Proceedings by which an application is to be made to the Court or a Judge of the Court under any enactment shall be initiated by motion and where an enactment provides that an application shall be made by some other means, an application by motion shall be deemed to satisfy the provision of the enactment as to the making of the application.

(3) Except where these Rules otherwise provide, no motion shall be made without previous notice to the parties affected.

(4) If on hearing a motion the Court is of the opinion that any person to whom notice has not been given ought to have or to have had notice, the Court may either dismiss the motion or adjourn the hearing in order that the notice may be given upon such terms as it considers just.

Rule 2—Service of Notice of Motion

(1) Unless the Court gives leave to the contrary or any of these Rules otherwise provides, there shall be at least three clear days between the service of notice of a motion and the date named in the motion for the hearing of the motion.

(2) Where leave has been given under subrule (1) to serve short notice of motion, that fact shall be stated on the notice.

(3) Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ or at any time after service of the writ, whether or not the defendant has filed appearance.

Rule 3—Ex-parte Motions

(1) Subject to rule 1 subrule (3), an application by motion may be made ex-parte where any of these Rules provides or where, having regard to the circumstances, the Court considers it proper to permit the application to be made.

(2) The Court may make an order ex-parte on such terms and subject to such undertaking as it considers just where it is satisfied that delay caused by proceeding in the ordinary way would or might entail irreparable damage or serious mischief.

(3) The Court shall not grant an application made ex-parte under subrule (2) unless the applicant shows to the satisfaction of the Court good reason for making the application ex-parte and the precise nature of the irreparable damage or serious mischief which will be occasioned by proceeding in the ordinary way.

(4) The Court in its discretion may refuse to hear an application ex-parte and may direct that notice shall be given to all the parties affected by the application.

#### Rule 4—Affidavit in Support of Motion

Every application shall be supported by affidavit deposed to by the applicant or some person duly authorised by the applicant and stating the facts on which the applicant relies, unless any of these Rules provides that an affidavit shall not be used or unless the application is grounded entirely on matters of law or procedure which shall be stated in the motion paper.

#### Rule 5—Bringing a Prisoner to Give Evidence

An application for an order to bring a prisoner, otherwise than by writ of habeas corpus to give evidence in any proceedings civil or criminal before a court, tribunal or Judge, shall be made by motion ex parte supported by affidavit to a Judge in chambers.

### ORDER 20—AFFIDAVITS

#### Rule 1—Use of Affidavits

An affidavit may be used wherever these Rules so provide.

#### Rule 2—Persons who may Take Affidavits

Affidavits shall be sworn before a Judge, Magistrate, Registrar, Commissioner for Oaths, any officer empowered by these Rules or by any other enactment to administer oaths.

#### Rule 3—Title of Affidavit

(1) Subject to subrules (2) and (3) of this rule, an affidavit sworn in any cause or matter shall bear the title of that cause or matter.

(2) Where a cause or matter has more than one title, it is sufficient to state the title of the first matter followed by the words "and other matters".

(3) Where there is more than one plaintiff or one defendant, it is sufficient to state the full name of the first followed by the words "and others" or "and another".

#### Rule 4—Form of Affidavit

(1) Every affidavit shall be printed, written or typed and shall be numbered consecutively.

(2) Every affidavit shall be expressed in the first person and shall state the place of residence of the deponent and the occupation of the deponent or, if the deponent has none, the description of the deponent and whether the deponent is, or is not employed by a party to the cause or matter in which the affidavit is sworn.

(3) Every affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(4) Dates, sums and other numbers may be expressed in an affidavit in figures or in words or both.

(5) Subject to rule 6 an affidavit shall be signed by the deponent and the jurat shall be completed and signed by the person before whom it is sworn.

(6) The jurat shall state the full address of the place where the affidavit was sworn, the date when it was sworn and the name and title of the person before whom it was sworn.

#### Rule 5—Affidavit by Two or More Deponents

Where an affidavit is made by two or more deponents, the names of the person making the affidavit shall be inserted in the jurat except that if the affidavit is sworn by both or all the deponents at one time before the same person, it is sufficient to state that it was sworn by both or all of the "above named" deponents.

#### Rule 6—Affidavit by Illiterate or Blind Person

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

- (a) the affidavit was read to the deponent in the presence of the person administering the oath;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent signed or mark the affidavit in his presence of the person administering the oath.

(2) An affidavit sworn by a deponent to whom subrule (1) applies shall not be used in evidence without the certificate referred to in the subrule unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood and approved by the deponent.

#### Rule 7—Use of Defective Affidavit

An affidavit may with leave of the Court be filed or used in evidence notwithstanding any irregularity in its form.

#### Rule 8—Contents of Affidavit

(1) An affidavit shall contain only facts that the deponent can prove, unless any provision of these Rules provides that it may contain a statement of information or belief or both.

(2) An Affidavit sworn for the purpose of being used in interlocutory proceedings may contain a statement of information or belief or both with the source of the information and the grounds of the belief.

#### Rule 9—Scandalous and Irrelevant Matter in Affidavit

The Court may order any matter which is scandalous, offensive, irrelevant or otherwise oppressive to be struck out of an affidavit.

#### Rule 10—Alterations in Affidavit

(1) An affidavit which has in the body or jurat any interlineation, erasure or other alteration shall not be filed or used in any proceedings without leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at any office of the Court, the official stamp of that office may be substituted for the signature or initials required by this rule.

#### Rule 11—Affidavit not to be Sworn Before Lawyer of Party

No affidavit shall be acceptable if sworn before the lawyer of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that lawyer.

#### Rule 12—Filing of Affidavit

(1) Every affidavit used in any proceedings shall be filed in the registry of the Court in which the proceedings are brought.

(2) Every affidavit shall be indorsed with a note showing on whose behalf it is filed and the date of filing and an affidavit which is not so indorsed may not be filed or used without leave of the Court.

#### Rule 13—Use of Original or Copy of Affidavit

- (1) An original affidavit may be used in any proceedings if it bears a filing stamp.
- (2) Where an original affidavit is used it shall be filed with the Registrar.
- (3) Where an affidavit has been filed, an office copy of it may be tendered in any proceedings

#### Rule 14—Document Exhibited to Affidavit

- (1) Any document to be used in conjunction with an affidavit shall be exhibited and not merely annexed or attached to the affidavit.
- (2) Any exhibit to an affidavit shall be identified by a certificate of the person before whom the affidavit is sworn.
- (3) The certificate shall be titled in the same manner as the affidavit and rule 3 subrules (1), (2) and (3) shall apply accordingly.

#### Rule 15—Affidavit Taken in Other Countries

A document purporting to have fixed, impressed, or subscribed on it the seal or signature of a court, judge, notary public or person with authority to administer oaths in any country outside Ghana in testimony of an affidavit taken before that court, judge, notary public or person, shall be admitted in evidence without proof of the seal or signature of that court, judge, notary public or person.

### ORDER 21—DISCOVERY AND INSPECTION OF DOCUMENTS

#### Rule 1—Mutual Discovery of Documents

- (1) After the close of pleadings in an action there shall be discovery of documents in accordance with this Order.
- (2) Nothing in this Order shall be taken as preventing the parties from agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

#### Rule 2—Discovery by Parties Without Order

- (1) Subject to this rule, a party in an action shall within fourteen days after the pleadings in the action are closed between that party and any other party, make and file for service on the other party a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question between them in the action.
- (2) Without prejudice to any directions given by the Court under Order 15 rule 4 (1), subrule (1) of this rule shall not apply in third party proceedings, including proceedings under Order 15 involving fourth or subsequent parties.
- (3) Unless the Court otherwise orders, a defendant to an action arising out of a motor accident shall not make discovery of any documents to the plaintiff under subrule (1).
- (4) Subrule (1) shall not be taken to require a defendant
  - (a) to an action for the recovery of a penalty under any enactment to make a discovery of any documents; or

(b) to an action to enforce a forfeiture to make discovery of any documents relating to the issue of forfeiture.

(5) subrules (3) and (4) shall apply to a counterclaim as they apply to an original action.

(6) On the application of any party required by this rule to make discovery of documents, the Court may

(a) order that the parties or any of them shall make discovery under subrule (1) of such documents or such matters in question, as may be specified in the order; or

(b) if satisfied that discovery is not necessary, order that there shall be no discovery of documents by any of the parties.

(7) An application for an order under subrule (6) shall be made before the expiration of the period for discovery of documents under this rule.

(8) A party entitled to discovery under this rule may, at any time before the application for directions in the action is made, serve on the party required to make the discovery a notice requiring that party to make an affidavit verifying the list that that party is required to make under subrule (1), and the party on whom the notice is served shall within fourteen days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

#### Rule 3—Discovery by Court Order

(1) Subject to rule 6, any party to a cause or matter may apply at the stage of the application for directions for such discovery as is necessary and the Court may, on the application of the party, order any other party to the cause or matter to serve on the applicant a list of the documents which are in respondent's possession, custody or power relating to any issue in the cause or matter, and may at the same time order the respondent to file an affidavit verifying the list and serve a copy of it on the applicant.

(2) Notwithstanding subrule (1) the Court may after the application for directions, upon an application by a party for reasonable cause shown, order any other party to make discovery.

(3) Notwithstanding subrules (1) and (2), an order under this rule may be limited to such documents only, or to only the issues in the cause or matter as may be specified in the order.

#### Rule 4—Persons Entitled to List

(1) A defendant who pleads in an action is entitled to have a copy of any list of documents served by any other defendant on the plaintiff under rule 2 or 3; and a plaintiff against whom a counterclaim is made in an action is entitled to have a copy of any list of document served by any other defendant to the counterclaim on the party making the counterclaim under rule 2 or 3.

(2) A party required by subrule (1) to supply a copy of a list of documents shall supply it free of charge on request made by the party entitled to it.

(3) In this rule, "list of documents" includes an affidavit verifying a list of documents.

#### Rule 5—Order for Discovery of Particular Documents

(1) Subject to rule 6, the Court may at any time, on the application of any party to the cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application, has at any time been in that party's possession, custody or power, and if not then in the party's possession, custody or power, when that party parted with it and what has become of it.

(2) An application for an order under this rule shall be supported by an affidavit stating the belief of the deponent that, the respondent from whom discovery is sought under this rule has, or at some time had, in the respondent's possession, custody or power the document specified or described in the application and that it relates to one or more of the issues in the cause or matter.

(3) An order may be made against a party under this rule notwithstanding that he has made or been required to make a list of documents of affidavits under rule 2 or 3.

#### Rule 6—Discovery to be Ordered only if Necessary

On the hearing of an application for an order under rule 3 or 5, the Court shall refuse to make the order if it is of the opinion that discovery is not necessary either to dispose fairly of the cause or matter or to save costs.

#### Rule 7—Inspection of Documents Referred to in List

A party who serves a list of documents on any other party in compliance with this Order shall at the same time serve a notice on that other party, stating a time within seven days after the service, when that other party may inspect and take copies of the documents other than any of those to which the party objects to produce, at a place specified in the notice.

#### Rule 8—Inspection of Documents Referred to in Pleadings and Affidavits

(1) A party may at any time serve a notice on any other party in whose pleading or affidavit reference is made to a document to produce the document for the inspection of the party giving the notice and to permit the party giving the notice to take copies of it.

(2) A party on whom notice to inspect documents is served shall within four days after service of the notice inform the party giving the notice of a date within seven days after the service of the notice to inspect documents and of a time between 9.30 a.m. and 4.30 p.m. when the documents may be inspected at the office of the lawyer of the party served, or at some other convenient place, and shall at the time and place named make the documents available for inspection.

(3) A party on whom notice to inspect documents is served shall within four days after service of the notice inform the party giving the notice, of documents the production of which are objected to and the grounds of the objection.

#### Rule 9—Order for Production for Inspection

(1) If a party who is required by rule 7 to serve a notice or who is served with a notice under rule 8 (1)

(a) fails to serve the notice under rule 7, 8 (2) or 8 (3);

(b) objects to produce any documents for inspection; or

(c) offers inspection at an unreasonable time or place,

the Court may, subject to rule 11 (1), on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Notwithstanding subrule (1), but subject to rule 11 (1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying, to inspect any documents in the possession, custody or power of that other party which relates to any issue in the cause or matter.

(3) An application for an order under subrule (2) shall be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to an issue in the cause or matter.

#### Rule 10—Order for Production to Court

At any stage of the proceedings in any cause or matter the Court may, subject to rule 12 (1), order any party to produce to the Court any document in the party's possession, custody or power relating to any issue in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

#### Rule 11—Production to be Ordered only if Necessary

(1) An order for the production of any document for inspection or to the Court shall not be made under any of these Rules unless the Court is of opinion that the order is necessary either to dispose fairly of the cause or matter or to save costs.

(2) Where, on an application under this Order for production of a document for inspection or to the Court, privilege from the production is claimed or objection is made to the production on any other ground, the Court may inspect the document to decide whether the claim or objection is justified.

#### Rule 12—Production of Business Records

(1) Where production of any business records for inspection is applied for under these Rules, the Court may, instead of ordering production of the original records for inspection, order a copy of any entries in it to be supplied and verified by an affidavit of a person who has examined the copy with the original records.

(2) The affidavit shall state whether or not there are in the original records any and if so what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of an entry in any record has been supplied under this rule, the Court may order the production of the record from which the copy was made.

#### Rule 13—Withholding Document or Record in the Public Interest

This Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document or record on the ground that the disclosure of it would be injurious to the public interest.

#### Rule 14—Failure to Make Discovery

(1) If any party who is required by any of these Rules, or any order made under them, to make discovery of documents or records, or to produce any documents or records for the purpose of inspection or any other purpose, fails to comply with any provision of that rule or with that order, then without prejudice to rule 9 (1), the Court may make such order as it considers just including, in particular, an order that

(a) the action be dismissed;

(b) the defence be struck out and judgment entered accordingly;

(c) where the document is favourable to the party's case, the party may not use the document at the trial, except with leave of the Court; or

(d) where the document is not favourable to the party's case, the party may be committed for contempt.

(2) Service on a party's lawyer of an order for discovery or production of documents or records made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application sufficient cause for the failure to obey the order.

(3) Where an order made against the client of a lawyer is served on the lawyer and the lawyer fails without reasonable excuse to give notice of it to the client, the lawyer shall be liable to committal for contempt.

#### Rule 15—Revocation and Variation of Orders

Any order made under this Order, including an order made on appeal, may, on sufficient cause shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

#### ORDER 22—INTERROGATORIES

##### Rule 1—Discovery by Interrogatories

(1) A party may apply for an order

(a) giving the party leave to serve on another party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter; and

(b) requesting that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) The interrogatories shall be as in Form 10 in the Schedule and the answer shall be as in Form 11 in the Schedule.

(3) A copy of the proposed interrogatories shall be served with the application, or the notice under Order 32 rule 4 or rule 9 by which the application for the leave is made.

(4) On the hearing of an application under this rule, Court shall give leave only of the interrogatories which it considers necessary either to dispose fairly of the cause or matter or to save costs.

(5) In deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(6) A proposed interrogatory which does not relate to a matter mentioned in paragraph (a) of subrule (1) shall be disallowed, notwithstanding that it might be admissible in oral cross examination of a witness.

##### Rule 2—Interrogatories where Party is a Body of Persons

Where a party is a body of persons, whether corporate or not, being a body which is empowered by law to sue and be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing that other party to serve interrogatories on such officer or member of the body as may be specified in the order.

##### Rule 3—Statement as to Party Required to Answer

Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, an agent or servant is required to answer.

##### Rule 4—Privilege

Where a person objects to answering any interrogatory on the ground of privilege, the person may state the objection in the person's affidavit in answer.

##### Rule 5—Insufficient Answers

If a person on whom interrogatories have been served answers any of them insufficiently, the Court may make an order requiring the person to make a further answer either by affidavit or on oral examination as the Court may direct.

#### Rule 6—Failure to Comply with Order

(1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such order as it considers just including, in particular, an order that the action be dismissed or, an order that the defence be struck out and judgment be entered accordingly.

(2) If a party against whom an order is made under rule 1 or 5 fails to comply with it, then, notwithstanding subrule (1), he shall be liable to committal for contempt.

(3) Service on a party's lawyer of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that the party had no notice or knowledge of the order.

(4) A lawyer on whom an order to answer interrogatories made against a client is served and who fails without reasonable excuse to give notice of it to the client shall be liable to committal for contempt.

#### Rule 7—Use of Answer to Interrogatories at Trial

(1) A party may put in evidence at the trial of any cause or matter, or of any issue in it, some of the answers to interrogatories, or part of an answer, without putting in evidence the other answers or, the whole of that answer.

(2) Notwithstanding subrule (1), the Court may look at the whole of the answers and if it is of the opinion that any other answer or other part of an answer is so connected with an answer, or any part of it used in evidence that the one ought not to be used without the other, the Court may direct that, that other answer or part shall be put in evidence.

#### Rule 8—Revocation and Variation of Orders

An order made under this Order, including an order made on appeal may, on sufficient cause shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

### ORDER 23—ADMISSIONS

#### Rule 1—Notice of Admission of Facts

A party to a cause or matter may give notice, by that party's pleadings, or otherwise in writing, that the party admits the truth or the whole or any part of the case of any other party.

#### Rule 2—Request to Admit Fact or Document

(1) A party may at any time, by serving a request to admit, request any other party to admit for the purposes of the cause or matter only, the truth of a fact or the authenticity of a document. The request shall be as in Form 12 in the Schedule.

(2) A copy of any document mentioned in the request to admit shall, where practicable, be served with the request, unless a copy is already in the possession of the other party.

#### Rule 3—Effect of Request to Admit

(1) A party on whom a request to admit is served shall respond to it within fourteen days after it is served by serving on the requesting party a response to request to admit. The response shall be as in Form 13 in the Schedule.

(2) Where the party on whom the request is served fails to serve a response as required by subrule (1), the party shall be deemed, for the purposes of the cause or matter only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(3) A party shall also be deemed, for the purposes of the cause or matter only, to admit the truth of the facts or the authenticity of the documents mentioned in the request, unless the party's response

(a) specifically denies the truth of a fact or the authenticity of a document mentioned in the request; or

(b) refuses to admit the truth of a fact or the authenticity of a document and sets out the reason for the refusal.

#### Rule 4—Costs on Refusal to Admit

Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at the hearing, the Court may take the denial or refusal into account in exercising its discretion with respect to costs.

#### Rule 5—Withdrawal of Admission

An admission made in response to a request to admit or an admission under rule 2 or an admission in a pleading may be withdrawn on consent or with leave of the Court.

#### Rule 6—Order Based on Admission of Fact or Document

(1) Where an admission of the truth of a fact or the authenticity of a document is made

(a) in an affidavit filed by a party;

(b) in the examination for discovery of a party or a person examined for discovery on behalf of a party;  
or

(c) by a party on any other examination under oath or affirmation in or out of court

any party may apply to the Court or Judge in the same or another cause or matter for such order as the party may be entitled to on the admission without waiting for the determination of any other question between the parties, and the Court or Judge may make such order as is just.

(2) Where an admission of the truth of a fact or the authenticity of a document is made by a party in a pleading or is made or deemed to be made by a party in response to a request to admit, any party may apply by motion to the Court or to the Judge for such order as the party may be entitled to on the admission without waiting for the determination of any question between the parties, and the Court or the Judge may make such order as is just.

#### ORDER 24—SECURITY FOR COSTS

##### Rule 1—Security for costs of Proceedings

(1) Where, on the application of a defendant, it appears to the Court that

(a) the plaintiff is ordinarily resident outside Ghana;

(b) the plaintiff, not being a plaintiff who is suing in a representative capacity, is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that the plaintiff will not be able to pay the costs of the defendant if ordered to do so;

(c) subject to subrule (2), the plaintiff's address is not stated in the originating process or is incorrectly stated in it; or

(d) the plaintiff's address has been changed during the course of the proceedings with a view to evading the consequences of the litigation,

the Court may, having regard to all the circumstances of the case, order the plaintiff to give such security for the defendant's costs of the proceedings as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (c) of subrule (1) if the plaintiff satisfies the Court that the failure to state the address of the plaintiff or the mis-statement of the address was made inadvertently and without an intention to deceive.

(3) References in this Order to a plaintiff and a defendant shall be construed as references to the person (howsoever described) who is in the position of plaintiff or defendant in the cause or matter.

(4) Where an order is made requiring any party to give security for costs the security shall be given in such manner, at such time and on such terms as the Court may direct.

#### Rule 2—Default of Plaintiff

Where a plaintiff defaults in giving the security required by an order, the Court may, on an application by the defendant dismiss the cause or matter against the defendant who obtains the order.

#### ORDER 25—INTERLOCUTORY INJUNCTION, INTERIM PRESERVATION OF PROPERTY

##### Rule 1—Application for Injunction

(1) The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so, and the order may be made either unconditionally or upon such terms and conditions as the Court considers just.

(2) A party to a cause or matter may apply for the grant of an injunction before, or after the trial of the cause or matter, whether or not a claim for the injunction was included in the party's writ, counterclaim or third party notice.

(3) The applicant shall attach to the Motion paper and supporting affidavit, a Statement of Case setting out fully arguments, including all relevant legal authorities, in support of the application.

(4) A respondent who desires to oppose the application shall file an affidavit in opposition as well as a Statement of Case containing full arguments and the legal authorities to be relied on.

(5) Whenever possible, a draft of the order sought (copies of which may be obtained from the Fast Track High Court) should be filed with the application to facilitate speedy preparation and sealing of the order.

(6) The application may be considered on the basis of the papers filed and the court may direct, where necessary, the lawyer address it on specific points of law and facts.

(7) In case of urgency, a party may make the application ex-parte supported by an affidavit

(8) An application made ex-parte under subrule (3) shall not be granted unless the applicant gives sufficient reasons for making it ex-parte and specifies some irreparable damage or mischief which will be caused to the plaintiff if the plaintiff proceeds in the ordinary way.

(9) Where an order is made pursuant to an application made ex-parte under subrule (3) it shall not remain in force for more than ten days.

(10) If no application is made on notice to extend the order it shall lapse after the expiration of ten days from the making of the order unless the Court otherwise directs.

(11) The Court may upon application by any party affected set aside an order made ex-parte under subrule (7) on such terms as it considers fit.

(12) The plaintiff shall not make such an application before the issue of the writ.

#### Rule 2—Detention, Preservation of Property

(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter or in respect of which any question may arise in the action, or may order the inspection of any such property in the possession of a party.

(2) To enable an order under subrule (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of a party to a specific fund is disputed, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms as the Court considers just.

(5) Unless the Court otherwise directs, a defendant may not apply for such an order before the defendant files appearance.

#### Rule 3—Power to Order Samples to be Taken

(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or an experiment to be carried out on or with such property.

(2) To enable an order under subrule (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Unless the Court otherwise directs, an application by a defendant for an order under this rule may not be made before filing appearance.

#### Rule 4—Sale of Perishable Property

(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by the applicant in such manner and on such terms as may be specified in the order of any perishable property which is the subject matter of the cause or matter or as to which any question arises therein and which for any other good reason it is desirable to sell forthwith.

(2) Unless the Court otherwise directs, an application by a defendant for an order under this rule may not be made before filing an appearance.

#### Rule 5—Order for Early Trial

(1) Where on the hearing of an application, made before the trial of the cause or matter for an injunction or the appointment of a receiver or an order under rules 2, 3 or 4, it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits for the purposes of the application, the Court may make an order accordingly and may also make such order with respect to the period before trial as the justice of the case requires.

(2) Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial.

(5) Unless the Court otherwise directs, a defendant may not apply for such an order.

#### Rule 6—Recovery of Movable Property Subject to Lien

Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific movable property and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court may, at any time after the claim to be so entitled as appears from the pleadings or by affidavit or otherwise to its satisfaction, order

(a) that the party seeking to recover the property may pay into court, to abide by the event of the action, the amount of money in respect of which the security is claimed and such further sum, if any, for interest and costs as the Court may direct; and

(b) that, upon such payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of the Exchange Control Act, 1961 (Act 71) where applicable.

#### Rule 7—Directions

(1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further conduct of the cause or matter.

(2) Where in an action, not being an action mentioned in subrule (3), the Court considers fit to give directions under this rule before the application for directions, Order 32 rules 4 to 9 shall, with the omission of so much of Order 32 rule 4 as requires parties to file a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were an application for directions.

(3) Subrule (2) applies to all actions except

(a) actions in which directions have been given under Order 11 rule 20 or Order 14 rule 6;

(b) actions in which an order for the taking of an account has been made under Order 29; and

(c) actions for the infringement of a patent.

#### Rule 8—Allowance of Income of Property Pending Suit

Where movable or immovable property forms the subject matter of any cause or matter, and the Court is satisfied that it will be more than sufficient to answer all the claims for which provision ought to be made in the cause or matter, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the movable property be transferred or delivered to any or all of such parties.

#### Rule 9—Undertaking as to Damages

(1) Where an application is made under rules 1 and 2 of this Order the Court shall, if the application is opposed, require, before making an order, that the applicant shall give an undertaking to the person opposing the application to pay any damages that person may suffer as a result of the grant of the application if it turns out in the end that the applicant was not entitled to the order.

(2) The giving of an undertaking required under subrule (1) shall be a precondition to the making of any order under rules 1 and 2 of this order.

(3) Where an applicant gives the undertaking the Court shall at the end of the proceedings in which the undertaking was given assess the damages, if any, which the person who opposed the application has suffered and which the applicant is liable to pay and shall give such judgment as the circumstances require.

#### ORDER 26—COURT EXPERT

##### Rule 1—Appointment of Court Expert

In any cause or matter in which a question for an expert witness arises, the Court may at any time appoint an independent expert (in this Order referred to as a "court expert" in accordance with section 114 of the Evidence Decree, 1975(N.R.C.D. 323).

#### Rule 2—Report of Court Expert

- (1) On receiving the report of the court expert the Registrar shall send one copy to each party or the party's lawyer.
- (2) The Court may if necessary direct the court expert to make a further or supplementary report.

#### Rule 3—Experiments and Tests

If the court expert is of opinion that an experiment or test of any kind, other than one of a trifling nature, is necessary to enable the expert make a satisfactory report the expert shall apply to the Court with notice to the parties or their lawyers for directions with regard to the expenses involved, the persons to attend and other relevant matters and the Court may make such orders as may be just.

#### Rule 4—Cross-examination

- (1) Any party may, within fourteen days after receiving a copy of the court expert's report, apply to the Court for an order that the court expert be required to attend to be cross-examined on the report.
- (2) At the hearing of the application the Court shall make an order for the cross-examination of the expert by all the parties either
  - (a) at the trial; or
  - (b) before an examiner at such time and place as may be specified in the order.

#### Rule 5—Remuneration of Court Expert

- (1) The remuneration of a court expert shall be determined by the Court and shall include a fee for the expert's report and a sum for each day on which the expert is required to be present either in Court or before an examiner.
- (2) Where the appointment of a court expert is opposed, the Court may, as a condition for making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court considers fit.

#### Rule 6—Calling of Experts

- (1) When a court expert is appointed, any party may call one expert witness to give evidence on the matter reported on by the court expert if the party gives notice of such intention within a reasonable time to the other party.
- (2) A party may not call more than one expert witness without leave of the Court, and the Court shall not grant leave unless it considers the circumstances to be exceptional.

### ORDER 27—RECEIVERS

#### Rule 1—Appointment of Receiver

- (1) The Court may appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so; and the order may be made either unconditionally or upon such terms and conditions as the Court thinks just.
- (2) Any party to a cause or matter may apply to the Court for the appointment of a receiver.

#### Rule 2—Ancillary Injunction

(1) An application for an injunction ancillary to an order appointing a receiver may be joined with the application for such order.

(2) An applicant who wishes to apply for the immediate grant of an injunction, may do so ex-parte on affidavit, and on hearing the application the Court may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of an application for the appointment of the receiver.

#### Rule 3—Security by Receiver

(1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the receiver.

(2) Where by virtue of subrule (1), or of any judgment or order appointing a person named to be a receiver, the person is required to give security in accordance with this rule the person named shall give security approved by the Court to account for what the person receives and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or by a written undertaking having regard to the amount for which the security is to be given.

(4) The guarantee or written undertaking shall be filed in the registry and it shall be kept as part of the record until vacated.

#### Rule 4—Remuneration of Receiver

A person appointed receiver shall be allowed such reasonable remuneration as may be fixed by the Court.

#### Rule 5—Receiver's Accounts

(1) A receiver shall submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

(2) Unless the Court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit verifying it.

(3) The receiver's accounts and affidavit shall be filed at the registry and the plaintiff or party conducting the cause or matter shall then obtain an appointment for the purpose of passing the accounts before the Registrar.

(4) The passing of a receiver's account shall be certified by the Registrar.

#### Rule 6—Payment of Balance by Receiver

The days on which a receiver shall pay into court the amounts shown by his accounts as due from him, or such part of it as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

#### Rule 7—Receiver's Default

(1) Where a receiver fails to attend for the passing of any accounts prepared by the receiver or fails to submit accounts, make an affidavit or do any other thing which the receiver is required to submit, make or do, the receiver and any or all of the parties to the proceedings in which the receiver was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into open court, give such directions as it considers proper

including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to subrule (1), where a receiver fails to attend for the passing of any account prepared by the receiver or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by the account as due from the receiver, the Court may disallow any remuneration claimed by the receiver.

(3) Where a court or receiver fails to pass accounts prepared by that receiver or to pay into court any money due from that receiver, any party who has an interest in the accounts or the money may apply for an order calling upon the receiver to show cause why an order for committal or sequestration should not be made against the receiver.

(4) The Court upon hearing an application under subrule (3) may

(a) order the receiver to file that accounts within a period specified in the order;

(b) order that the receiver shall pay into court any amount found to be due from the receiver; or

(c) make an order for committal or sequestration against the receiver.

#### ORDER 28—INQUIRIES

##### Rule 1—General Power to Direct Inquiries

(1) The Court may, on an application made at any stage of a cause or matter, direct any necessary inquiries to be made.

(2) Every direction for the making of an inquiry shall be numbered in the judgment or order so that each distinct inquiry may be designated by a number.

##### Rule 2—Inquiry by Referee

(1) The Court may refer to a referee for inquiry and report any question or issue of fact raised in a cause or a matter before it.

(2) For the purpose of this rule the referee shall be appointed by the Court and shall receive such remuneration as the Court may direct.

(3) Unless the Court otherwise orders, the further consideration of the cause or matter shall stand adjourned until the receipt of the referee's report.

##### Rule 3—Hearing for Directions

(1) The party directed by the Court shall forthwith have the order directing the reference signed and entered and, within ten days after entry, request an appointment with the referee for a hearing to consider directions for the reference and, in default, any other party having an interest in the reference may assume the conduct of it.

(2) A notice of hearing for directions and a copy of the order directing the reference shall be served on every other party to the cause or matter at least five days before the hearing unless the referee directs otherwise.

(3) At the hearing for directions, the referee shall give such directions for proceeding with the reference as are just, including

(a) the time and place at which the reference is to proceed;

(b) any special directions concerning the parties who are to attend; and

(c) any special directions concerning what evidence is to be received and how documents are to be proved.

(4) The directions may be varied or supplemented during the course of the reference.

(5) A party served with notice of a reference under subrule (2) who does not appear in response to the notice is not entitled to notice of any step in the reference and need not be served with any document in the reference, unless the referee orders otherwise.

#### Section 4—Report on Reference

(1) The report made by a referee following a reference under this rule shall be filed with the Court and notice of it shall be served on the parties to the reference.

(2) The referee may in the report submit any question arising from it to the Court for decision or make a special statement of facts from which the Court may draw such inferences as it considers fit.

(3) On receiving the referee's report the Court may

(a) adopt the report in whole or in part;

(b) vary the report;

(c) require an explanation from the referee;

(d) remit the whole or any part of the question or issue originally referred to the referee for further consideration by the referee or any other referee; or

(e) decide the question or issue originally referred to the referee on the evidence taken before the referee, either with or without additional evidence.

(4) Notwithstanding subrule (3) where the report of a referee has been made in a cause or matter, which has been adjourned, any party may on the next hearing date apply orally to the Court to adopt the report or with leave of the Court give not less than four days' notice by motion, for the Court to vary the report or to remit the cause or matter or any part of it for re-hearing or further consideration to the same or any other referee.

(5) Where on a reference under this rule the Court orders that proceedings shall stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report and the provisions of this rule shall have effect subject to any such directions.

#### Rule 5—Powers of Referee

(1) A referee shall, subject to any directions contained in the order directing the reference, devise and adopt the simplest, least expensive and most expeditious manner of conducting the reference and may

(a) give such directions as are necessary; and

(b) dispense with any procedure ordinarily taken that the referee considers to be unnecessary or adopt a procedure different from that ordinarily taken.

(2) A referee may hold the proceedings at any place which appears to the referee to be convenient.

(3) A referee may adjourn proceedings as the referee thinks fit.

#### ORDER 29—ACCOUNTS

##### Rule 1—Summary Order for Account

(1) Where a writ indorsed with a claim includes a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has filed appearance or after the time limited for filing appearance apply for an order for account under this rule.

(2) An application under this rule shall be supported by affidavit or other evidence if the Court so directs.

(3) On the hearing of the application the Court may, unless satisfied by the defendant by affidavit or otherwise 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 that party within a time specified in the order.

#### Rule 2—Court May Direct Taking of Account

(1) The Court may, on an application made at any stage in the cause or matter, direct any necessary accounts to be taken.

(2) Every direction for the taking of an account shall be numbered in the judgment or order so that each distinct account may be designated by a number.

#### Rule 3—Directions as to Manner of Taking Account

(1) Where the Court orders an account to be taken it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or verified.

(2) Notwithstanding subrule (1), the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained in them with liberty to the parties interested in them to take such objections as they think fit.

#### Rule 4—Accounts to be Verified

(1) Where an account has been ordered to be taken, the accounting party shall make out an account and, unless the Court otherwise directs, verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party shall file the account with the Court with notice to the other parties.

#### Rule 5—Notice to be Given of Alleged Omission in Account

Any party who seeks to charge an accounting party with an amount beyond

(a) that prepared by the accounting party,

(b) which the party admits to have received, or

Who alleges that any item in the account is erroneous in respect of an amount or in any other respect, shall give the accounting party notice of it stating, the amount sought to be charged with brief particulars of the grounds for alleging that the item is erroneous.

#### Rule 6—Allowances

In taking any account directed by a judgment or order all just allowances shall be made taking into consideration

(a) money received or that which might have been received but for wilful neglect or default;

(b) allowance for rent; and

(c) necessary repairs, improvements, costs and other expenses properly incurred.

#### Rule 7—Distribution of Fund before all Persons Entitled are Ascertained

Where some of the persons entitled to share in a fund are ascertained and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of the shares of the persons ascertained without reserving any part of those shares to meet the subsequent cost of ascertaining those other persons.

#### Rule 8—Guardian's Account

A guardian's account shall be verified and passed in the same manner as that provided under Order 27 in relation to a receiver's account or in such other manner as the Court may direct.

### ORDER 30—SALE OF LAND BY ORDER OF COURT

#### Rule 1—Power to Order Sale of Land

(1) Where in any cause or matter relating to immovable property it appears necessary or expedient for the purposes of the cause or matter that the immovable property or any part of it should be sold, the Court may order the immovable property or part of it to be sold.

(2) Any party bound by the order and in possession of that immovable property or any part of it, or in receipt of rents or profits from it, shall deliver up the possession or receipt to the purchaser or to such other person as the Court may direct.

(3) In this Order, "immovable property" includes any interest in or right over immovable property.

#### Rule 2—Manner of Carrying Out Sale

(1) Where an order is made, whether in court or in chambers, directing immovable property to be sold, the Court may permit the party or person having the conduct of the sale to sell the immovable property in such manner as that person thinks fit, or may direct that the immovable property be sold in such manner as the Court may either by the order or under subrule (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order shall apply to the Court for directions for sale and

(a) file a copy of the order at the registry with a certificate that it is a true copy of the order; and

(b) subject to subrule (3) proceed with the order.

(3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not make an application under subrule (2) unless he requires further directions of the Court.

(4) On the hearing of the application the Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing, directions

(a) appointing the party or person who is to have the conduct of the sale;

(b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;

(c) fixing a reserve or minimum price;

(d) requiring payment of the purchase money into court or to trustees or other persons;

(e) for settling the particulars and conditions of sale;

(f) for obtaining evidence of the value of the property; and

(g) fixing the security, if any, to be given by the auctioneer, where the sale is to be by public auction, and the remuneration to be allowed the auctioneer.

#### Rule 3—Certifying Result of Sale

(1) Where the Court directs payment of the purchase money into court or otherwise directs, the result of a sale by order of the Court shall be certified

(a) in the case of a sale by public auction, by the auctioneer who conducted the sale; or

(b) in any other case, by the lawyer of the party or person having the conduct of the sale, and the Court may require the certificate to be verified by affidavit of the auctioneer or lawyer.

(2) The lawyer of the party or person having the conduct of the sale shall file a copy of the certificate and any affidavit at the registry.

#### Rule 4—Mortgage, Exchange or Partition Under Order of Court

Rules 2 and 3 shall so far as applicable and with the necessary modifications, apply to the mortgage, exchange or partition of any immovable property under an Order of the Court as they apply to the sale of immovable property under such an order.

### ORDER 31—ASSIGNMENT AND CONSOLIDATION

#### Rule 1—Exercise of One Judge's Jurisdiction by Another

(1) A Judge shall, if the Chief Justice so Directs, hear and dispose of an application in a cause or matter which has been assigned to another Judge.

(2) Where an application ought to be made to or jurisdiction exercised by the Judge by whom a cause or matter has been tried and that Judge dies or ceases to be a Judge or if for any other reason it is impossible or inconvenient for that Judge to act in that cause or matter, the Chief Justice may nominate another Judge to whom the application may be made or by whom the jurisdiction may be exercised.

(3) This rule is subject to section 104 of the Courts Act, 1993 (Act 459).

#### Rule 2—Consolidation of Proceedings

Where two or more causes or matters are pending in the same Court and it appears to the Court

(a) that some common question of law or fact arises in both or all of them; or

(b) that the rights to relief claimed are in respect of or arise out of the same transaction or series of transactions; or

(c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it considers just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until the determination of any other of them.

### ORDER 32—APPLICATION FOR DIRECTIONS

#### Rule 1—Purpose of Application

(1) In every action to which this rule applies, an application for directions shall be made to enable the Court consider the preparations for trial, so that

(a) all matters which have not already been dealt with, may so far as possible, be dealt with; and

(b) directions may be given as to the future course of the action as appear best to secure the just, expeditious and inexpensive disposal of it.

(2) This rule applies to all actions except

(a) actions in which directions are given under Order 11 rule 19, Order 14 rule 6 and Order 25 rule 7;

(b) actions in which an order for the taking of an account is made under Order 29 rule 1;

(c) actions for the infringement of a patent; and

(d) actions or proceedings under Order 65.

#### Rule 2—Application by Plaintiff

(1) In every action to which rule 1 applies, the plaintiff shall within one month after the pleadings in the action are closed, file notice of an application for directions for service on all the other parties to the action.

(2) There shall be at least eight days between the date of service of the notice and the day named in the notice for the hearing of the application.

(3) Where, in the case of an action in which discovery of documents is required to be made by any party under Order 21, rule 2 and the period of fourteen days referred to in Order 21 rule 2 (1) is extended, subrule (1) of this rule shall have effect in relation to that action as if for the reference to one month after the pleadings are closed there were substituted a reference to fourteen days after the expiration of the period referred to in Order 21 rule 2 (1) as so extended.

(4) In the case of an action which is proceeding in respect of a counterclaim only, the reference in this rule to the plaintiff shall be construed as a reference to the party making the counterclaim.

#### Rule 3—Failure of Plaintiff to Apply for Directions

(1) Where the plaintiff does not apply for directions in accordance with rule 2, a defendant may do so or may apply for an order to dismiss the action.

(2) Where a defendant applies to dismiss the action under subrule (1), the Court may either dismiss the action on such terms as may be just or deal with the application as if it were an application for directions.

(3) In the case of an action which is proceeding in respect of a counterclaim only, reference in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

#### Rule 4—Directions Required by other Parties

Any party on whom an application for directions is served in accordance with rule 2 shall apply at the hearing of that application for any order or directions which that party may desire as to any matter capable of being dealt with on an interlocutory application in the action and shall, not less than seven days before the hearing of the application for directions, file for service on the other parties a notice specifying those orders and directions if they differ from the orders and directions asked for in the application for directions.

#### Rule 5—Duty to Consider all Matters

- (1) When an application for directions first comes to be heard, the Court shall consider whether
- (a) it is possible to deal at the time with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the application for directions, or
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.
- (2) When an application for directions first comes to be heard and the Court considers that it is possible to deal then with all the matters, it shall deal with them immediately and shall endeavour to ensure that all other matters which must or can be dealt with on an interlocutory application and have not already been dealt with are also then dealt with.
- (3) When an application for directions first comes to be heard and the Court considers that it is expedient to adjourn the consideration of all or any of the matters which by the subsequent rules of this Order are required to be considered on the hearing of the application, the Court shall deal immediately with such of those matters as it considers can conveniently be dealt with immediately and shall adjourn the consideration of the remaining matters and endeavour to ensure that all other matters which must or can be dealt with on an interlocutory application and have not already been dealt with are dealt with either then or at a resumed hearing of the application for directions.
- (4) Except with the agreement of the parties, no order as to the place or mode of trial shall be made until all matters have been dealt with which, by the subsequent rules of this Order, are required to be considered on the hearing of the application for directions.
- (5) Where, on an application for directions, an action is ordered to be transferred to another court, subrule (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order on the application.
- (6) Where the hearing of an application for directions is adjourned sine die, any party may apply to the Registrar to restore it to the Cause List; and the Registrar shall give 2 day's notice of the hearing date to the other parties.

#### Rule 6—Particular Matters for Consideration

Where the hearing of an application for directions the Court shall in particular consider if necessary on its own motion whether any order should be made or direction given in the exercise of any of the powers conferred under Part VIII of the Evidence Decree 1975 (N.R.C.D. 323), Order 16 r 5, Order 33 r 4(2) or Order 38 rules 2 to 7 or any other enactment.

#### Rule 7—Admissions and Agreements to be Made

- (1) At the hearing of an application for directions, the Court shall endeavour to secure that the parties make admissions and agreements as to the conduct of the proceedings which ought reasonably to be made by them and shall incorporate in the order on the application any admissions or agreements so made and any refusal to make an admission or agreement subject to any special order as to costs being made at the trial.
- (2) Nothing in this rule shall be construed as requiring the Court to endeavour to secure that the parties agree to exclude or limit any right of appeal.

#### Rule 8—Duty to give all Information at Hearing

- (1) Subject to subrule (3), no affidavit shall be used at the hearing of an application for directions except by leave or direction of the Court, but subject to subrule (5), it shall be the duty of the parties to the action and their lawyers to give any information and produce any documents at the hearing of the application as the Court may reasonably require to enable it deal properly with the application.
- (2) The Court may, if it appears just so to do in a case involving the security of the State, authorise any information or document to be given or produced to the Court without being disclosed to the other party but, in the absence of such authority, any information or document given or produced under

subrule (1) shall be given or produced to all the parties present or represented at the hearing of the application as well as to the Court.

(3) No leave shall be required by virtue of subrule (1) for the use of an affidavit by any party on the hearing of an application for directions in connection with any application for any order if, under these Rules, an application for the order is required to be supported by an affidavit.

(4) Where the Court at the hearing of an application for directions requires a party to the action or his lawyer to give any information or produce any document and that information or document is not given or produced, then, subject to subrule (5), the Court may

(a) cause the facts to be recorded with a view to awarding costs as may be just at the trial;

(b) order the whole or any part of the pleadings of the party concerned to be struck out, if it appears to the Court just to do so; or

(c) order the action or counterclaim to be dismissed on such terms as may be just, if the party is plaintiff or the claimant under a counterclaim.

(5) Notwithstanding anything in the foregoing provisions for this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by the lawyers of any party except with the consent of that party.

#### Rule 9—Applications for Further Order

(1) Where the hearing of an application for directions is adjourned and any party to the cause or matter wishes to apply at the resumed hearing for any order or directions not asked for by the application or in any notice given under rule 4 the party shall, not less than two days before the resumed hearing of the application, serve on the other party a notice specifying those orders and directions in so far as they differ from the orders and directions asked by the application or in any notice under rule 4.

(2) Any application subsequent to the application for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the application for directions by two clear days' notice to the other party stating the grounds of the application.

#### Rule 10—Application of this Order in Relation to Order 34

The application of the provisions of this Order shall be without prejudice to the provisions of Order 34.

#### ORDER 33—PLACE AND MODE OF TRIAL

##### Rule 1—Place of Trial

Subject to section 38 of the Courts Act, 1993 (Act 459) and these Rules, the place of trial of any cause or matter or of any question or issue arising in any cause or matter, shall be determined by the Court.

##### Rule 2—Mode of Trial

Subject to these Rules and any other law any cause or matter or issue arising in Ghana shall be tried by a Judge alone, unless the Court orders trial by a Judge with referee, or by a referee alone.

##### Rule 3—Time of Trial of Questions or Issues

The Court may order any question or issue arising in any cause or matter whether of fact or law, or partly of fact and partly of law, and raised by the pleadings to be tried before, at or after the trial of the cause or matter and may give directions as to the manner in which the question or issue shall be stated.

##### Rule 4—Determining the Place and Mode of Trial

(1) In every action, an order made on an application for directions shall, subject to any law, determine the place and mode of the trial; and any order may be varied by a subsequent order of the Court made at or before the trial.

(2) In an action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

(3) The references in this Order to an application for directions include references to any application to which, under any of these Rules, Order 32 rules 4 to 9 are to apply with or without modification.

#### Rule 5—Dismissal of Action After Determination of Preliminary Issue

Where it appears to the Court that the decision of any question or issue arising in any cause or matter and tried separately from the main cause or matter substantially disposes of the cause or matter or renders trial of the main cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment as may be just.

#### ORDER 34—SETTING ACTION DOWN FOR TRIAL

##### Rule 1—Application of Order

This Order applies to all actions which proceed to trial before a Judge.

##### Rule 2—Time for Setting Down Action

(1) Every order made upon the hearing of an application for directions under Order 32 shall fix a period within which the Registrar shall set down the action for trial.

(2) The Registrar shall within that period issue to the parties a notice of trial specifying the date on which the action will be tried and the notice shall be issued and served at least one month before the date for trial.

(3) Not later than seven days after an order is made fixing the period within which the action should be set down for trial, the plaintiff shall pay to the Registrar the appropriate fee for the issue and service of the notice of trial.

(4) Where the plaintiff defaults in the payment of the fee the defendant may apply to the Court to strike out the action for want of prosecution provided that if there is a counterclaim the defendant shall pay the appropriate fee for notice of trial of the counterclaim.

(5) If the plaintiff defaults in payment of the fee and the defendant does not within 14 days apply to the Court as provided in subrule (4) the Registrar shall inform the Court of that fact and the Court shall upon that strike out the action.

##### Rule 3—Length of Trial

Every order fixing the time within which an action should be set down for trial shall contain an estimate of the length of trial and shall specify whether the action is to be put on the General Cause List or the Short Cause List.

##### Rule 4—Early Hearing

(1) On the hearing of an application for directions if it appears to the Judge that the cause or matter ought to have an early trial, then the Judge may, instead of fixing a period within which the action is set down for trial, fix a day for the hearing.

(2) An order fixing a date for the trial of the action shall contain an estimate of the length of the trial.

##### Rule 5—New Trial

Where a new trial becomes necessary in the course of any action the procedure for setting down the action for the new trial shall be that specified in the foregoing provisions except that

(a) a request to set down the action for trial shall be made by the plaintiff to the Registrar accompanied by the appropriate fee; and

(b) upon receiving the request, the Registrar shall not later than fourteen days issue and serve a notice of trial as specified in rule 2 (2).

#### Rule 6—Directions Relating to Lists

(1) Where an order has been made directing that a cause or matter shall be set down on one of the Lists, and an order is later made for the trial of the cause or matter on another List, the later order shall contain such other variations of the order for directions as the Court thinks fit, and the cause or matter shall be transferred to the appropriate List.

(2) Nothing in this Order shall prejudice any powers of the Chief Justice to give directions

(a) specifying the Lists in which actions of any class or description are to be set down for trial and providing for the keeping and publication of the Lists;

(b) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial of it is not to take place; or

(c) as to the making of applications (whether to a Court or a Judge or an officer of the Court) to fix, vacate or alter the date, and in particular, requiring an application to be supported by an estimate of the length of the trial and any other relevant information.

#### Rule 7—Abatement of Action

(1) Where after an action has been set down for trial it abates, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the lawyer for the plaintiff or other party having the conduct of the action shall, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability in writing to the Registrar, who shall make the appropriate entry in the list of actions set down for trial.

(2) Where on any List an action stands for one year marked as abated or ordered to stand over generally, the Registrar shall on the expiration of that year inform the Court of that fact, and the Court shall thereupon strike the action out of the List unless, in the case of an action ordered to stand over generally, the order otherwise provides.

### ORDER 35—PROCEEDINGS IN CHAMBERS

#### Rule 1—Disposal of Matters in Chambers

A Judge may by any judgment or order made in Court in any cause or matter, direct that the issues in the cause or matter as the Judge may specify shall be disposed of in chambers provided that the power may only be exercised in the interest of public order, public safety or public morality.

#### Rule 2—Applications with Respect to Funds

(1) The following applications to the Court may be disposed of in chambers

(a) applications for the payment or transfer by any person of any funds in court standing to the credit of any cause or matter or for the transfer of the funds to a separate account or for the payment to any person of any dividends of or interest on any securities or money comprised in such funds;

(b) applications for the investment or change of investment of any funds in court;

(c) applications for payment of dividends or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or

(d) applications for the payment or transfer out of court of any funds mentioned in paragraph (c) of this subrule.

(2) This rule does not apply to any application for an order under Order 18.

#### Rule 3—Other Business to be Disposed of in Chambers

(1) Without prejudice to the generality of rule 1 and in addition to matters which under any other rule or by any enactment may be disposed of in chambers, the following matters may also be disposed of in chambers

(a) applications as to the guardianship, parentage, custody, access to and maintenance of infants;

(b) any matter relating to the fosterage and adoption of children;

(c) applications connected with the management of property;

(d) applications for or relating to the sale by auction or private contract of property, and also to the manner in which the sale is to be conducted, and for payment into court and investment of the purchase money; and

(e) the determination of any question of construction arising under a deed, will or other written instrument, and declarations of the rights of the persons interested.

(2) A guardian's account shall be verified and passed in the same manner as that provided by Order 27 in relation to a receiver's account or in such other manner as the Court may direct.

#### Rule 4—Subpoena for Attendance of Witness

(1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the registry if the party who desires the attendance of the witness produces a note from a Judge or Registrar authorising the issue of the writ.

(2) Any Registrar may give such a note or may direct that the application for it be made to the Judge before whom the cause or matter is to be heard.

#### Rule 5—Assistance of Expert

If the Court thinks it expedient in order to better determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act on the person's opinion.

#### Rule 6—Notice of Filing of Affidavit

(1) A party who files an affidavit intended to be used by the party in any proceedings in chambers shall give notice of the filing to every other party.

(2) A party who intends to use in any proceedings in chambers, an affidavit filed by the party in previous proceedings, shall give notice of the intention to do so, to every other party.

#### Rule 7—Adjournment from Court

The Hearing of an application in chambers may be adjourned from chambers into Court and subsequently from Court into chambers.

#### Rule 8—Registrar's Note

Where in any proceedings a matter is adjourned from Court into chambers, or directions are given in court to be acted upon in chambers, without an order being drawn up, the plaintiff in the cause or matter shall obtain from the Registrar a signed note, stating for what purpose that matter was adjourned into chambers or the directions given, and file it at the judge's chambers

#### Rule 9—Papers for Use of Court

The original of any document which is to be in evidence in proceedings in chambers shall, if available, be brought in, and copies of any such document or of any part of the document shall not be made unless the Court directs that copies of that document or part of it be supplied for the use of the Court or be given to the other parties to the cause or matter.

#### Rule 10—Notes of Proceedings in Chambers

A note shall be kept of all proceedings in the Judge's chambers with the dates of the proceedings so that all the proceedings are noted in chronological order with a short statement of the matters decided at each hearing.

### ORDER 36—PROCEEDINGS AT TRIAL

#### Rule 1—Failure to Attend at Trial

(1) Where an action is called for trial and all the parties fail to attend, the trial Judge may strike the action off the trial list.

(2) Where an action is called for trial and a party fails to attend, the trial Judge may

(a) where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim;

(b) where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any; or

(c) make such other order as is just.

#### Rule 2—Judgment given in Absence of Party may be Set Aside

(1) A Judge may set aside or vary, on such terms as are just, a judgment obtained against a party who fails to attend at the trial.

(2) An application under this rule shall be made within fourteen days after the trial.

#### Rule 3—Adjournment of Trial

The Court may, if it considers it necessary in the interest of justice, adjourn a trial for such time, to such place, and upon such terms, as it considers fit.

#### Rule 4—Order of Speeches

(1) Unless the Judge before whom an action is tried gives directions as to the party to begin and the order of speeches at the trial, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to subrule (6), the plaintiff shall begin by opening the plaintiff's case.

(3) Where the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff

may, after the evidence on behalf of the plaintiff has been given, close the plaintiff's case and the defendant may then state the case of the defendant.

(4) Where the defendant elects to adduce evidence, the defendant may, after the close of the plaintiff's case, open the case of the defendant and, after the evidence on behalf of the defendant has been given, close the defendant's case; at the close of which the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then where

(a) none of them elects to adduce evidence, each defendant shall state the case of the defendant in the order in which that defendant's name appears on the record;

(b) each of the defendants elects to adduce evidence, each defendant may open that defendant's case and the evidence on behalf of each defendant shall be given in the order specified in paragraph (a) and the speech of each defendant closing that defendant's case shall be made in that order after the evidence on behalf of all the defendants has been given; or

(c) some of them elect to adduce evidence and some do not, those who do not, shall state their cases in the order specified in paragraph (a) and those who elect to adduce evidence shall do so as provided in paragraph (b), after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof in all the issues in the action lies on the defendant, the defendant may begin, and subrules (3), (4) and (5) shall have effect in relation to the plaintiff and the defendant, as if for references to the plaintiff there were substituted references to the defendant and for references to the defendant there were substituted references to the plaintiff.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this subrule be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority.

#### Rule 5—Inspection by Judge

The Judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the proceedings.

#### Rule 6—Death of Party before Judgment

Where a party to an action dies after the defendant has closed his or her case but before judgment is given, judgment may be given notwithstanding the death, but without prejudice to the power of the Court to make an order under Order 4 rule 6 (2) before giving judgment.

#### Rule 7—Certificate of Court Clerk

At the conclusion of the trial of any action, the clerk of the Court in attendance at the trial shall make a certificate in which the clerk shall certify

(a) the time spent on the trial;

(b) any order made by the Judge under Order 38 rule 5 or 6;

(c) the judgment given by the Judge; and

(d) any order made by the Judge as to costs.

#### Rule 8—List of Exhibits

(1) The clerk of the Court shall take charge of every document or object put in as an exhibit during the trial and shall mark or label each exhibit with a letter or letters indicating the party by whom the exhibit

is put in or the witness by whom it is proved, and with a number, so that all the exhibits put in by a party or proved by a witness are numbered in one consecutive series.

(2) The clerk of the Court shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list and any documentary exhibit.

(3) The list of exhibits when completed and any documentary exhibit shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

#### Rule 9—Custody of Exhibits after Trial

(1) All the exhibits tendered at a trial shall be kept in the registry of the trial Court until the period limited for appeal has expired; provided that where an appeal is made after trial the exhibits shall be forwarded to the Court of Appeal or the relevant appellate court with the record of proceedings.

(2) No exhibit shall, except by order of the Court, be given to any party or taken out of the registry before the expiration of the time limited for appeal or until the appeal has been heard and disposed of.

#### Rule 10—Impounded Documents

(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a Judge or on an application.

(2) Documents impounded by order of the Court while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order signed by a Judge.

### ORDER 37—ADJOURNMENTS AND DELAYS

#### Rule 1—Adjournments

The Court may, if it considers it necessary in the interest of justice, postpone or adjourn the hearing of any cause or matter for such time and on such terms as it considers fit.

#### Rule 2—Duty to Avoid Delay

It is the duty of the parties, their lawyers and the Court to avoid all unnecessary adjournments and other delays, and to ensure that causes or matters are disposed of as speedily as the justice of the case permits.

#### Rule 3—Proceedings after Delay

Where six months have elapsed since the last step taken in any cause or matter, the party who wishes to proceed shall give to every other party not less than twenty-eight days notice of the intention to proceed.

#### Rule 4—Striking out for Delays

(1) Where in any cause or matter no step has been taken for twelve months from the date of the last proceeding and no notice under rule 3 has been given, the Registrar or any party to the cause or matter may apply to the Court for an order that the cause or matter be struck out for want of prosecution.

(2) Notice of the application shall be served on all the parties concerned at least fourteen days before the day stated in the notice for hearing the application.

(3) Upon the hearing of the application where none of the parties shows cause to the satisfaction of the Court why the cause or matter should not be struck out and upon proof of service of the notice on all parties concerned, the Court shall strike out the proceedings.

(4) If any party shows cause to the satisfaction of the Court why the cause or matter should not be struck out for want of prosecution, the Court shall order the proceedings to continue on such terms as it thinks fit.

#### ORDER 38—EVIDENCE GENERALLY

##### Rule 1—General Rule—Witnesses to be Examined Orally

Subject to the Constitution, the Evidence Decree, 1975 (N.R.C.D. 323), these Rules and any other enactment, any fact required to be proved at the trial of an action by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

##### Rule 2—Evidence by Affidavit

(1) The Court may, at or before the trial of an action, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under subrule (1) may be made on such terms as to the filing and giving of copies of the affidavit and as to the production of the deponent for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponent shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) On any application in any cause or matter, evidence may be given by affidavit unless in the case of any such application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit, and where, after an order has been made, the person in question does not attend, that person's affidavit shall not be used as evidence without leave of the Court.

##### Rule 3—Evidence of Particular facts

(1) Without prejudice to rule 2, the Court may at or before the trial of an action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by subrule (1) extends in particular to ordering that evidence of any particular fact may be given at the trial

(a) by statement on oath of information or belief; or

(b) by the production of documents or entries in books; or

(c) by copies of documents or entries in books; or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of any publication of general circulation which contains a statement of that fact.

##### Rule 4—Limitation of Expert Evidence

The Court may at or before the trial of an action order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified in the order.

##### Rule 5—Limitation of Plans in Evidence

At or before the trial, unless the Court for a special reason otherwise orders, no plan, photograph or model shall be received in evidence unless at least ten days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to its admission without further proof.

##### Rule 6—Revocation or Variation of Orders

Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

#### Rule 7—Trial of Issues, References

The foregoing rules of this Order shall apply to the trial of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

#### Rule 8—Depositions in Evidence

(1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless the deposition was taken in pursuance of an order under Order 39 rule 1.

(2) A deposition purporting to be signed by the person before whom it was taken shall be received in evidence without proof of the signature of that person.

#### Rule 9—Official Documents in Evidence

Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of any office or department shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in or issued out of that office or department shall be presumed to be an office copy of that document without further proof unless the contrary is shown.

#### Rule 10—Form and Issue of Writ of Subpoena

(1) A writ of subpoena shall be as in Form 14 in the Schedule.

(2) The issue of a writ of subpoena takes place upon its being sealed by an officer of the registry of the Court out of which it is issued.

(3) Before a writ of subpoena is issued a request as in Form 15 in the Schedule for the issue of the writ shall be filed in the registry out of which the writ is to issue; and the request shall contain the name and address of the party issuing the writ, if the party issuing is acting in person, or the name or firm and business address of that party's lawyer and also (if the lawyer is the agent of another) the name or firm and business address of the lawyer's principal.

#### Rule 11—Amendment of Writ of Subpoena

Where there is a mistake in any person's name or address in a writ of subpoena which has not been served, the party by whom the writ was issued may have the writ re-sealed in the correct form by filing a second request under rule 10 (3) indorsed with the words "Amended and re-sealed".

#### Rule 12—Service of Writ of Subpoena

A writ of subpoena shall be served, personally and the service shall not be valid unless effected within twelve weeks after the date of issue of the writ.

#### Rule 13—Duration of Writ of Subpoena

A writ of subpoena shall after service continue to have effect until the conclusion of the trial at which the attendance of the witness is required.

### ORDER 39—EVIDENCE BY DEPOSITION

#### Rule 1—Power to Order Depositions to be taken

(1) The Court may, in any cause or matter where it appears necessary in the interest of justice, make an order for the examination on oath of any person, at any place before a Judge, an officer or examiner of the Court or some other person.

(2) An order under subrule (1) may be made on such terms as the Court considers fit including terms that relate to discovery before examination, and may contain an order for the production of any document which appears to the Court to be necessary for the purposes of the examination.

#### Rule 2—Where person to be Examined is out of the Jurisdiction

(1) Where the person in relation to whom an order under rule 1 is required, is out of the jurisdiction, an application may be made

(a) for an order under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is, to take, or cause to be taken, the evidence; or

(b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order under that rule appointing a special examiner to take the evidence of that person in that country.

(2) An application may be made for the appointment as special examiner of a Ghanaian consul in the country in which the evidence is to be taken

(a) if there subsists with respect to that Country Civil Procedure Convention that provides for the taking of the evidence of any person in that country to facilitate the proceedings in the High Court; or

(b) with the consent of the Ghana's Minister for Foreign Affairs.

#### Rule 3—Order for Issue of Letter of Request

(1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country, the following provisions shall apply

(a) the party who requires the order shall prepare the letter of request and lodge it in the registry;

(b) if the evidence of the person to be examined is to be obtained by means of interrogatories, there shall be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination;

(c) unless the official language, or one of the official languages, of the country in which the examination is to be taken is English, each document lodged under paragraphs (a) and (b) shall be accompanied by a translation of the document in the official language of that country or, if that country has more than one official language, in any one of those languages which is appropriate to the place in that country where the examination is to be taken;

(d) every translation lodged under paragraph (c) shall be certified by the person making it to be a correct translation, and the certificate shall contain a statement of that person's full name, address and qualifications for making the translation; and

(e) the party who obtains the order shall, when lodging the documents mentioned in paragraphs (a) to (d) in the registry, also file an undertaking as in Form 16B in the Schedule, signed by the party or the party's lawyer to be responsible personally for all expenses incurred by the Minister for Foreign Affairs in respect of the letter of request and, on receiving due notification of the amount of those expenses, pay that amount to the Minister for Foreign Affairs and produce a receipt for the payment to the Registrar.

(2) The letter of request for examination of a witness abroad, the interrogatories to accompany the letter of request and the undertaking to be responsible for all expenses incurred by the Minister for Foreign Affairs shall be as in Forms 16, 16A and 16B in the Schedule.

#### Rule 4—Enforcing Attendance of Witness at Examination

Where an order has been made under rule 1

(a) for the examination of any person before an officer or examiner of the Court or some other person, in this rule and rules 5 to 16 referred to as "the examiner"; or

(b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of the person before the examiner and the production by the person of any document at the examination may be enforced by writ of subpoena in the same manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

#### Rule 5—Refusal of Witness to Attend or be Sworn

(1) If any person, who has been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn or to affirm for the purpose of the examination or to answer any lawful question or produce any document, a certificate of the person's refusal or failure, signed by the examiner shall be filed in the registry, and upon such filing the party by whom the attendance of that person is required may apply to the Court for an order requiring that person to attend or to be sworn or to affirm or to answer any question or produce any document.

(2) An application for an order under this rule shall be made ex-parte.

(3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by the person's refusal or failure.

(4) A person who wilfully disobeys any order made against him under this rule shall be liable to committal for contempt of court.

#### Rule 6—Time and place for Examination

(1) The examiner shall give the party on whose application the order for examination is made a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and the time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

(2) The party to whom a notice under subrule (1) is given shall, on receiving it, immediately give notice of the appointment to all the other parties.

#### Rule 7—Documents to be Supplied

The party on whose application the order for examination is made shall supply the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions in issue in the cause or matter.

#### Rule 8—Conduct of Examination

(1) The examination shall take place in the presence of the parties, their lawyers or agents.

(2) Subject to any directions contained in the order for examination

(a) any person ordered to be examined before the examiner may be cross-examined and re-examined; and

(b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in the same manner as at the trial of any cause or matter.

(3) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(4) The examiner may, if necessary, adjourn the examination from time to time.

#### Rule 9—Examination of Additional Witnesses

The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any other person in addition to those named or provided for in the order for examination and shall annex the consent to the original deposition of that other person.

#### Rule 10—Objection to Questions

(1) If a person being examined before the examiner refuses to answer any question put to that person, or if objection is taken to any question, the ground for the objection and the answer to the question to which objection is taken shall be set out in the deposition of that person or in a statement annexed to it.

(2) The validity of the ground for objecting to answer any question or for objecting to any question shall be decided by the Court and not by the examiner, but the examiner shall state to the parties, an opinion on it, and the statement of the examiner's opinion shall be set out in the deposition or in a statement annexed to it.

(3) If the Court decides against the person who raised the objection, it may order the person to pay the costs caused by the objections

#### Rule 11—Taking of Depositions

(1) The deposition of any person examined before the examiner shall be taken down or recorded by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to subrule (2) and rule 10 (1), the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer to it to be set out in the deposition if that question and answer appear to the examiner to have special importance.

(3) The deposition of any person in transcript shall be read to the person, and the person shall be asked to sign it in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision.

(4) If a person refuses to sign a deposition under subrule (3) the examiner shall sign the deposition

(5) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, shall be sent by the examiner to and filed at the registry.

#### Rule 12—Endorsement of time Occupied

Before sending a deposition to the registry, the examiner shall indorse on it a signed statement of the time occupied in taking the examination and any fees received in respect of the examination.

#### Rule 13—Special Report by Examiner

An examiner may make a special report to the Court with regard to any examination before the examiner and with regard to the absence or conduct of any person at the examination, and the Court may direct such proceedings to be taken, or make such order on the record as it considers fit.

#### Rule 14—Fees and Expenses of Examiner of the Court

(1) An examiner is entitled to charge such fee as the Court may authorise for each day or part of the day on which the examiner conducts an examination.

(2) The party prosecuting the order shall also pay all reasonable travelling and other expenses of the examiner.

(3) An examiner is not obliged to send any deposition to the registry until all fees and expenses due to the examiner in respect of the examination have been paid.

#### Rule 15—Order for Payment of Examiner's Fees

(1) If the fees and expenses due to an examiner are not paid, the examiner may report that fact to the Court, and the Court may direct the Registrar to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses in respect of the examination.

(2) An order under this rule shall not prejudice any determination as to the party by whom the costs of the examination shall ultimately be borne.

#### Rule 16—Appointment of Examiner

The Chief Justice appoint any lawyer of not less than three years' standing to act as an examiner of the Court for a period not exceeding five years at a time, and may revoke the appointment at any time.

### ORDER 40—ASSESSMENT OF DAMAGES OR VALUE

#### Rule 1—Assessment by Court

(1) Where interlocutory judgment is given for damages to be assessed the damages shall, subject to rule 2, be assessed by the Court.

(2) The Court may, if it considers fit, order particulars to be filed before any assessment of damages.

#### Rule 2—Assessment by Officer of Court

(1) Where interlocutory judgment is given for damages to be assessed and it appears to the Court that the amount of damages is substantially a matter of calculation, the Court may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court.

(2) The attendance of witnesses and the production of documents before the officer may be compelled by subpoena, and the officer may adjourn the inquiry from time to time.

(3) The officer shall indorse upon the order referring the ascertainment of the amount of damages to the officer, the amount found by the officer, and shall deliver the order with the indorsement to the person entitled to the damages.

(4) On presentation of the order that is indorsed to the Registrar, the amount of damages shall be added to the judgment.

#### Rule 3—Default Judgment against some but not all Defendants

Where interlocutory judgment for damages to be assessed is given in default of appearance or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

#### Rule 4—Assessment of Value

Rules 1 to 3 shall apply to a judgment for the value of goods to be assessed, with or without damages, as they apply to a judgment for damages to be assessed, and references in those rules on the assessment of damages shall be construed accordingly.

#### Rule 5—Assessment of Damages to be up to time of Assessment

Where damages are to be assessed, whether under this Order or otherwise, in respect of any continuing cause of action, they shall be assessed up to the time of the assessment.

## ORDER 41—JUDGMENTS AND ORDERS

### Rule 1—Declaratory Judgment or Order

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

### Rule 2—Time Limit for Delivery of Judgment

(1) It is the duty of the Court to deliver judgment as soon as possible after the close of each case before it, and in any event not later than six weeks after the close of the case.

(2) For the purposes of this rule a case is closed when the evidence has been given to the Court and the final speeches have been concluded.

(3) The times of the vacations in any year shall not be reckoned in the computation of the period of six weeks referred to in this rule.

(4) Where for any reason judgment has not been delivered within the period of six weeks, the Court shall forthwith inform the Chief Justice in writing of that fact and shall state the reasons for the delay and the date upon which it is proposed to deliver judgment.

(5) Where judgment has not been delivered within the period of six weeks, any party to the cause or matter may in writing notify the Chief Justice of that fact and request that a date be fixed for the delivery of judgment.

(6) Upon receiving a notification from the Court or a party under subrule (4) or (5), the Chief Justice may fix a date for the delivery of judgment by the Court and notify the Court accordingly, and it shall be the duty of the Court to ensure that judgment is delivered on the date fixed by the Chief Justice.

### Rule 3—Form of Judgment or Order

(1) Where in the case of any judgment, a form for the entry of judgment is prescribed as in Forms 17 to 17F in the Schedule, the entry of the judgment shall as far as practicable be in that form.

(2) The party who enters any judgment may recite in it a statement of the manner in which and the place at which the writ of summons was served

(3) An order shall be marked with the name of the Judge or referee by whom it was made and shall be sealed with the seal of the Court.

### Rule 4—Time for doing an Act Under Judgment or Order

(1) Subject to subrule (3), a judgment or order which requires a person to do an act shall specify the time within which the act is to be done.

(2) Time under this rule starts to run from the date of service of the judgment or order.

(3) Where the act which a person is required by a judgment or order to do is to pay money to any other person, give possession of immovable property or deliver movable property, subrule (1) shall not apply unless the Court otherwise directs.

### Rule 5—Date of Judgment or Order

(1) A Judgment or order of the Court or of a referee takes effect from the day of its date.

(2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court or referee orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.

#### Rule 6—Orders Required to be Drawn up

(1) Subject to subrule (2), every order of the Court shall be drawn up unless the Court otherwise directs

(2) Unless the Court otherwise directs, an order need not be drawn up if it does not impose any special terms or include any special directions other than direction as to costs, but merely

(a) extends the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act; or

(b) grants leave for

(i) the issue of any writ other than a writ of summons for service out of the jurisdiction;

(ii) the amendment of a writ of summons or a pleading;

(iii) the filing of any document; or

(iv) any act to be done by an officer of the Court other than a lawyer.

(3) Where an order is not required to be drawn up, the production of a note or memorandum of the order, signed by a Judge or Registrar, shall be sufficient authority for the extension of time, issue, amendments, filing or other act.

(4) Where an order is not required to be drawn up, the lawyer of the person on whose application the order was made shall forthwith give notice in writing of the order to every other party to the cause or matter.

#### Rule 7—Drawing up and entry of Judgment or Order

(1) The party seeking to have a judgment entered shall draw up the judgment and present it to the Registrar for entry.

(2) Where judgment is presented for entry in accordance with this rule, the Registrar shall enter it in the book kept for that purpose, file the judgment and return a duplicate of it to the party who presents it for entry.

(3) An order required to be drawn up shall be drawn up by the party in whose favour the order is made, and if that party fails to draw up the order within seven days after it is made, any other party affected by the order may draw it up.

(4) The order referred to in subrule (3) shall when drawn up, be produced at the registry together with a copy of it, and when passed by the Registrar the order shall be sealed and returned to the party who produced it and the copy shall be lodged in the registry.

#### Rule 8—Payment by Instalments

(1) Where any judgment or order directs the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest; and the order may be made at the time of giving the judgment, or at any time afterwards by the same or any other Judge and may be rescinded upon specific cause shown at any time.

(2) Where the Court orders payment of money by instalments, execution shall not issue until after default in payment of some instalment according to the order, and execution or successive executions may then issue for the whole money then remaining unpaid, or for such portion of it as the Court orders, either when making the original order or at any subsequent time.

#### ORDER 42—REVIEW

#### Rule 1—Application for Review

(1) A person who is aggrieved

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

(b) by a judgment or order from which no appeal is allowed,

may upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within that person's knowledge or could not be produced by that person at the time when the judgment was given 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, apply for a review of the judgment or order.

(2) A party who is not appealing against a judgment or order may apply for a review of that judgment or order notwithstanding the pendency of an appeal by any other party, except where the ground of the appeal is common to the applicant and the appellant, or where, being the respondent, he can present to the Court of Appeal the case on which he applies for the review.

#### Rule 2—Time for making Application

(1) The applicant shall give seven days' notice of the application to all parties to the action.

(2) Subject to subrule (3), the application shall be made within fourteen days from the date on which the judgment or order in respect of which review is sought is entered or made.

(3) Where the review sought is in respect of a final judgment, the Court may, at any time within three months after the judgment is entered, and on such terms as seem just, grant leave to apply for review.

#### Rule 3—Grant or Dismissal of Application

(1) Where it appears to a judge that there is not sufficient ground for a review, the Judge shall dismiss the application.

(2) The Judge shall grant the application for review where the Judge is of the opinion that it should be granted.

#### Rule 4—Judge to hear Application

Where the Judge who gave the judgment or made the order sought to be reviewed, continues to hold office at the time when the application for a review is presented, and is not precluded by absence or other cause for a period of three months following the application from considering the judgment or order to which the application relates, that Judge and no other Judge shall hear the application.

#### Rule 5—Rehearing where Application granted

(1) Where an application for review is granted, a note of it shall be made in the Cause Book and the Court may immediately rehear the case or make any order in regard to the rehearing as it considers fit.

(2) Upon the rehearing the Court may amend, vary or confirm its previous judgment or order.

#### Rule 6—Further Applications Barred

No applications to review a judgment or order given or made on a review shall be entertained.

### ORDER 43—ENFORCEMENT OF JUDGMENTS AND ORDERS

#### Rule 1—Enforcement of Judgment for Payment of Money

(1) Subject to these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means

(a) writ of fieri facias;

(b) garnishee proceedings;

(c) a charging order;

(d) the appointment of a receiver;

(e) in a case in which rule 5 applies, an order of committal or a writ of sequestration.

(2) Subject to these Rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means

(a) the appointment of a receiver;

(b) in a case in which rule 5 applies, an order of committal or a writ of sequestration.

(3) A writ of sequestration shall be directed to two or more Commissioners to be appointed by the Court for that purpose, who shall be commanded and empowered to enter any immovable property of the person against whom the writ is issued and to collect, take and obtain not only the rents and profits of the immovable property, but also all the person's goods and movable property, and detain and keep them under sequestration in their hands until the person is cleared of the contempt or the Court makes an order to the contrary.

(4) The Court may order payment out of the sequestration proceeds of all the charges related to the execution including such reasonable remuneration to the Commissioners as the Court considers fit to allow.

(5) Subrules (1) and (2) are without prejudice to any other remedy available to enforce the judgment or order or to any enactment relating to bankruptcy, insolvency or the winding up of companies.

(6) In this Order references to a writ shall be construed as including references to any further writ or order in aid of that writ.

#### Rule 2—Judgment for Payment to Person Resident outside Ghana

(1) Where a person is directed by any judgment, order or award to pay money to or for the credit of a person who is resident outside Ghana, the person directed shall pay the money into court unless the Bank of Ghana has given permission for the payment under the Exchange control Act, 1961 (Act 71) unconditionally or upon conditions which have been complied with.

(2) Payment into court under subrule (1) shall, to the extent of the amount paid in, be a good discharge to the person making the payment and no steps may be taken to enforce the judgment, order or award to the extent of that amount.

(3) Notice of payment into Court under this rule shall be given to the plaintiff, the plaintiff's lawyer or agent and to any other person required by the judgment, order or award to be given notice of the payment.

#### Rule 3—Enforcement of Judgment for Possession of Immovable Property

(1) Subject to these Rules, a judgment or order for the recovery of possession of immovable property may be enforced by one or more of the following means

(a) a writ of possession;

(b) in a case in which rule 5 applies, an order of committal or a writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the recovery or possession of immovable property shall not be issued without leave of the Court, except where the judgment or order was given or made in a mortgage action to which Order 56 applies.

(3) The leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the immovable property has received such notice of the proceedings as appears to the Court sufficient to enable the person apply to the Court for any relief to which the person may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

#### Rule 4—Enforcement of Judgment for Delivery of Goods

(1) Subject to these Rules, a judgment or order for the delivery of goods which does not give a person against whom the judgment is given or order is made, the alternative of paying the assessed value of the goods, may be enforced by one or more of the following means

(a) a writ of delivery to recover the goods without alternative provision for recovery of the assessed value, referred to in this rule as a "writ of specific delivery"; or

(b) in a case in which rule 5 applies, an order of committal or a writ of sequestration.

(2) Subject to these Rules, a judgment or order for the delivery of goods or payment of their assessed value may be enforced by one or more of the following means

(a) a writ of delivery to recover the goods or their assessed value;

(b) a writ of specific delivery with leave of the Court; or

(c) a writ of sequestration in a case in which rule 5 applies.

(3) A writ of specific delivery and a writ of delivery to recover goods or their assessed value may include provision for enforcing the payment of any money adjudged to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of goods may be enforced by the same means as any other judgment or order for the payment of money.

#### Rule 5—Enforcement of Judgment to do or Abstain from doing an Act

(1) Where

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or within that time as extended or reduced under Order 80 rule 4; or

(b) a person disobeys a judgment or order requiring the person to abstain from doing an act the judgment or order may subject to these Rules be enforced by one or more of the following means

(aa) a writ of sequestration against the property of that person with leave of the Court;

(bb) a writ of sequestration against the property of any director or other officer of the body where that person is a body corporate, with leave of the Court; or

(cc) an order of committal against that person or, where that person is a body corporate, against any director or other officers.

(2) Where a judgment or order requires a person to do an act within a specified time and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in

subrule (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under subrule (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring that the first-mentioned person deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

#### Rule 6—Judgment Requiring act to be done; Order fixing time for doing it

(1) Notwithstanding that a judgment or an order which requires a person to do an act specifies a time within which the act is to be done, the Court may, without prejudice to Order 80 rule 1, make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified in the order.

(2) Where, notwithstanding Order 41 rule 4 (1) and (3), a judgment or order which requires a person to do an act does not specify a time within which the act is to be done, the Court may subsequently make an order requiring the act to be done within such time after service of that order or such other time as may be specified in the order.

(3) Notice of an application for an order under this rule shall be served on the person required to do the act in question.

#### Rule 7—Service of Copy of Judgment before Enforcement Under Rule 5

(1) In this rule references to an order shall be construed as including references to a judgment.

(2) Subject to Orders 21 rule 14 (2) and 22 rule 6 (3) and subrule (6) of this rule, an order shall not be enforced under rule 5 unless

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

(b) in the case of an order requiring a person to do an act, the copy has been served before the expiration of the time within which the person was required to do the act.

(3) Subject as stated, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as provided in rule 5 subrule (1) paragraph (bb) or (cc) unless

(a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and

(b) in the case of an order requiring the body corporate to do an act, the copy has been served before the expiration of the time within which the body was required to do the act.

(4) There shall be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served

(a) in the case of service under subrule (2), that if the person neglects to obey the order within the time specified in the order, or, if the order is to abstain from doing an act, that if the person disobeys the order, the person is liable to process of execution; and

(b) in the case of service under subrule (3), that if the body corporate neglects to obey the order within the time specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, it is liable to process of execution.

(5) With the copy of an order required to be served under this rule, being an order that requires a person to do an act, there shall also be served a copy of any order made under Order 80 rule 4

extending or reducing the time for doing the act and, where the first-mentioned order is made under rule 5(3) or 6, a copy of the previous order requiring the act to be done.

(6) Without prejudice to its powers under Order 7 rule 6, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

#### Rule 8—Court may Order Act to be done at Expense of Disobedient Party

(1) If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment is obtained or some other persons appointed by the Court, at the cost of the disobedient party.

(2) If a judgment or order that requires a party to execute a deed or indorse a negotiable instrument is not complied with, any other party interested in having it executed or endorsed may prepare a deed or endorsement of the instrument in accordance with the terms of the judgment or order and tender it to the Court for execution together with the amount of any stamp duty payable and the signature on it by the Registrar shall have the same effect as the execution indorsement by the disobedient party.

(3) Subrules (1) and (2) shall be without prejudice to the powers of the Court to punish the disobedient party for contempt and any other powers of the Court.

(4) Upon the act being done under subrule (1) or (2) the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount as ascertained and for costs.

#### Rule 9—Execution by or against Person not being a Party

(1) Any person, not being a party to the cause or matter, who obtains any order or in whose favour any order is made, is entitled to enforce obedience to the order by the same process as if the person were a party.

(2) Any person, not being a party to the cause or matter against whom obedience to any judgment or order may be enforced, is liable to the same process for enforcing obedience to the judgment or order as if the person were a party.

#### Rule 10—Conditional Judgment, Waiver

A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition shall be deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

#### Rule 11—Matters Occurring after Judgment, stay of Execution

Without prejudice to Order 45 rule 15, a party against whom a judgment or order has been given or made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant the relief, on such terms as it thinks just.

#### Rule 12—Enforcement of Judgment and Order for Recovery of Money

(1) Rule 1(1) of this Order with the omission of paragraph (e) and Orders 27, 44 to 47 and 49 shall apply to a judgment or order for the payment of money.

(2) Rule 3 of this Order with the omission of subrule (1) (b) and Order 45 rule 3 shall apply to a judgment or order for the recovery of possession of immovable property as they apply to a judgment or order for the giving or delivery of possession of immovable property.

(3) Rule 4 of this Order other than subrules (1)(b) and (2)(c), and Order 45 rule 3(2), shall apply in relation to a judgment or order

(a) for the return of any goods; or

(b) for the recovery of the assessed value of the goods

as they apply in relation to a judgment or an order for the delivery of any goods or the payment of the assessed value of the goods respectively.

#### Rule 13—Forms Applicable to this Order

Forms 18 to 18K provided in the Schedule to these Rules shall be used for the respective purposes provided for in this Order.

### ORDER 44—WRITS OF EXECUTION—GENERAL

#### Rule 1—Interpretation

In this Order, unless the context otherwise requires, "writ of execution" includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any other writ in aid of execution.

#### Rule 2—Effect of Writ of Execution

(1) A writ of execution may be put into effect in any part of the country.

(2) A writ of execution against goods shall bind the property in the hands of the judgment debtor as from the time when the writ is issued, but shall not prejudice the title to the goods acquired by any person in good faith and for valuable consideration unless at the time when the person acquired title the person had notice that the writ or any other writ by virtue of which the goods of the judgment debtor may be seized or attached has been delivered to and remained unexecuted in the hands of the Registrar.

(3) The immovable property of a judgment debtor shall not be levied in execution if the judgment debtor shows that the judgment debtor has sufficient movable property within the jurisdiction to satisfy the judgment or order and costs.

(4) Where the execution is levied against immovable property, there shall be endorsed on the writ of execution a statement that there was not sufficient movable property to satisfy the judgment debt.

(5) Subject to subrule (3) all property movable or immovable, belonging to the judgment debtor, and whether held in the judgment debtor's name or by another person in trust for the judgment debtor or on the judgment debtor's behalf, is liable to attachment and sale in execution of the judgment or order.

#### Rule 3—Necessity for Leave to Issue Writ of Execution

(1) A writ of execution to enforce a judgment or order may not issue without leave of the Court in the following cases

(a) where six years or more have elapsed since the date of the judgment or order;

(b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;

(c) where the judgment or order is against the assets of a deceased person coming into the hands of his or her executors or administrators after the date of the judgment or order, and it is sought to issue execution against the assets;

(d) where under the judgment or order, any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled, or

(e) where any goods to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Where the Court grants leave for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting the leave, the order shall cease to have effect, without prejudice to the making of a fresh order.

#### Rule 4—Writ in Aid of Other Writ

A writ of execution in aid of any other writ of execution shall not issue without leave of the Court.

#### Rule 5—Application for Leave to Issue Writ

(1) An application for leave to issue a writ of execution may be made ex parte.

(2) The application shall be supported by an affidavit

(a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due and the amount under it at the date of the application;

(b) stating, where the case falls within rule 3(1)(a), the reasons for the delay in enforcing the judgment or order;

(c) stating, where the case falls within rule 3(1)(b), the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;

(d) stating, where the case falls within rule 3(1)(c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that the person has refused or failed to do so; and

(e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court which is hearing the application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action be tried and in either case, may impose such terms as to costs or otherwise as it considers just.

#### Rule 6—Application for Leave to issue Writ of Sequestration

(1) Notwithstanding anything in rules 3 and 5, a writ of sequestration shall not issue except with leave of the Court.

(2) Subject to subrule (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, shall be served personally on the person against whose property it is sought to issue the writ.

(3) The Court may dispense with service of the notice of motion under this rule if it considers just to do so.

(4) The Judge hearing an application for leave to issue a writ of sequestration may sit in chambers in any case in which, if the application were for an order of committal, the Judge would be entitled to do so by virtue of Order 50 rule 3 but, except in such a case, the application shall be heard in open court.

#### Rule 7—Issue of Writ of Execution

(1) The issue of a writ of execution shall be deemed to be issued when sealed by the Registrar.

- (2) Before such a writ is issued a request for its issue shall be filed.
- (3) The request shall be signed by the person entitled to execution, if acting in person, or by the person's lawyer.
- (4) On receiving a request for the issue of a writ of execution, the Registrar shall make a note of the request, and of the date and hour when it is received for filing.
- (5) The Registrar may at any time seek the direction of the Court as to any request for the issue of a writ of execution and may meanwhile decline to issue the writ.
- (6) No writ of execution shall be sealed unless at the time it is tendered for sealing, the Registrar is satisfied that the period if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.
- (7) No writ of execution shall be sealed unless at the time it is tendered for sealing the person tendering it produces
  - (a) the judgment or order on which the writ is to issue or an office copy of it;
  - (b) the order granting leave or evidence of the granting of it where the writ may not issue without leave of the Court;
  - (c) the written permission of the Bank of Ghana therein referred to where rule 8 (2) applies.
- (8) The Registrar shall indorse on every writ of execution the date of the day on which it is issued.
- (9) Unless the Court otherwise directs, writs of execution shall be issued in the order in which they are applied for.

#### Rule 8—Writ and Request where Exchange Control Act Applies

- (1) Where any party entitled to enforce a judgment or order for the payment of any money is resident outside the country, then, unless the Bank of Ghana has given permission under the Exchange Control Act, 1961 (Act 71) for payment of the money to the party unconditionally or on conditions which have been complied with, any writ of execution to enforce that judgment or order shall direct the Registrar to pay the proceeds of execution into court.
- (2) Where the Bank of Ghana has given such permission unconditionally or on conditions which have been complied with, the request for the issue of a writ of execution to enforce the judgment or order in question shall be endorsed with a certificate of that fact.
- (3) Notice of a payment into court in compliance with a direction under subrule (1) shall be given by the Registrar to the party by whom the writ of execution is issued or to the parties lawyer or agent.

#### Rule 9—Duration and Renewal of Writ of Execution

- (1) For the purpose of execution, a writ of execution shall be valid in the first instance for twelve months beginning with the date of its issue.
- (2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of twelve months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day on which the writ would otherwise expire.
- (3) Before a writ, the validity of which has been extended under this rule is executed, either the writ shall be sealed with the seal of the office out of which it is issued showing the date on which the order extending its validity was made or the applicant for the order shall serve a notice in the prescribed form, sealed as aforesaid, on the Registrar to whom the writ is directed informing the Registrar of the making of the order and the date of it.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the Registrar.

(5) The production of a writ of execution, or of such a notice as is mentioned in subrule (3), purporting in either case to be sealed as mentioned in that subrule, shall be evidence that the validity of that writ or of the writ referred to in that notice, has been extended under this rule.

#### Rule 10—Procedure after Issue of Writ of Execution

(1) Writs of execution shall be put into effect by the bailiffs of the Court acting in accordance with the instructions of the Registrar.

(2) The bailiff charged with putting a writ of execution into effect shall as soon as possible return the writ to the Registrar with an account showing the amount realised, the amount due to the bailiff for fees and expenses, and the balance, and shall pay the balance to the Registrar; and where a sale has been held the bailiff shall also deliver to the Registrar a duly certified sale account.

(3) The Registrar shall pay the balance to the execution creditor or other person entitled to it and take a receipt from the execution creditor or the other person entitled to it.

(4) If for any reason the balance is not paid to the person entitled to it within fourteen days after its receipt by the Registrar, the Registrar shall after that, deal with it in the same manner as the Registrar deals with money paid into court.

(5) No bailiff shall pay any money realised by a writ of execution to the execution creditor or to the execution creditor's lawyer or agent.

(6) Mileage money shall always be paid to the bailiff by the Registrar, who may require it to be paid to the Registrar in the first instance by the execution creditor.

(7) No bailiff shall receive or demand any mileage money from the execution creditor, or from anyone except the Registrar.

(8) No bailiff shall, in respect of the execution of any writ, receive or demand any subsistence allowance, or any fee or charge whatsoever, except the mileage money and such of the fees and expenses stated in the account delivered by the bailiff to the Registrar as the bailiff is entitled to.

(9) The Registrar shall keep a book in which the Registrar shall enter the date of the return of every writ, the amount realised, the amount of fees and expenses and the balance paid into court; and the Registrar shall file the receipts for the balance as well as the voucher in support of the entry in the Registrar's book.

#### Rule 11—Return of Writ of Execution

(1) A party at whose instance a writ of execution is issued may serve a notice on the Registrar to whom the writ is directed requiring the Registrar, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which the Registrar has executed it and to send to that party a copy of the statement.

(2) If a Registrar on whom such a notice is served fails to comply with it, the party by whom it is served may apply to the Court for an order directing the Registrar to comply with it.

#### Rule 12—Claims by other Persons

(1) A person who makes a claim to or in respect of a property taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such property, shall give notice of the claim to the Registrar and shall include in the notice a statement of the person's address for service.

(2) On receipt of a claim made under subrule (1), the Registrar shall forthwith give notice of it to the execution creditor who shall within four days after receiving the notice, give notice to the Registrar informing the Registrar whether the execution creditor admits or disputes the claim.

(3) Where

(a) the Registrar receives a notice from an execution creditor under subrule (2) disputing a claim, or the execution creditor fails to give the required notice within the period mentioned in that subrule; and

(b) the claim made under subrule (1) is not withdrawn,

the Registrar may apply to the Court for relief.

(4) An application for relief by the Registrar under this rule shall be made ex-parte to the Court seeking an order that the claimant and the execution creditor shall appear before the Court on a date specified in the order for the issue between them to be determined.

(5) Where the Registrar receives a notice from an execution creditor under subrule (2) admitting a claim, the Registrar shall forthwith withdraw from possession of the property claimed and having withdrawn the Registrar may apply to the Court for an order restraining the bringing of an action against the Registrar in respect of the Registrar having taken possession of that property.

(6) Notice of an application under subrule (5) shall be served on any person who makes a claim under subrule (1) to or in respect of the property concerned, and that person may attend the hearing of the application.

(7) An execution creditor who gives notice in accordance with subrule (2) admitting a claim shall only be liable to the Registrar for the fees and expenses incurred by the Registrar before receipt of that notice.

#### Rule 13—Powers of Court Hearing Application for Relief

(1) Where on the hearing of proceedings pursuant to an order made under rule 12(4) all the persons by whom adverse claims to the property in dispute, in this rule referred to as "the claimants" appear, the Court may

(a) summarily determine the question in issue between the claimants and execution creditor and make an order accordingly on such terms as may be just; or

(b) order that any issue between the claimants and the execution creditor be stated and tried and may direct which of them is to be plaintiff and which defendant.

(2) Where a claimant, having been duly served with notice of an order made under rule 12(4), fails to appear or, having appeared, fails or refuses to comply with any order made after the appearance, the claimant, and all persons claiming under the claimant, shall be forever barred from prosecuting the claimant's claim against the Registrar and all persons claiming under the Registrar; but such an order shall not affect the rights of the claimants as between themselves.

(3) Where a claimant alleges that the claimant is entitled to any property by way of security for debt, the Court may order that the property or any part of it be sold and may direct that the proceeds of sale be applied in such manner and on such term as may be just and as may be specified in the order.

(4) For the purposes of this rule the Court may give such judgment or make such order as may finally dispose of all questions arising between any claimant and the execution creditor.

(5) An appeal against any judgment or order given or made under subrule (4) shall be filed within fourteen days from the date of the judgment or order.

#### ORDER 45—WRITS OF FIERI FACIAS

#### Rule 1—Nature of Writ Fieri Facias

(1) A judgment or order for the payment of money may be enforced by a writ of fieri facias.

(2) Where a writ of fieri facias is issued it shall be executed by the seizure and sale of the debtor's property sufficient to satisfy the amount of the judgment debt together with post-judgment interest at the appropriate rate until payment and the costs of the execution.

#### Rule 2—Two or more Writs of Fieri Facias

(1) A party entitled to enforce a judgment or order by writ of fieri facias may issue two or more such writs, directed to different Registrars, at either the same time or different times, to enforce that judgment or order; but no more shall be levied under all those writs together than is authorised to be levied under one of them.

(2) Where a party issues two or more writs of fieri facias directed to different Registrars to enforce the same judgment or order the party shall inform each Registrar of the issue of the other writ or writs.

#### Rule 3—Separate Writs to Enforce payment of Costs

(1) A party entitled to enforce a judgment or order for the payment of money, together with costs, may, if the party so elects, issue one writ of fieri facias to enforce payment of the sum (other than for costs) adjudged or ordered, and a second writ of fieri facias to enforce payment of the costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if the party so elects, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to the party by that judgment or order.

#### Rule 4—Methods of putting Writ into effect

(1) Subject to the other provisions of this Order and to the provisions of any other enactment, a writ of fieri facias shall be put into effect

(a) in respect of any movable property in the possession of the judgment debtor by actual seizure; the property being kept in the custody of the Registrar until sale;

(b) in respect of any money or negotiable instrument, by actual seizure and the money or instrument being deposited in court by the Registrar and held subject to the further order of the Court;

(c) in respect of any movable property to which the judgment debtor is entitled subject to a lien or right of some other person to the immediate possession of the property, by delivering to the person in possession a written order prohibiting the person in possession from giving over the property to the judgment debtor;

(d) in respect of shares in any body corporate, by a written order prohibiting the person in whose name the shares are held from making any transfer of the shares or receiving payment of any dividends of the shares, and prohibiting the manager, secretary or other proper officer of the body corporate from making such payment until such further order;

(e) in respect of immovable property or any interest in immovable property, whether at law or in equity, by a written order prohibiting the judgment debtor from alienating the property or any interest in the property by sale, gift or in any other way, and prohibiting all persons from receiving it by purchase, gift or otherwise; and the Registrar may also, by direction of the Court, take and retain actual possession of the property.

(2) The orders referred to in subrule (1) (c), (d) and (e) shall be signed by the Registrar.

(3) Subject to any enactment, property in the custody or under the control of any public officer in the officer's official capacity is liable to attachment in execution of a judgment or order with notice to the Attorney-General, and the order of attachment shall be served on the public officer.

(4) Property in custodia legis is liable to attachment by leave of the Court, and the order of attachment shall be served on the Registrar.

#### Rule 5—Service of Prohibitory Orders

(1) In the case of any movable property not in the possession of the judgment debtor, an office copy of the order referred to in rule 4 (1) (c) shall be delivered to the person in possession of the property.

(2) In the case of shares in any body corporate, an office copy of the order referred to in rule 4 (1) (d) shall be delivered to or served upon the manager, secretary or other proper officer of that body corporate.

(3) In the case of immovable property or any interest in it, a copy of the order referred to in rule 4 (1) (e), certified by the Registrar, shall be delivered to the judgment debtor or if the judgment debtor cannot be found, shall be delivered to some adult person at the judgment debtor's last known place of abode or business to be given to the judgment debtor, or in case such delivery cannot be made, shall be affixed to a front door of the court building of the court from which the writ of fieri facias issued and, unless it is the same Court building, to the door of the District Court nearest the immovable property in question.

(4) A similar copy of the order referred to in rule 4 (1) (e) shall also in every case be posted on or affixed to some conspicuous part of the immovable property in question.

#### Rule 6—Unauthorised Alienation during Attachment Void

After an attachment has been made by actual seizure, or by written order duly delivered, served or posted in accordance with rule 5, any alienation without leave of the Court of the property attached, whether by sale, gift or otherwise, and any payment of the debt, dividends, or shares to the judgment debtor during the continuance of the attachment, shall be null and void, and the person making the alienation or payment shall be liable to committal for contempt of court.

#### Rule 7—Payment of Money and Proceeds of Sale

The Court may at any time during an attachment under this order, direct that any part of the property attached which

(a) consists of money, or a sufficient part of it, shall be paid over to the party applying for execution of the judgment;

(b) does not consist of money, so far as may be necessary for the satisfaction of the judgment, shall be sold, and that the money realised by the sale, or a sufficient part of it shall be paid to the party.

#### Rule 8—Sales in Execution of Judgments

(1) Sales in execution of judgments shall be made under the direction of the Registrar, and shall be conducted according to such orders, if any, as the Court may make on the application of any party concerned.

(2) Unless the Court authorises the sale to be made in any other manner, the sales shall be made by public auction.

(3) An order relating to sale may be made at the time of issuing a writ of fieri facias or afterwards.

#### Rule 9—Periods of Notice of Sale

(1) Subject to subrule (3) of this rule no sale shall be made until after at least seven days' notice of the sale in the case of movable property, or in the case of immovable property until after at least twenty-one days public notice, unless the judgment debtor in writing consents otherwise.

(2) Whatever notices are made elsewhere, the notices shall be made in the town or place where the property to be sold is situated, and if the sale is to take place in any other town or place the notices shall also be made at the place of sale.

(3) The Court may for any sufficient reason extend or reduce the periods of notice in any case.

#### Rule 10—Setting aside sale for Irregularity

(1) At any time within twenty-one days from the date of the sale of any immovable property, an application may be made to the Court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of the irregularity.

(2) If the application is granted by the Court, the Court shall make an order setting aside the sale for irregularity, and thereupon the purchaser shall be entitled to receive back any money deposited or paid by the purchaser on account of the sale, with or without interest, to be paid by such parties and in such manner as the Court may direct.

#### Rule 11—When Sale becomes Absolute

(1) If no application is made under rule 10, the sale shall become absolute.

(2) If an application made under rule 10 is dismissed, the Court shall make an order confirming the sale.

(3) After a sale of immovable property becomes absolute or is confirmed under this rule, the Court shall grant a certificate to the person who was declared the purchaser at the sale to the effect that that person has purchased the right, title and interest of the judgment debtor in the property sold.

(4) A certificate of purchase granted under subrule (3) is a valid transfer of the right, title and interest of the judgment debtor in the property sold.

#### Rule 12—Delivery of Property Sold

(1) Where the property sold consists of movable property in the possession of the judgment debtor or to the immediate possession of which the judgment debtor is entitled and of which actual seizure has been made, the property shall be delivered to the purchaser.

(2) Where the property sold consists of movable property to which the judgment debtor is entitled subject to a lien or right of any other person to the immediate possession of the property, delivery to the purchaser shall, as far as practicable, be made by the Registrar giving notice to the person in possession prohibiting the person in possession of the property from delivering possession of the property to any person except the purchaser of it.

(3) If the property sold consists of immovable property in the possession of the judgment debtor, or some person on the judgment debtor's behalf or some person claiming under a title created by the judgment debtor after the attachment of the property, the Court shall, on the application of the purchaser, order delivery to be made by putting the purchaser, or any person whom the purchaser may appoint to receive delivery on the purchaser's behalf, in possession of it, and, if need be, by removing any person who may refuse to vacate the property.

(4) If the property sold consists of immovable property in the occupancy of a person entitled to occupy it, the Court shall, on the application of the purchaser, order delivery of it to be made by affixing a copy of the certificate of purchase in some conspicuous place on the immovable property and on the court building.

(5) If the property sold consists of shares in a body corporate, the Court shall, on the application of the purchaser, make an order prohibiting the person in whose name the shares are held from making any transfer of the shares to any other person except the purchaser, or receiving payment of any dividends

on the shares, and the manager, secretary or other proper officer of the body corporate from permitting any such transfer or making any payment to any person except the purchaser.

(6) If the property sold consists of negotiable securities of which actual seizure has been made, they shall be delivered to the purchaser.

#### Rule 13—Transfer of Securities or Shares

(1) If the endorsement, transfer or conveyance of the party in whose name any negotiable security or any share in a body corporate is standing, or in whom any mortgage or equity of redemption is vested is required to transfer it, the Registrar may indorse the security or share certificate or may execute such other document as may be necessary to transfer it.

(2) The endorsement or execution shall be in the following form, or to the like effect

"A.B. by C.D., Registrar of the High Court in the ..... Region of Ghana; in an action by E.F. versus: A.B"

(3) Until the transfer of the security or share, the Court may by order appoint some other person to receive any interest or dividend due on the security or share and to sign receipts for it.

(4) Any indorsement made, or document executed, or receipt signed by the Registrar or any other person appointed by the Court shall be binding on the judgment debtor or the party entitled to the securities or shares.

#### Rule 14—Withdrawal on Satisfaction of Judgment

(1) If the amount adjudged, with costs and all charges and expenses incurred by the attachment, is paid into court or if the judgment or order is otherwise satisfied or vacated or set aside, an order shall be issued for the withdrawal of the attachment.

(2) If the execution debtor so wishes, and deposits in court a sum sufficient to cover the expenses, an order shall be issued in the same manner as prescribed before in this Order for the withdrawal of the attachment, and such steps shall be taken as may be necessary to stay further proceedings in execution of the judgment or order.

#### Rule 15—Power to stay Execution by Writ of Fieri Facias

(1) Where a judgment is given or an order is made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order or at any time thereafter by the judgment debtor or other party liable to execution

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) that the applicant is unable from any just cause to pay the money then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court considers fit.

(2) An application under this rule may be made notwithstanding that the party liable to execution did not file appearance in the action.

(3) The application, if not made at the time the judgment is given or order made, shall be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them.

(4) Where such application is made on the ground of the applicant's inability to pay, the affidavit shall disclose the applicant's income, the nature and value of any property of the applicant and the amount of any other liabilities of the applicant.

(5) Where the application is not made at the time the judgment is given or order made, notice of the application and a copy of the supporting affidavit shall be served on the party entitled to enforce the judgment or order not less than four clear days before the day named in the notice for hearing the application.

(6) An order staying execution under this rule may be varied or revoked by a subsequent order.

#### ORDER 46—EXAMINATION OF JUDGMENT DEBTOR

##### Rule 1—Order for Examination

(1) For the purpose of garnishee proceedings under Order 47, where a person has obtained a judgment or order for the payment of money by some other person, hereinafter referred to as "the judgment debtor", the Court may, on an application made ex-parte by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer of it, to attend before the Court and be orally examined on the questions

(a) whether any debts are owing to the judgment debtor;

(b) whether the judgment debtor has any property or other means of satisfying the judgment or order;

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to these questions at the time and place appointed for the examination.

(2) An order under this rule shall be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

##### Rule 2—Examination of Party Liable to Satisfy the Judgment

Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than a judgment or order as mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for the examination of that party on such questions as may be specified in the order and that rule shall apply accordingly with the necessary modifications.

#### ORDER 47—GARNISHEE PROCEEDINGS

##### Rule 1—Attachment of Debt due to Judgment Debtor

(1) Where a person in this Order referred to as "the judgment creditor" has obtained a judgment or order for the payment of money by some other person referred to as "the judgment debtor" and the judgment or order is not for the payment of money into court, and another person within the jurisdiction, referred to as "the garnishee" is indebted to the judgment debtor, the Court may, subject to the provisions of this order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, or as much of it as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, and shall specify the time and place for further consideration of the matter, and in the mean time attach such debt as is mentioned in subrule (1), or as much of it as may be specified in the order, to satisfy the judgment or order mentioned in that subrule and the costs of the proceedings.

##### Rule 2—Application for Order

An application for an order under rule 1 shall be made ex-parte supported by an affidavit that

(a) identifies the judgment or order to be enforced and states the amount remaining unpaid under it at the time of the application; and

(b) states that to the best of the information or belief of the deponent, the garnishee is within the jurisdiction and is indebted to the judgment debtor and states the sources of the deponent's information or the grounds for the deponent's belief.

#### Rule 3—Service and effect of Order to show cause

(1) An order under rule 1 to show cause shall, at least seven days before the time appointed for the further consideration of the matter, be served on the

(a) garnishee personally; and

(b) judgment debtor unless the Court otherwise directs.

(2) Service of the order shall bind the garnishee as from the date of service on the garnishee of any debt specified in the order or as much of it as may be specified.

#### Rule 4—No Appearance or Dispute of Liability by Garnishee

(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from the garnishee to the judgment debtor, the Court may, subject to rule 7 make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

#### Rule 5—Dispute of Liability by Garnishee

Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from the garnishee to the judgment debtor, the Court may summarily determine the question in issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

#### Rule 6—Claims of third Persons

(1) If in garnishee proceedings it is brought to the notice of the Court that some person other than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien on it, the Court may order that other person to attend before the Court and state the nature of the claim with particulars of it.

(2) After hearing any person who attends before the Court in compliance with an order under subrule (1), the Court may, summarily determine the questions in issue between the claimants or make such other order as it considers just, including an order that any question or issue necessary for determining the validity of the claim of the other person as is mentioned in subrule (1) be tried in any manner in which any question or issue in an action may be tried.

#### Rule 7—Judgment Creditor Resident outside Ghana

(1) The Court shall not make an order under rule 1 requiring the garnishee to pay any sum to or for the credit of a judgment creditor resident outside Ghana unless the judgment creditor produces a certificate that the Bank of Ghana has given permission under the Exchange Control Act, 1961 (Act 71) for the payment unconditionally or on conditions which have been complied with.

(2) If it appears to the Court that payment by the garnishee to the judgment creditor will contravene any provision of the Exchange Control Act, 1961, (Act 71) it may order the garnishee to pay into court the amount due to the judgment creditor and the costs of the garnishee proceedings after deduction of the garnishee's costs.

#### Rule 8—Discharge of Garnishee or Judgment Debtor

(1) Any payment made by a garnishee in compliance with an order absolute under this order and any execution levied against the garnishee under the order shall be a valid discharge of the liability of the garnishee to the judgment debtor to the extent of the amount paid or levied, notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose are reversed.

(2) Any payment made by a garnishee in compliance with an order absolute under this Order and any execution levied against the garnishee in pursuance of the order shall also be a valid discharge of the liability of the judgment debtor to the judgment creditor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose are reversed.

#### Rule 9—Money in court

(1) Where money stands to the credit of a judgment debtor in court, the judgment creditor is not entitled to take garnishee proceedings in respect of that money but may apply to the Court for an order that the money or so much of it as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) Unless the Court otherwise directs, notice of the application shall be served on the judgment debtor at least seven days before the day named in it for hearing the application.

(3) The money to which the application relates shall not be paid out of Court until after the determination of the application.

(4) The Court which hears the application may make any order with respect to the money in court as it considers just.

#### Rule 10—Costs

The costs of any application for an order under rule 1 or 9, and of any proceedings arising from or incidental to such application, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by the judgment creditor under the order and in priority to the judgment debt.

#### ORDER 48—INTERPLEADER

##### Rule 1—Entitlement to Relief by way of Interpleader

A person may apply to the Court for relief by way of interpleader where

(a) the person seeking relief, in this Order referred to as "the applicant" is under liability for any debt, money or goods for or in respect of which the person is or expects to be sued by two or more parties in this order referred to as "the claimants" making adverse titles thereto; or

(b) the person seeking relief is a Registrar or other officer of the Court charged with the execution of process by or under the authority of the Court, and a claim is made to any property movable or immovable taken or intended to be taken in execution under any process or to the proceeds or value of any of the property by any claimant other than the person against whom the process is issued.

##### Rule 2—Mode of Application

(1) An application for relief under this Order shall be made by motion with notice to the claimants.

(2) On the hearing of the application, the Court may order the claimants to appear and state the nature and particulars of their claims and either maintain or relinquish them.

##### Rule 3—Application by Defendant

Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons and the Court shall stay further proceedings until the application has been dealt with.

#### Rule 4—Matters to be proved by Applicant

The applicant shall satisfy the Court by affidavit or otherwise that the applicant

- (a) claims no interest in the subject matter in dispute, other than for charges or costs;
- (b) is not in collusion with any of the claimants; and
- (c) is willing to pay or transfer the subject matter into court or to dispose of it as the Court may direct.

#### Rule 5—Date for Claimants to Appear in Court

An order made under rule 2(2) shall specify the date on which the claimants shall appear in Court and a copy of the order shall be served on the claimants if the Court so directs.

#### Rule 6—Filing of Particulars of Claimants' Claim

(1) Not later than 7 days after the Court makes an order under rule 2(2) or after service of the order on the claimants if the Court so directs, any claimant who intends to maintain a claim shall file in the registry particulars of the claim, notice of which shall be given to every other claimant and to the applicant.

(2) A claimant who fails to file particulars of a claim shall not be heard by the Court and shall be deemed to have abandoned the claim unless the Court directs otherwise and grants the claimant extension of time within which to file the particulars.

#### Rule 7—Order upon Appearance of Claimants

If the claimants appear in pursuance of an order made under rule 2(2), the Court may either order that any claimant be made a defendant in an action already commenced in respect of the subject matter in dispute in lieu of or in addition to the defendant 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.

#### Rule 8—Disposal in Summary Manner

Where the claimants consent or any of them so requests, or where the question in issue between the parties is a question of law and the facts are not in dispute, the Court may summarily determine the questions in issue between the claimants and make an order accordingly on such terms as may be just.

#### Rule 9—Power to Order sale of Goods taken in Execution

Where an application for relief under this Order is made by a Registrar who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that the claimant is entitled under a bill of sale or otherwise to the goods or chattels or any part of it to be sold, the Court may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

#### Rule 10—Failure to Appear or Default of Claimant

If a claimant is ordered by the Court to appear and maintain or relinquish the claim but does not appear in pursuance of the order or having appeared neglects or refuses to comply with any order made after the appearance, the Court may make an order declaring the claimant and all persons who claim under the claimant forever barred against the applicant and persons claiming under the applicant, but the order shall not affect the rights of the claimants as between themselves.

#### Rule 11—Discovery

(1) Orders 21, 22 and 36 shall, with the necessary modifications apply to an interpleader issue as they apply in relation to any other cause or matter.

(2) The Court before which any interpleader proceedings are tried may give such judgment or make such order as may be necessary to dispose finally of all questions that arise from the proceedings.

#### Rule 12—Other Powers

Subject to the rules of this Order, the Court may in any interpleader proceedings make such order as to costs or any other matter as it considers just.

#### ORDER 49—CHARGING ORDERS AND STOP ORDERS

##### Rule 1—Order Imposing charge on Land

(1) The Court may for the purpose of enforcing a judgment or order for the payment of money to a person, by order impose on any immovable property or interest in immovable property of the debtor a charge to secure the payment of any moneys due or to become due under the judgment or order as may be specified in the order.

(2) An order under subrule (1) shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) An application for an order under subrule (1) may be made ex-parte.

(4) There may be joined with an application for an order under subrule (1) an application for the appointment of a receiver to enforce the charge imposed by the order.

(5) The application shall be supported by an affidavit

(a) identifying the judgment or order to be enforced, and stating the name of the judgment debtor on whose immovable property or interest it is sought to impose a charge and the amount remaining unpaid under the judgment or order at the time of the application;

(b) specifying the immovable property on which, or an interest in which, it is sought to impose a charge; and

(c) stating that to the best of the information or belief of the deponent the immovable property or interest in question is the judgment debtor's and stating the sources of the deponent's information or the grounds for the deponent's belief.

(6) Unless the Court otherwise directs, a copy of the order shall, at least 7 days before the time appointed for the further consideration of the matter, be served on the judgment debtor and if the judgment debtor does not attend, proof of service shall be given.

(7) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(8) Where on the further consideration of the matter it appears to the Court that the order should not be made absolute, it shall discharge the order.

##### Rule 2—Order Imposing charge on Securities

(1) The Court, for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money, may by order impose a charge on any interest in securities to which the judgment debtor is beneficially entitled.

(2) Any securities to be charged under this rule shall be specified in the charging order.

(3) The securities to which this rule applies are

(a) government stock standing in the name of the Accountant-General;

(b) any stock of any company registered under any enactment; and

(c) any dividend of or interest payable on stock mentioned in paragraph (a) and (b).

(4) In this Order "government stock" means any stock issued by the Government of Ghana or any funds or annuity granted by that Government, and "stock" includes shares, debentures and debenture stock.

(5) A charging order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

#### Rule 3—Application for Order

An application for an order under rule 2 shall be made ex-parte supported by an affidavit

(a) identifying the judgment or order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the judgment or order; and

(b) stating that to the best of the information or belief of the deponent the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the sources of the deponent's information or the grounds for the deponent's belief.

#### Rule 4—Service of Notice of Order to show cause

(1) Unless the Court otherwise directs, a copy of the order under rule 2 to show cause shall, at least seven days before the time appointed for the further consideration of the matter, be served on the judgment debtor, and if the judgment debtor does not attend, proof of service shall be given.

(2) Notice of the order to show cause, with a copy of that order, shall as soon as practicable be served

(a) on the Bank of Ghana where the order relates to government stock;

(b) on the company concerned where the order relates to other stock; and

(c) on the Accountant-General where the order relates to stock standing in the name of the Accountant-General.

#### Rule 5—Effect of Order to show cause

(1) No disposition by the judgment debtor of the judgment debtor's interest in any securities to which an order under rule 2 to show cause relates made after that order shall, so long as the order remains in force, be valid as against the judgment creditor.

(2) Until the order is discharged or made absolute, the Bank of Ghana or other person shall not permit the transfer of any stock specified in the order, or pay to any person any dividend, or interest payable, except with the authority of the Court.

(3) If after notice the order is served on the Bank of Ghana or any other person, and that other person permits any transfer or makes any payment prohibited by subrule (2), that person shall be guilty of contempt of court and liable to pay the judgment creditor the value of the stock transferred or the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which the order relates, as much of it as is sufficient to satisfy it.

#### Rule 6—Making and effect of Charging Order

(1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modification.

(2) Where on the further consideration of the matter it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 2 made absolute under this rule shall have the same effect and the judgment creditor in whose favour it is made shall, subject to subrule (4) have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of three months from the date of the order being made absolute.

#### Rule 7—Discharge of charging Order

The Court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 2 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms as to costs as it considers fit.

#### Rule 8—Injunctions and Receivers

The Court may

(a) appoint a receiver to enforce a charge imposed by an order under rule 1; or

(b) grant an injunction if it is ancillary or incidental to an order under rule 1 or 2

and an application for the appointment of a receiver or for an injunction under this rule may be joined with the application for the order under rule 1 or 2 to which it relates.

#### Rule 9—Funds in Court: stop order

(1) The Court, on the application of any person

(a) who has a mortgage or charge on the interest of any person with funds in court; or

(b) to whom the interest referred to in paragraph (a) has been assigned; or

(c) who is a judgment creditor of a person entitled to such interest as is mentioned in paragraph (a)

may make an order prohibiting the transfer, sale, delivery, payment or other dealing with the funds, or any part of the funds, or the income from the funds, without notice to the applicant.

(2) An application for an order under this rule shall be made by motion in the cause or matter relating to the funds in court.

(3) Notice of the motion shall be served on each person whose interest may be affected by the order applied for and on the Accountant-General, where the government has an interest, but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

#### Rule 10—Securities not in Court: stop Notice

(1) Any person who claims to be beneficially entitled to an interest in any securities to which rule 2 applies, other than securities in court and who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person who claims to be entitled shall file in the registry

(a) an affidavit identifying the securities in question and describing the person's interest in the securities by reference to the document under which it arises; and

(b) a notice signed by the deponent to the affidavit, and annexed to it, addressed to the Bank of Ghana or other person,

and shall serve an official copy of the affidavit, and a copy of the notice sealed with the seal of the registry, on the Bank or other person.

(3) There shall be indorsed on the affidavit filed under this rule a note stating the address to which any notice referred to in rule 11(1) is to be sent and subject to subrule (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change that person's address for service for the purpose of rule 11 by serving on the Bank of Ghana or other person concerned, notice to that effect, and as from the date of service of the notice, the address stated in it shall for the purpose of that rule be the address for service of that person.

#### Rule 11—Effect of stop Notice

(1) Where a notice under rule 10 has been served on the Bank of Ghana or other person, if the notice is in force, the Bank or other person shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer of payment restrained by the notice, without serving on the person on whose behalf the notice was filed at that person's address for service, a notice informing that person of the request for the transfer or payment.

(2) Where the Bank of Ghana or other person receives a request for a transfer or payment mentioned in subrule (1) made by or on behalf of the holder of the securities to which the notice under rule 10 relates, the Bank of Ghana or other person shall not by reason only of that notice refuse to register the transfer or make the payment for longer than eight days after receipt of the request except under the authority of an order of the Court.

#### Rule 12—Amendment of stop Notice

If any securities are incorrectly described in a notice filed under rule 10 the person on whose behalf the notice was filed may file in the registry in which the notice was filed an amended notice and serve on the Bank of Ghana or other person concerned a copy of that notice sealed with the seal of the registry, and where the person does so, the notice under rule 10 shall be deemed to have been served on the Bank or other person on the day on which the copy of the amended notice was served on the Bank or that other person.

#### Rule 13—Withdrawal of stop Notice

(1) The person on whose behalf a notice under rule 10 is filed may withdraw it by serving a request for its withdrawal on the Bank of Ghana or other person on whom the notice is served.

(2) The request shall be signed by the person on whose behalf the notice is filed and the person's signature shall be witnessed by a lawyer.

(3) The Court, on the application of a person who claims to be beneficially entitled to an interest in the securities to which a notice under rule 10 relates, may by order discharge the notice.

(4) An application for an order under subrule (3) shall be served on the person on whose behalf the notice under rule 10 is filed.

#### Rule 14—Order Prohibiting Transfer of Securities

(1) The Court, on the application of any person who claims to be beneficially entitled to an interest in any government stock or any stock of a company registered under any enactment, may by order

prohibit the Bank of Ghana or other person from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend or interest on it.

(2) The name of the holder of the stock to which the order relates shall be stated in the order.

(3) Notice of an application made under subrule (1) shall be served on the holder of any stock and the Bank of Ghana or other person.

(4) The Court, on the application of any person who claims to be entitled to an interest in any stock to which an order under this rule relates, may vary or discharge the order on such terms as it considers fit.

#### ORDER 50—COMMITTAL

##### Rule 1—Committal for Contempt

(1) The power of the Court to punish for contempt of court may be exercised by an order of committal.

(2) Committal proceedings shall be commenced by an application to the Court.

(3) The application shall be supported by an affidavit stating inter alia the grounds of the application.

(4) Subject to subrule (5), the notice of motion, together with a copy of the affidavit in support of the application shall be served personally on the person sought to be committed.

(5) Without prejudice to its power under Order 7 rule 6 the Court may dispense with service of the notice of motion if it thinks it just to do so.

##### Rule 2—Committal without Application

Nothing in rule 1 affects the power of the Court to make an order of its own motion against a person to show cause why the person should not be committed for contempt of court.

##### Rule 3—Hearing of Application

(1) Subject to subrule (2), the Court that hears an application for an order of committal may sit in chambers where

(a) the application arises out of proceedings that relate to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, fosterage, maintenance or up bringing of a child, or right of access to a child;

(b) the application arises out of proceedings that relate to a person who suffers or appears to suffer from mental illness,

(c) the application arises out of proceedings in which a secret process, discovery or invention is in issue; or

(d) it appears to the Court that in the interest of the administration of justice or for reasons of national security the application should be heard in chambers,

except that in all other cases, the application shall be heard in open court.

(2) If the Court hearing an application in chambers by virtue of subrule (1) decides to make an order of committal against the person sought to be committed, it shall state in open court

(a) the name of that person;

(b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and

(c) if the person is being committed for a fixed period, the length of that period.

(3) Without prejudice to the powers of the Court under Order 16 rule 7 no grounds except the grounds set out in the affidavit in support of the motion shall be relied upon at the hearing of an application for an order of committal.

#### Rule 4—Suspension of Order

(1) The Court which makes an order of committal may by an order direct that the execution of the order of committal shall be suspended for such period or on such other terms and conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under subrule (1), the applicant for the order of committal shall, unless the Court otherwise directs, serve on the person against whom it is made a notice informing the person of the order made under that subrule and the terms of the order.

#### Rule 5—Discharge of Person Committed

(1) The Court may, on the application of any person committed to prison for contempt of court, discharge the person.

(2) Where a person has been committed for failure to comply with a judgment or order that requires the person to deliver something to any other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of the person committed and, without prejudice to the generality of subrule (1), the Court, may discharge the person committed and give directions for dealing with the thing taken by the commissioners.

#### Rule 6—Saving of other Powers

Nothing in rules 1 to 5 shall affect the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if the person had been guilty of contempt of the court, to pay a fine or to give security for good behaviour, and those rules, so far as applicable, and with the necessary modifications, shall apply to an application for such an order as they apply to an application for an order of committal.

### ORDER 51—APPEALS FROM DISTRICT COURTS

#### Rule 1—Notice of Appeal

(1) An appeal from a decision or order of a District Court to the High Court shall be by way of rehearing and shall be brought by notice in this Order referred to as "the notice of appeal".

(2) The appeal is brought in the case of a substantive appeal when the notice of appeal has been filed in the District Court from which the appeal is brought, in this Order referred to as "the court below".

(3) The procedure for an interlocutory appeal shall be as set out in rule 16 of this Order.

(4) The notice of appeal shall set out the grounds of appeal and shall state

(a) whether the whole or part only of the decision or order of the court below is complained of, in the latter case specifying the part;

(b) the nature of the relief sought; and

(c) the names and addresses for service of all parties directly affected by the appeal.

(5) The notice of appeal shall be accompanied with sufficient number of copies for service on all parties directly affected by the appeal.

#### Rule 2—Grounds of Appeal

(1) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

(2) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of the evidence.

(3) If the grounds of appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.

(4) Any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent.

(5) The appellant shall not without leave of the Court rely on any ground of appeal not stated in the notice of appeal.

#### Rule 3—Time for bringing Appeal

(1) Subject to rule 4, a person wishing to appeal under section 21(1) of the Courts Act, 1993 (Act 459) against a decision of a District Court shall file a notice of appeal within three months from the date of the decision appealed against.

(2) A person wishing to appeal with leave under section 21 (2) of the Courts Act, 1993 (Act 459) against an interlocutory order or decision of a District Court shall apply to the court below for leave within fourteen days from the date of the order or decision against which leave to appeal is sought.

(3) Where the court below refuses to grant leave, the person wishing to appeal may apply to the Court for leave within fourteen days from the date upon which the court below refused to grant leave.

(4) Where leave is granted, either by the Court below or by the Court, the appellant shall file a notice of appeal within fourteen days from the date upon which leave is granted.

#### Rule 4—Extension of time

(1) An application to extend the time in which to appeal may be made to the Court or to the court below.

(2) No application shall be made after the expiration of one month after the time specified in rule 3 within which an appeal may be brought.

(3) Each such application shall be supported by an affidavit setting out good and substantial reasons for the application and grounds of appeal which prima facie show good cause for leave to be granted.

(4) When time is so extended, the date of the order granting the extension and the court by which the order is made shall be set out in the notice of appeal

#### Rule 5—Service of Notice

(1) As soon as practicable after the notice of appeal has been filed, the court below shall cause a copy of it to be served on each of the parties mentioned in the notice.

(2) Subject to subrule (3), it shall not be necessary to serve any party not directly affected by the appeal.

(3) The Court may direct notice to be served on all or any party to the cause or matter, or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just and make such order as might have been made if the persons served with the notice had originally been parties to the appeal.

#### Rule 6—Deposit or Security

(1) The appellant shall within one month after being notified by the Registrar of the court below to do so, deposit in the court below the prescribed fee to cover the expense of making up and forwarding the record of appeal, and shall also deposit a prescribed sum or give security by bond with one or more sureties to the satisfaction of the court below for the due prosecution of the appeal and for the payment of any costs which the appellant may be ordered to pay.

(2) Where the appellant fails to comply with subrule (1) his appeal shall lapse unless the Court grants extension of the time within which to comply with subrule (1).

(3) An application for extension of time under subrule (2) shall be made not later than one month after the expiration of the period specified in subrule (1)

#### Rule 7—Record of Appeal

(1) The Court below shall make up the record of appeal, which shall consist of the originating process, the pleadings, if any, certified copies of all documents admitted as evidence or tendered as evidence and rejected, the notes of evidence, any interlocutory proceedings or orders, the judgment or order of the court below, the notice of appeal and the addresses of the parties or their lawyers or both.

(2) The record of appeal when completed shall be forwarded to the Registrar of the Court together with

(a) a certificate that the conditions imposed under rule 6 have been fulfilled;

(b) one copy of the record for the use of the Judge; and

(c) the docket or file of the case in the court below containing the papers or documents filed by the parties in connection with it as well as all exhibits tendered in evidence whether admitted or rejected.

#### Rule 8—Time Limit for Submitting Record

(1) It is the duty of the court below to ensure that the completed record of appeal and all associated documents specified in rule 7 (2) are submitted to the Court as soon as possible, and in any event not later than thirty days after the provisions of rule 6 have been complied with.

(2) Where the court below fails to submit to the Court the completed record of appeal and all associated documents as provided by subrule (1) the appellant may in writing notify the Chief Justice who, after investigating the reasons for the delay, may take appropriate steps to expedite the appeal.

#### Rule 9—Effect of Appeal

(1) An appeal shall not operate as a stay of execution in respect of the judgment or order appealed from except where the court below or the Court otherwise orders

(a) in the case of the court below, upon application made orally or by motion on notice to it; or

(b) in the case of the Court, upon application made to it by motion on notice,

and except as provided no intermediate act or proceeding shall be invalidated.

(2) During any period when an application is pending for determination under subrule (1), any proceedings for execution of the judgment or order to which the application relates shall be stayed

(a) for a period of seven days immediately following the judgment or the making of the order;

(b) during any period when an application under subrule (1) is pending for determination; or

(c) for a period of seven days immediately following the determination by the court below of any application under subrule (1) (a) where the application is refused by the court below.

#### Rule 10—Production of Original Documents

All letters, documents and exhibits tendered in evidence at the trial shall be retained in the registry of the court below until the time limited for appeal has expired or if there is an appeal they shall be transmitted to the Court as provided under rule 7.

#### Rule 11—High Court to Control Appeal

(1) After the record of appeal has been transmitted, and until the appeal is disposed of, the Court shall be in control of the whole proceedings as between the parties to the appeal.

(2) Subject to subrule (3), every application in the proceedings shall be made to the Court, and not to the court below, but any application may be made through the court below.

(3) In case of urgency the court below may make any interim order to prevent prejudice to the claims of any party pending an appeal, but the order may be discharged or varied by the Court.

#### Rule 12—Failure of Party to Appear

(1) If the appellant fails to appear in person or by the appellant's lawyer when the appeal is called for hearing, the appeal shall, on proof of service upon the appellant of notice of the hearing, be dismissed by the Court with costs; but the Court may, if satisfied subsequently, that it is just to do so, direct that the appeal be re-entered for hearing on such terms as to costs or otherwise as it considers fit.

(2) If the respondent fails to appear in person or by the respondent's lawyer when the appeal is called for hearing, the Court shall, on proof of service upon the respondent of notice of the hearing, proceed to hear the appeal in the respondent's absence; but the Court may, if satisfied subsequently by an aggrieved respondent that there are good and substantial reasons for the respondent's non-appearance or that there are exceptional circumstances occasioning a miscarriage of justice, direct that the judgment be set aside and the appeal re-entered for hearing on such terms as to costs or otherwise as it considers fit.

#### Rule 13—New Evidence on Appeal

It is not open as of right to any party to an appeal to adduce new evidence in support of the party's original case; but for the furtherance of justice, the Court may allow or require new evidence to be adduced; and the evidence shall be either by oral examination in court or by affidavit or by deposition taken before an examining commissioner as the Court may direct; but the new evidence shall be evidence which was not within the knowledge of the party or could not have been produced after the exercise of due diligence by the party at the time when the judgment was given or that order made.

#### Rule 14—Powers of Court hearing Appeal

(1) The Court may in any appeal before it

(a) rehear the whole case, or may remit it to the court below to be reheard or otherwise dealt with as the Court may direct;

(b) direct the court below to inquire into and certify its finding on any question which the Court considers fit to determine before final judgment in the appeal;

(c) allow the appellant to amend the grounds of appeal, or may itself amend the grounds of appeal, and may amend any defect or error in the record of appeal;

(d) draw any inference of fact which should have been drawn in the cause or matter out of which the appeal arose;

(e) make any order, on such terms as it considers just, to ensure the determination on the merits of the real question in controversy between the parties;

(f) make any interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary enquiries or accounts to be made or taken, and generally shall have as full jurisdiction over the whole proceedings, as if the proceedings had been instituted and prosecuted in the Court as a court of first instance;

(g) give any judgment and make any order that ought to have been made and may make such further or other order as the case may require, including any order as to costs and may do so notwithstanding that the appellant may have asked that a part only of a decision be reversed or varied, and may also act in favour of all or any of the respondents or parties, although the respondents or parties may not have appealed from or complained of the decision;

(h) in special circumstances, order that such security be given for the costs of the appeal as may be just.

(2) The powers of the Court in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(3) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage of justice has been occasioned by it.

(4) The Court in deciding the appeal shall not be confined to the grounds of appeal set out by the appellant; but the Court shall not rest its decision on any ground not set out by the appellant unless the respondent has had sufficient opportunity to contest the case on that ground.

#### Rule 15—Enforcement of Judgment or Order

(1) Any judgment given or order made by the Court may be enforced by the Court or by the court below as the Court may direct.

(2) When the Court directs a judgment or order to be enforced by the court below, the Registrar of the Court shall send to the court below a certificate under the seal of the Court and the hand of the presiding Judge, setting out the judgment or order of the Court; and the court below shall enforce the judgment or order made by the Court in terms of the certificate.

#### Rule 16—Interlocutory Appeals

(1) An interlocutory appeal shall be brought by the appellant submitting to the Registry of the High Court four or such number of files as the Registrar of the court may decide, each containing:

(a) "notice of appeal" which shall state the matters specified in rule 1(4)

(b) a copy each, of the motion paper, the supporting affidavit and the exhibits which were annexed to the affidavit, and used in the court below.

(c) the respondent's affidavit in opposition if any with its exhibits used in the court below.

(d) the order or decision of the court below in respect of which the appeal is brought if available at the time of submitting the files to the Registrar of the Court; or later when obtained.

(2) The appeal shall be deemed to be filed when the files are submitted to the Registrar of the Court and the appropriate fee has been paid.

(3) The Registrar of the Court shall cause to be affixed to all the papers in each file the official stamp of the Court and each file shall constitute "the record of appeal" for the purpose of the appeal. Consequently, there shall be no settling or preparation of a record of appeal.

(4) The Registrar of the Court shall cause to be served on each of the parties mentioned in the notice of appeal, one file and shall issue a certificate of service of the notice of appeal after that.

(5) Within fourteen days after filing the notice of appeal, the appellant shall file four copies of the "Statement of the Appellant's Case" setting out fully the arguments and the relevant statutes or decided cases the appellant wishes the Court to consider.

(6) If the appellant does not file a statement of case within the time stipulated in rule 5, the Registrar shall certify that fact to the Court which may dismiss the appeal for non-prosecution, or make such other order as it may consider appropriate.

(7) If the appellant files a statement of case, the Registrar shall cause a copy to be served on each respondent or the lawyer within seven days from the date of filing.

(8) A respondent who wishes to contest the appeal shall file six copies or such number as the Registrar may determine of the "Respondent's statement of case, within fourteen days of the service of the statement of the appellant's case and shall set out his arguments in full citing all relevant statutes and decided cases intended for the consideration of the Court.

(9) The Registrar shall cause to be served on the appellant and on each other respondent if separately represented, a copy each of the respondent's statement of case.

(10) The Registrar shall within seven days of causing the respondent's statement of case to be served on the appellant and other respondents, fix the appeal for hearing by the Court and shall notify the parties of the date for the hearing of the appeal.

(11) An interlocutory appeal shall be considered and disposed of by the Court on the basis of the papers filed and, if considered necessary by the Court, oral submissions from the parties or their lawyers may also be received and considered by the Court.

(12) Judgment shall be delivered in open court or in chambers as the Court may determine.

(13) For the purpose of rule 16 of this Order, an interlocutory appeal shall include an appeal in respect of a decision or ruling on:

(a) any interlocutory application, irrespective of whether the decision disposes of the whole case or not.

(b) judgment on the undefended list.

(14) The times stipulated for filing interlocutory appeals shall be as specified in rule 3 (2) of this Order, but for an appeal against a final judgment on the Undefended List it shall be as specified in rule 3 (1) of this Order.

## ORDER 52—APPEALS FROM REGISTRARS AND REFEREES

### Rule 1—Appeal from Registrar

(1) An appeal shall lie to a Judge in chambers from any order or decision of a Registrar.

(2) The appeal shall be brought by serving on every party to the cause or matter in which the order or decision is made or given, a notice to attend before the Judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the notice shall be issued within fourteen days after the order or decision appealed against is made or given and served not less than three clear days before the days fixed for hearing the appeal.

(4) Unless the Court otherwise directs, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

#### Rule 2—Appeal from Referee

An appeal shall lie to the Court from any judgment, decision or order of a referee given or made on the hearing or determination of any cause, question or issue ordered to be tried before the referee.

#### ORDER 53—LAND TITLE REGISTRATION APPEALS

##### Rule 1 —Appeals from Adjudicating Committees

(1) An appeal from an order or a decision of an Adjudicating Committee by virtue of subsection (3) of section 32 of the Land Title Registration Law 1986 (P.N.D.C.L. 153) shall be commenced by a notice of appeal.

(2) The notice of appeal shall set out the grounds of appeal and shall state the decision appealed against, the names and addresses of all persons directly affected by the appeal and the relief sought.

(3) The notice of appeal shall be accompanied with sufficient number of copies for service on all parties directly affected by the appeal.

##### Rule 2—Grounds of Appeal

(1) The grounds of appeal shall set out concisely and consecutively and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal and shall not contain any argument or narrative.

(2) A ground which is vague or general in terms or which disclosed no reasonable ground of appeal shall not be permitted, except the general grounds that the judgment is against the weight of the evidence.

(3) If the grounds of appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.

(4) Any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent.

(5) The appellant shall not without leave of the Court rely on any ground of appeal not stated in the notice of appeal.

##### Rule 3—Service of Notice

(1) The Registrar shall within 7 days after the filing of the notice of appeal, cause a copy of the notice to be served on the Adjudicating Committee and on every party mentioned in the notice of appeal.

(2) The Court may direct notice to be served on that person either on its own motion or by a person whose interest may be directly affected by the decision and may for that purpose adjourn the hearing of the appeal upon such terms as may be just and make such order as might have been made if the persons served with the notice had originally been a party to the appeal.

##### Rule 4—Submission of Record of Proceedings

The record of proceedings consisting of certified documents used in the hearing before the Adjudicating Committee shall be forwarded by the secretariat of the Adjudicating Committee to the Registrar.

##### Rule 5—Time for Submission of Records

The record of appeal shall within three months after receipt of the notice of appeal, subject to any extension of time that the Court may grant, be submitted to the Registrar by the secretariat of the Adjudicating Committee.

#### Rule 6—Effect of Appeal

(1) An appeal shall not operate as a stay of execution in respect of the decision or order appealed against except where the Court otherwise orders upon application made to it by motion on notice, and except as provided, no intermediate act or proceeding shall be invalidated.

(2) During any period when an application is pending for determination under subrule (1), any proceedings for execution of the decision or order to which the application relates shall be stayed

(a) for a period of seven days immediately following the decision or the making of the order; and

(b) during any period when an application under subrule (1) is pending for determination.

#### Rule 7—High Court to Control Appeal

(1) After the record of appeal has been transmitted, and until the appeal is disposed of, the Court shall be in control of the whole proceedings as between the parties to the appeal.

(2) The notice of appeal shall be filed with the Registrar of the High Court within three months of the delivery of the decision to the Committee except that the Court may for good cause extend the time for a further period not exceeding fourteen days.

(3) No application for extension of time shall be filed after 30 days from the expiry of the three months specified in subrule (2).

#### Rule 8—Failure of Party to Appear

(1) If the appellant fails to appear in person or by a lawyer when the appeal is called for hearing, the appeal shall, on proof of service upon the appellant of notice of the hearing, be dismissed by the Court with cost; but the Court may, if satisfied subsequently, that it just to do so, direct that the appeal be re-entered for hearing on such terms as to costs or otherwise as it considers fit.

(2) If the respondent fails to appear in person or by a lawyer when the appeal is called for hearing, the Court shall, on proof of service of notice of the hearing on the respondent, proceed to hear the appeal in the absence of the respondent, and give judgment on the merits.

#### Rule 9—New Evidence on Appeal

It is not open as of right to any party to an appeal to adduce new evidence in support of that party's original case; but for the furtherance of justice, the Court may allow or require new evidence to be adduced; the evidence shall be either by oral examination in court or by affidavit or by deposition taken before an examining commissioner as the Court may direct; but the new evidence shall be evidence which was not within the knowledge of the party or could not have been produced after the exercise of due diligence by the party at the time when the judgment was given or that order made.

#### Rule 10—Orders of the Court

(1) The Court hearing an appeal shall make such order(s) as it considers just in the case.

(2) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage of justice has been occasioned by it.

(3) The Court in deciding an appeal shall not be confined to the grounds of appeal set out by the appellant; but the Court shall not rest its decision on any ground not set out by the appellant unless parties have had sufficient opportunity to contest the case on that ground.

Rule 11—Enforcement of Decision or Order

A decision given or an order made by the Court shall be enforced by the Court.

Rule 12—Interlocutory Appeals

Interlocutory appeals shall follow the procedure in Order 51 rule 16 of these rules.

ORDER 54—TAX APPEALS

Rule 1—Tax Appeals to the High Court

Where in any enactment provision is made for an appeal to be made to the High Court against a decision or order of the Commissioner the provisions of this Order shall apply to the appeal.

Rule 2—Notice of Appeal

(1) The appeal shall be commenced by the filing of five copies of the notice of appeal together with five copies of all relevant documents with the Registrar within thirty days of receipt of service of the decision or order of the Commissioner.

(2) Where the aggrieved person does not file an appeal within the time prescribed in rule 2(1), he may apply for an extension of time to do so within 3 months from the date of the expiry fixed in subrule (1), and the court may, if satisfied that the delay in filing the notice of appeal was due to his absence from the country, sickness or other reasonable cause and that there has been no unreasonable delay on his part, grant him extension of time to file his Notice of Appeal.

(3) No application for extension of time shall be entertained after the time specified in subrule (2).

(4) For the purposes of this appeal the Commissioner shall be the Respondent.

(5) The Notice of Appeal shall be titled as follows:

"In the matter of an appeal against tax assessment by the Commissioner"

X . . . . . Appellant

Vrs.

The Commissioner . . . . . Respondent"

Rule 3—Grounds of Appeal

(1) The notice of appeal shall be set out in consecutively numbered paragraphs, a concise statement of the facts and of any points of law upon which the appellant intends to rely in support of the appeal.

(2) No ground of appeal which is vague or general in form shall be stated.

(3) The grounds of appeal shall be accompanied with a copy of the assessment or decision of the Commissioner appealed against certified by the Commissioner.

Rule 4—Payment of Tax

(1) An aggrieved person who has filed an appeal against an assessment, decision or order of the Commissioner under rule 1 of this Order shall, pending the determination of the appeal, pay an amount not less than a quarter of the amount payable in the first quarter of that year of assessment as contained in the notice of assessment.

(2) An appeals shall not be entertained by a Court under these rules unless the Appellant has paid the amount set out in sub rule (1) of this rule.

(3) Where the payment of tax has been held over pending an appeal, any tax outstanding under the assessment shall be payable within thirty days from the date of the decision of the Court.

#### Rule 5—Filing by Agent

Where the appellant is a body corporate or where the judge permits the appeal to be made by an agent, any document required to be filed or signed by the appellant may be filed or signed by the agent.

#### Rule 6—Registration of Tax Appeals and Service on the Commissioner

(1) The Registrar shall upon the receipt of the notice of appeal endorse the date of receipt on it and shall enter the appeal in a register of Tax Appeals which shall be kept by the Registrar for that purpose.

(2) The Registrar shall upon receipt of the notice of appeal immediately serve a copy on the Commissioner.

#### Rule 7—Reply of Commissioner

(1) The Commissioner shall within fifteen days of service file copies of a reply together with five copies all certified documents used in the assessment in respect of which the appeal has been lodged with the Registrar.

(2) The reply shall set out in consecutively numbered paragraphs a concise statement of the facts and points of law on which the Commissioner intends to rely.

(3) The Registrar shall cause a copy of the reply of the Commissioner and copies of all the documents used in the assessments to be served on the appellant not later than fifteen days from the filing of the Commissioner's reply.

#### Rule 8—Registrar to give Notice of Date of Hearing

(1) The Registrar shall within seven days after the service of the Commissioner's reply on the Appellant, fix a date for the hearing of the appeal and serve notices of this on the parties not later than twenty one days from the hearing of the appeal.

(2) The hearing date should not exceed four weeks from the date of service of the Commissioner's reply on the Appellant.

#### Rule 9—Decision of the Court

The Court upon hearing an appeal under this Order may take evidence or seek expert's assistance and may confirm, reduce, increase or annul an assessment on which the decision is based and may in all cases make such decision as the Court considers appropriate.

#### Rule 10—Application of other Rules

(1) Except otherwise provided in this Order, the rules on appeals provided in these rules shall apply to tax appeals with such modifications as are necessary.

(2) For purposes of this appeal the record shall be the documents submitted by the parties with the Notice of Appeal or Reply to the Registrar which shall be put together in a folder by the Registrar and submitted to the Court.

#### Rule 11—Commissioner

(1) For the purposes of this Order, Commissioner includes any body or person from whose decision on a matter relating to tax an appeal lies to the High Court.

(2) "Relevant documents" shall include all documents used by both the Appellant and the Commissioner in the assessment or objection to the assessment.

#### ORDER 55—APPLICATION FOR JUDICIAL REVIEW

##### Rule 1—Cases Appropriate for Application for Judicial Review

An application for

(a) an order in the nature of mandamus, prohibition, certiorari or quo warranto; or

(b) an injunction restraining a person from acting in any public office in which the person is not entitled to act; or,

(c) any other injunction,

shall be made by way of an application for judicial review to the High Court.

##### Rule 2—Orders Obtainable by Judicial Review

(1) On the hearing of an application for judicial review the High Court may make any of the following orders as the circumstances may require

(a) an order for prohibition, certiorari or mandamus;

(b) an order restraining a person from acting in any public office in which that person is not entitled to act;

(c) any other injunction;

(d) a declaration;

(e) payment of damages.

(2) In granting an injunction or making a declaration under paragraphs (c) or (d) of subrule (1) of this rule the Court shall have regard to

(a) the matter in respect of which relief may be granted by way of prohibition, certiorari or mandamus;

(b) the nature of the persons against whom relief may be granted by way of the order; and

(c) whether in all the circumstances of the particular case it would be just and convenient to grant an injunction or make a declaration on an application for judicial review.

(3) The Court on an application for judicial review, may award damages to the applicant if the applicant makes a case for damages and if in the opinion of the Court such damages arise from a matter to which the application relates and damages would have been awarded to the applicant in an action begun by the applicant at the time of making the application.

##### Rule 3—Time for making Application

(1) The application for judicial review shall be made not later than six months from the date of the occurrence of the event giving grounds for making the application.

(2) Where an order of certiorari is sought in respect of any judgment, order, conviction or other proceeding, the date of the occurrence of the event giving grounds for the making of the application shall be taken to be the date of that judgment, order, conviction or proceeding.

#### Rule 4—Mode of Application

(1) An application for judicial review shall be made to the High Court by motion.

(2) The motion shall be supported by an affidavit by or on behalf of the applicant which shall contain the following particulars

(a) the full name, description and address for service of the applicant;

(b) the facts upon which the applicant relies;

(c) the relief or remedy sought by the applicant and the grounds on which he seeks the relief or remedy; and

(d) the full name, description and address for service of the person directly affected by the application.

#### Rule 5—Notice of Application

(1) Notice of the application shall be served on all parties named in the applicant's affidavit as being directly affected by it.

(2) The Court may order that notice of the application shall be served on any person not named as being directly affected by the application if in its opinion it is desirable that the person should be given notice.

(3) A person who is served with notice of the application may file an affidavit in response to the application not later than seven days after service of the notice on the person.

(4) An applicant shall not rely on any ground at the hearing not set out in the applicant's affidavit in support of the application.

(5) The applicant may by leave of the Court amend the grounds relied on and upon leave being granted, the applicant shall file a further affidavit setting out the grounds relied on as amended not later than seven days after the grant of leave or such other time as the Court may order.

(6) Where the respondent wishes to file a reply to the applicant's amended affidavit, the respondent shall do so within seven days of service of the further affidavit.

(7) No further affidavits may be filed by either the applicant or any respondent except by leave of the Court.

(8) Each party to the application shall supply to every other party copies of every affidavit the party proposes to use at the hearing of the application.

#### Rule 6—Hearing of Application

(1) The Court may on the hearing of an application for judicial review, allow a person who desires to oppose the application to be heard notwithstanding that the person has not been served with notice of the application and may direct that person to file an affidavit.

(2) Within 14 days after filing the Notice of application, the applicant shall file such number of copies of the applicant's statement of case as the Registrar shall determine setting out fully his arguments and relevant statutes or decided cases he wishes the Court to consider.

(3) If the applicant does not file a statement of case within the time stipulated in subrule 2, the Registrar shall certify that fact to the Court which may dismiss the application for non-prosecution or make such other order as it may consider appropriate.

(4) If the applicant files a statement of case the Registrar shall cause a copy to be served on each respondent or interested party or his lawyer within seven days from the date of filing.

(5) A respondent or any interested party who wishes to contest the application shall file such number of his statement of case, as the Registrar may determine, within 14 days of the service of the statement of the applicant's case on him and shall set out his arguments in full citing all relevant statutes and decided cases intended for the consideration of the Court.

(6) The Registrar shall cause to be served on the applicant and on every other interested party, if separately represented, a copy of the respondent's statement of case.

(7) The Registrar shall within seven days of causing the respondent's statement of case to be served on the applicant and other interested parties, fix the application for hearing by the Court and shall notify the parties of the date for the hearing.

(8) The application shall be considered and disposed of by the Court on the basis of the papers filed and if considered necessary by the Court, oral submissions from the parties or their lawyers may also be received and considered by the Court.

#### Rule 7—Certiorari

(1) Where the applicant seeks an order of certiorari to remove any proceedings for the purpose of quashing them the applicant shall at least seven days before the hearings of the application file in the registry of the Court a copy of any order, warrant, commitment, conviction, inquisition or record verified by affidavit, otherwise the applicant shall not be heard unless the applicant's failure to do so is explained to the satisfaction of the Court.

(2) On the hearing of an application for certiorari, the Court if satisfied that there are grounds for quashing the decision or proceeding to which the application refers, may quash it and may in addition to quashing it remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and proceed in accordance with the findings of the Court.

#### Rule 8—Injunction or Declaration

(1) In an application for the relief of injunction, declaration or damages, if the Court considers that the relief should not be granted on an application for judicial review but might have been granted if sought in an action commenced by writ by the applicant at the time the application was made, it may instead of refusing the application order the proceedings to continue as if they had been commenced by writ.

(2) Where the Court makes an order under subrule (1) for the proceedings to continue it may direct that the parties shall settle the issues for trial and give such further directions for the conduct of the proceedings as it may consider necessary for the just and expeditious disposal of the matter.

#### Rule 9—Protection for Person acting in Obedience to Mandamus

No action or proceedings shall be commenced or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

#### ORDER 56—HABEAS CORPUS

##### Rule 1—Application for Habeas Corpus ad Subjiciendum

(1) An application for a writ of habeas corpus ad subjiciendum shall be made to the Court, except that

(a) in vacation or at any time when no court is sitting it may be made to a Judge otherwise than in court;

(b) in cases where the application is made on behalf of an infant, it shall be made in the first instance to a Judge otherwise than in court.

(2) Subject to subrule (3), an application for such writ may be made ex-parte and shall be supported by an affidavit by the person restrained setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by subrule (2), the affidavit may be made by some other person on behalf of the person restrained and that affidavit shall state that the person restrained is unable to make the affidavit for reasons stated in the affidavit.

#### Rule 2—Power of Court to which Ex-parte Application is made

(1) The Court or Judge to whom an application under rule 1 is made ex-parte may make an order forthwith for the writ to issue, or may,

(a) where the application is made to a Judge otherwise than in the Court, direct that an application be made by motion on notice to the Court; or

(b) where the application is made to the Court, adjourn the application so that notice of it may be given.

(2) The notice of the application shall be served on the person against whom the issue of the writ is sought and on such other persons as the Court or Judge may direct and, unless the Court or Judge otherwise directs, there shall be at least four clear days between the date of the service of the notice and the date stated in the notice for the hearing of the application.

#### Rule 3—Copies of Affidavits to be Supplied

Every party to an application under rule 1 shall supply to every other party copies of the affidavit which the party proposes to use at the hearing of the application.

#### Rule 4—Power to Order Release of Persons Restrained

Without prejudice to rule 2 (1), the Court or Judge hearing an application for a writ of habeas corpus ad subjiciendum may in the Court's or judge's discretion order that the person restrained be released, and such order shall be a sufficient warrant to any officer in charge of a prison, police officer or other person for the release of the person under restraint.

#### Rule 5—Directions as to Return of Writ

Where a writ of habeas corpus ad subjiciendum is ordered to issue, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which the writ is returnable.

#### Rule 6—Service of Writ and Notice

(1) Subject to subrules (2) and (3), a writ of habeas corpus ad subjiciendum shall be served personally on the person to whom it is directed.

(2) Where it is not possible to serve the writ personally, or if it is directed to a governor of a prison, police officer or other public official, it shall be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) Where the writ is directed to more than one person, the writ shall be served in the manner provided by this rule on the person first named in it, and copies shall be served on each of the other persons in the same manner as the writ.

(4) There shall be served with the writ a notice stating the Court or Judge before whom and the date on which the person restrained is to be brought and that in default of obeying, proceedings for committal of the party disobeying will be taken.

#### Rule 7—Return to the Writ

(1) The return to a writ of habeas corpus ad subjiciendum shall be endorsed on or annexed to the writ and shall state all the causes of the detention of the person restrained.

(2) The return may be amended or another return substituted by leave of the Court or Judge before whom the writ is returnable.

#### Rule 8—Procedure at Hearing of Writ

When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read and motion then made to discharge or remand the person restrained or to amend or quash the return, and where that person is brought in accordance with the writ, that person's lawyer shall be heard first, then the lawyer for the Republic, and the lawyer for the person restrained in reply.

#### Rule 9—Order Subject to Habeas Corpus Act and any other Enactment

This Order shall be subject to the Habeas Corpus Act, 1964 (Act 244) and to any other enactment for the time being in force.

#### ORDER 57—DEFAMATION ACTION

##### Rule 1—Application

These Rules apply to action for libel and slander subject to the rules in this Order.

##### Rule 2—Indorsement of Claim in Libel Action

Before a writ is issued in an action for libel it shall be indorsed with a statement giving sufficient particulars of the publication in respect of which the action is brought to enable them to be identified.

##### Rule 3—Obligation to give Particulars

(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of have been 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 the sense alleged.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on matter of public interest, or pleads to the like effect, the defendant shall give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters the defendant 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, the plaintiff need not in the statement of claim give particulars of the facts on which the plaintiff 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 on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, the plaintiff shall serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply 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.

##### Rule 4—Payment into Court

Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 18 rule 3, accepts money paid into court by any of the defendants in

satisfaction of the plaintiff's cause of action against that defendant, then notwithstanding anything in Order 18 rule 3(2) the action shall be stayed against that defendant only, but

(a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount, paid into court by the defendant against whom the action has been stayed; and

(b) the plaintiff shall not be entitled to costs against the defendant who has made the payment after the date of the payment into court unless either the amount of the damages awarded to the plaintiff is greater than the amount paid into court and accepted by the plaintiff or the Court is of the opinion that there was reasonable ground for the plaintiff to proceed with the action against the other defendant who made the payment.

#### Rule 5—Payment by way of Amends

(1) In an action for libel published in any public newspaper or other periodical publication the defendant may after paying into court a sum of money by way of amends, plead by way of defence that

(a) the libel was published without malice and without gross negligence;

(b) before the commencement of the action or at the earliest opportunity afterwards the defendant inserted in that newspaper or periodical publication a full apology for the libel or (if that newspaper or periodical publication is ordinarily published at intervals exceeding one week) that the defendant had offered to publish the apology in any newspaper or periodical publication to be selected by the plaintiff; and

(c) the defendant has paid into court a sum of money by way of amends for the injury sustained by the plaintiff from the publication of the libel.

(2) Order 18 rule 7 shall not apply in relation to a pleading under this rule.

(3) The plaintiff may reply generally denying the whole plea under subrule (1).

#### Rule 6—Statement in Court

(1) Where a party accepts money paid into court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant may apply to the Court for leave to make in open court a statement in terms approved by the Court.

(2) Where a party to an action for libel or slander which is settled before trial wishes to make a statement in open court, an application shall be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement shall be submitted for the approval of the Judge before whom it is to be made.

#### Rule 7—Certain Interrogatories not Allowed

In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

#### Rule 8—Evidence in Mitigation of Damages

(1) In an action for libel or slander in which the defendant does not by the defendant's 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 defamation was published, or as to the character of the plaintiff, without leave of the Court, unless seven days at least before the trial, the defendant gives particulars to the plaintiff of the matters in respect of which the defendant intends to give evidence.

(2) In an action for libel or slander the defendant may at the time of serving the statement of defence on the plaintiff give written notice to the plaintiff of the defendant's intention to give evidence in mitigation of damages that the defendant made an apology to the plaintiff for the defamation before the commencement of the action or at the earliest opportunity afterwards; and where notice is given, the defendant may give the evidence.

## ORDER 58—COMMERCIAL COURT RULES

### Rule 1—Application of Commercial Court Rules

The rules in this Order shall apply to the Commercial Division of the High Court known as the "Commercial Court" set up to handle commercial claims.

### Rule 2—Nature of Commercial Claim

A commercial claim is any claim arising out of trade and commerce and includes any claim relating to:—

- i. The formation or governance of a business or commercial organization.
- ii. The winding up or bankruptcy of a Commercial or business or commercial organization or corporate person.
- iii. The restructuring or payment of commercial debts by or to business or commercial organization or person.
- iv. A business document or contract.
- v. The export or import of goods.
- vi. The carriage of goods by sea, air, land or pipeline.
- vii. The exploration of oil and gas reserves.
- viii. Insurance and reinsurance.
- ix. Banking and financial services
- x. Business agency;
- xi. Disputes involving Commercial Arbitration and other settlements awards.
- xii. Intellectual property rights, including patents, copyrights, and trademarks.
- xiii. Tax matters.
- xiv. Commercial fraud.
- xv. Application under the Companies Code, 1969 (Act 179)
- xvi. Other claims of commercial nature.

### Rule 3—Commencement and Regulation

(1) Except as otherwise provided in this Order, actions in the Commercial Court shall be commenced and regulated in the same way as actions in the High Court; consequently the rules on filing of writ of summons, entry of appearance, defence and reply shall apply to actions in the Commercial Court.

(2) Applications for Summary judgment or judgment on admissions shall not be filed until after the pre-trial settlement conference.

#### Rule 4—Procedure after Reply.

(1) After a Reply has been filed or the time for filing the Reply has elapsed, the Administrator of the Commercial Court shall, within three days assign the case to one of the Commercial Court Judges, to conduct a pre-trial settlement conference.

(2) The pretrial judge shall within a period of thirty (30) days from the date the writ is assigned to him, invite the parties to settle issues for trial and effect settlement of the dispute.

(3) At a pre-trial settlement conference, the parties may be represented by their counsel.

(4) Experts may be invited by the pre-trial judge to assist at a pre-trial settlement conference.

(5) Any disclosures made or documents presented at the pre-trial conference shall be without prejudice.

#### Rule 5—Extension of Period for Settlement

Where at the end of the 30 days, there is a reasonable prospect of settlement the pre-trial judge may with the consent of the parties, extend the pretrial settlement period for a further period not exceeding thirty (30) days.

#### Rule 6—Agreement to Settle Dispute

(1) At the pre-trial conference, parties may, instead of allowing the pre-trial judge to settle the dispute through mediation, negotiation, arbitration or any other mode of settlement agree to refer their dispute to an external person or body to settle same, and the pre-trial judge shall give directions and time for the settlement.

(2) The time for the settlement process shall not exceed 30 days in the first instance, with not more than a further 15 days.

#### Rule 7—Terms of Settlement

Whenever the dispute is settled at the pre-trial settlement conference or by an external person or body, the terms of the settlement shall be read over to the parties or their counsel and entered as the judgment of the court.

#### Rule 8—Failure of Settlement Proceedings

If no amicable settlement is reached, the pre-trial judge shall at the time settlement broke down, direct the parties to the Administrator who shall immediately fix a date before another judge on the issues set down for hearing at the pre-trial settlement conference. The hearing date shall not exceed twenty-one days from the time settlement broke down.

#### Rule 9—Failure to Attend Pre-trial Settlement Conference

Where a party to a case or the parties' recognized agent or advocate fails without good cause to attend pre-trial conference or is substantially unprepared to participate in such conference, the pre-trial judge shall make such orders against the defaulting or unprepared party, agent or advocate as he deems fit, including an order for costs, unless there are exceptional circumstances for not making such orders/costs.

#### Rule 10—Trial

At the trial,

(1) The Judge may seek the services of not more than two assessors, who at the end of the case may state their opinion which shall not be binding on the judge;

(2) Assessors shall be paid fees as determined by the Rules of Court Committee.

Rule 11—Proceeding in the Absence of an Assessor

Where in the course of a trial one or more of the assessors is absent, the court may proceed and conclude the trial with the remaining assessor or assessors as the case may be.

Rule 12—Procedure after Hearing

The Court shall, after the case has been heard, sum up the evidence for each side and then require each assessor to state his or her opinion in writing as to the case generally and to any specific question of facts (which opinions are not binding on the judge), and thereafter the judge shall pronounce judgment either at once or on some future date, and if the judgment is deferred a notice of the date shall be given to the parties or their lawyers.

Rule 13—Venue

Notwithstanding the provisions of Order 3 of these Rules and until such time that commercial courts shall be established in all the regions a Commercial Claim may be instituted and heard in the Commercial Court nearest to the venue which would otherwise have been determined by the choice of venue rules in Order 3.

Rule 14—Fees

Fees or allowances chargeable in Commercial Court shall be as set out in the schedule below and where no fees are provided for a specific service or allowance, the fees and allowances in force at the High Court shall be applicable.

Schedule of Fees at Commercial Court.

¢

1.1 Writ of summons or counterclaim where amount does not exceed ¢100 million . . . . .

500,000.00

1.2 Writ of summons or counterclaim where amount exceeds ¢100 million . . . . .

0.5%

2. Statement of defence or reply . . . . . 250,000.00

3. Filing motions and summons . . . . . 350,000.00

4. Tendering of a document as exhibit during trial or when attached to an affidavit . . . . .

2,000.00

5. Obtaining copies of record of proceedings during trial .. 2,000.00 per page

6. Obtaining copies of record of proceedings after trial .. 50,000 for the first 20 pages and then 2,000 for any additional page

7. Filing notice of appeal

i. against interlocutory decision . . . . .

ii. at the end of the trial . . . . .

450,000.00

650,000.00

8. Additional grounds of appeal . . . . . 250,000.00

9. Obtaining copies or orders of judgment 10,000 for the first 50 pages and then 2,000.00 for every extra page

## ORDER 59—MONEYLENDERS AND MORTGAGE ACTION

### Rule 1—Application and Interpretation

(1) These Rules shall apply to a moneylender's action and to a mortgage action subject to the provisions of this Order.

(2) In this Order "moneylender" has the meaning assigned to it by the Moneylenders Ordinance, 1940 (Cap. 176);

"moneylender's action" means an action for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating, to money lent, which is an action brought by the lender or an assignee;

"mortgage action" means an action in which there is a claim by the plaintiff for any of the following reliefs

(a) payment of moneys secured by a mortgage or charge;

(b) sale of the mortgaged property;

(c) appointment of a receiver;

(d) delivery of possession to the mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge or by any other person who is or is alleged to be in possession of the property;

(e) release of the property from the security;

(f) delivery of possession by the mortgagee.

### Rule 2—Commencement of Moneylender's Action

Before a writ beginning a moneylender's action is issued it shall be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a moneylender under the Moneylenders Ordinance, 1940 (Cap. 176).

### Rule 3—Particulars in Statement of Claim

Every statement of claim in a moneylender's or mortgage action shall state,

(a) the date on which the loan was made;

(b) the amount actually lent to the borrower;

(c) the rate per cent per annum of interest charged;

(d) the date when the contract for repayment was made;

- (e) the fact that a note or memorandum of the contract was made and was signed by the borrower;
- (f) the date when a copy of the note or memorandum of the contract was made and was signed by the borrower;
- (g) the date when a copy of the note or memorandum was delivered or sent to the borrower;
- (h) the amount repaid;
- (i) the amount due but unpaid;
- (j) the date upon which the unpaid sum became due; and
- (k) the amount of interest accrued due and unpaid on the sum.

#### Rule 4—Default in Moneylender's Action

- (1) In a moneylender's action, judgment in default of appearance or in default of defence shall not be entered except with leave of the Court.
- (2) Notice of an application for the grant of leave under this rule shall be served on the defendant.
- (3) On the hearing of the application, whether the defendant appears or not, the Court may
  - (a) exercise the powers of the Court under the Moneylenders Ordinance, 1940 (Cap. 176);
  - (b) give leave to enter final judgment for the whole or part of the claim, if satisfied that notice of the application has been duly served; and
  - (c) as regards any part of the claim in respect of which leave to enter final judgment is refused, make or give any such order or directions as it considers necessary for further proceedings.

#### Rule 5—Judgment in Default in Mortgage Action

- (1) In a mortgage action, judgment in default of appearance or in default of defence shall not be entered except with leave of the Court.
- (2) Notice of an application for the grant of leave under this rule shall be served on the defendant.

### ORDER 60—INSOLVENCY PROCEEDINGS

#### Rule 1—Application and Interpretation

- (1) This Order applies to proceedings in insolvency.
- (2) In this Order unless the context otherwise requires "Court" means the High Court.

#### Rule 2—Notice of Appeal against Acts of Official Trustee.

- (1) Appeal by a person aggrieved by the act or omission of the Official Trustee in the performance of the Official Trustee's function shall be commenced by a notice of appeal to the High Court.
- (2) The notice of appeal shall be filed with the Registrar of the Court within seven days of knowledge of the act which is the subject of the grievance.
- (3) The notice of appeal may be filed within 3 months after the dates specified in subrule (1) if the person proves to the satisfaction of the Court that the delay in filing the notice of appeal is due to that person's absence from the country, sickness or other reasonable cause and that there has been no unreasonable delay on that person's part.

(4) No extension of time shall be granted after the expiration of the 3 months specified in subrule (3).

#### Rule 3—Grounds of Appeal

The notice of appeal shall set out in numbered paragraphs, a concise statement of the facts and of any points of law upon which the appellant intends to rely in support of the appeal.

#### Rule 4—Registration of Insolvency Appeals and Service on the Official Trustee

(1) The Registrar shall upon the receipt of the notice of appeal endorse the date of receipt on it and shall enter the appeal in a register of Insolvency Appeal which shall be kept by the Registrar for that purpose.

(2) The Registrar shall within three days of receipt of the notice of appeal serve a copy on the Official Trustee.

(3) Where the Registrar is unable to serve the Official Trustee within the period specified in subrule (2) the appeal remains valid and the Registrar shall take steps to effect service soon after.

#### Rule 5—Reply of Official Trustee

(1) The Official Trustee shall within seven days of service of the notice of appeal, file a reply signed by the Official Trustee or any other officer on behalf of the Official Trustee.

(2) The reply shall set out in numbered paragraphs a concise statement of the facts and points of law, if any, on which the Official Trustee intends to rely to rebut the grounds of appeal.

(3) The Registrar shall within seven days of the receipt of the Official Trustee's reply cause a copy of the reply to be served on the appellant.

#### Rule 6—Registrar to give Notice of Date of Hearing

(1) The Registrar shall within thirty days from the date of service on the appellant in writing fix the appeal for hearing.

(2) The hearing date shall not be a date which is more than 30 days from the date the hearing date is fixed.

#### Rule 7—Decision of the Court

The Court upon hearing an appeal under this Order may make such order as it considers appropriate in the circumstances of the case.

#### Rule 8—Application to the High Court by the Official Trustee

(1) The Court may upon an application by the Official Trustee

(a) make an order for compliance where a person refuses or fails to comply with a decision made by the Official Trustee;

(b) issue directions to the Official Trustee where the Official Trustee is in doubt as to any matter that arises in the course of the performance of its functions.

(2) Notice of the motion shall be served on all parties affected at least two clear days before the date fixed for the hearing of the motion, which shall not be more than 14 days after the date of the filing of the motion, unless the Court orders otherwise.

#### Rule 9—Suspension of Proceedings in the Court upon Commencement of Insolvency Proceedings

(1) When insolvency proceedings are commenced in respect of a debtor before the Official Trustee, the Court may, on an application by the Official Trustee, restrain the institution or continuation of civil proceedings by or against the debtor on the subject of debts owed by the debtor.

(2) Civil proceedings under subrule (1) do not include proceedings by a secured creditor for the realization of the security.

#### Rule 10—Application to the Court

(1) The Court on an application by the Official Trustee determine matters in insolvency proceedings in relation to a debtor, may make:

- (a) an insolvency order;
- (b) an order confirming an arrangement with creditors; or
- (c) an order rescinding the protection order.

#### Rule 11—Hearing of Application

(1) At the hearing of an application under rule 10, the debtor and a creditor who has lodged a proof of debt may appear and be heard either in person or by counsel and the Official Trustee shall submit to the Court a report on the case.

(2) A copy of the report of the Official Trustee to the Court shall be served on a creditor who has lodged a proof of debt, two clear days before the hearing of the application under subrule (1).

(3) The Official Trustee's report shall include, together with any other information which may assist the Court, a statement of,

- (a) the grounds on which the protection order was made;
- (b) the assets of the debtor which have become vested in the Official Trustee;
- (c) the liabilities of the debtor;
- (d) the conduct of the debtor before and since the presentation of the petition; and
- (e) the decisions taken at the first meeting of creditors.

(4) The Official Trustee and any other person entitled to appear may, with the leave of the Court, adduce oral or written evidence and cross examine a witness called before the Court.

(5) The Official Trustee shall give the assistance that the Court may require to enable it to reach a conclusion.

#### Rule 12—Confirmation of Arrangement with Creditors

(1) The Court shall at a hearing of an application to confirm an arrangement with creditors approved by the first meeting of creditors, where grounds for bankruptcy do not exist or do not appear to exist, consider

- (a) the fairness and reasonableness of the terms;
- (b) the provision for an order of priority of payments corresponding to that laid down by any enactment for the time being regulating insolvency; and
- (c) the provision for payment in full of the fees and outgoings due to the Official Trustee in respect of the insolvency proceedings.

(2) If the conditions specified in paragraphs (a) to (c) of subrule (1) are not satisfied, the Court may adjourn the hearing of the application for consideration and direct the first meeting of creditors to be reopened with a view to the submission by the debtor of proposals for a modified arrangement.

(3) On confirmation by the Court, an arrangement with creditors shall, in respect of every provable debt owed by the debtor, become binding on the debtor and on each creditor who was entitled to lodge a proof of debts, whether or not that creditor voted in favour of the arrangement.

(4) The Official Trustee shall supervise the carrying into effect of an arrangement with creditors confirmed by the Court and the Court may, on the application of the Official Trustee or a person interested, give directions that may be expedient for carrying it into effect.

(5) If it appears to the Court, on the application of the Official Trustee or a person interested,

(a) that default has been made in carrying into effect an arrangement with creditors confirmed by the Court,

(b) that for any reason it is impracticable or would be unjust to proceed with the arrangement, or

(c) that confirmation of the arrangement was procured by fraud, the Court may annul the arrangement but without prejudice to anything previously done under the arrangement.

(6) Where an arrangement is annulled, the Court may make a protection order against the debtor, and these rules shall apply as if the protection order had then been made by the Official Trustee on a creditor's petition.

#### Rule 13—Rescission of Protection Order

(1) Upon an application by the Official Trustee, the Court shall rescind the protection order if it appears to the Court,

(a) that having regard to new evidence and to the circumstance generally, the order should not have been made; or

(b) that due to payments made on behalf of the debtor or other change of circumstances, payment in full has been achieved.

(2) Where the Official Trustee informs the Court during the hearing of an application under subrule (1) that the assets vested in the Official Trustee in respect of the debtor are likely to be sufficient to provide for payment in full, the Court may adjourn the hearing of the application for consideration and authorize the Official Trustee to realize and distribute the assets as if an insolvency order had been made.

(3) Where the hearing is adjourned under subrule (2), the Official Trustee shall apply to the Court for the hearing to be resumed,

(a) when payment in full has been achieved; or

(b) if at any time it appears to the Official Trustee that the assets are not sufficient to provide for payment in full.

(4) Where the Court is satisfied that payment in full has been achieved the Court shall rescind the protection order.

(5) Where the interested party proves to the satisfaction of the Court that the Official Trustee ought to have applied to have the protection order rescinded, the party may bring an application under this rule.

#### Rule 14—Insolvency Order

(1) Where at the hearing of an application under rule 12 or 13 the Court does not confirm an arrangement with creditors or rescind the protection order, the Court shall make an insolvency order.

(2) Where an insolvency order is made, civil proceedings by or against the debtor shall not be instituted or continued without the leave of the Court.

#### Rule 15—Public Examination of Debtor

(1) Where, at the time when an insolvency order is made, or on an application made by the Official Trustee at a subsequent time before the debtor's discharge from the insolvency order, it appears to the Court that grounds for bankruptcy exist or that it is likely they may exist, the Court shall direct the debtor to undergo an examination at a public sitting of the Court in respect of the conduct and affairs of the debtor,

(a) the debtor shall be examined on oath and shall answer the questions put by the Court or allowed by the Court to be put to the debtor by or on behalf of the Official Trustee or a creditor who has lodged a proof of debt; and,

(b) a transcript of the examinations shall be made and read to or by the debtor and signed by the debtor; and the signed transcript may be used as evidence in any subsequent civil or criminal proceedings affecting the debtor, instituted under any enactment.

#### Rule 16—Adjudication of Bankruptcy

(1) Where a public examination is held under rule 16, the Court shall make an order adjudging the debtor bankrupt if any of the following has been established;

(a) that for a consecutive period of twelve months within the three years preceding the making of the protection order, the debtor continued to carry on the trade or business of the debtor when the debtor knew that he or she was insolvent;

(b) that the debtor contributed to the insolvency by rash speculations or culpable neglect of the business affairs of the debtor, or by gambling or unjustifiable extravagance;

(c) that a provable debt was contracted by the debtor with the intention that it should not be met or without a reasonable expectation of being able to meet it;

(d) that the debtor has failed to account satisfactorily for assets of the debtor which have disappeared since the date of the making of the protection order or during the year previous to that date;

(e) that the debtor has persistently and without adequate excuse failed to carry out the duties of the debtor in the insolvency proceedings;

(f) under section 7 or 8 of the Registration of Business Names, Act 1962 (Act 151);

(g) that within the preceding three years the debtor had been convicted of an offence;

(2) Subject to rule 19, the order shall specify a date for the discharge of the bankrupt, being a date at least two years after the making of the order.

(3) Where the Court has directed the debtor to undergo a public examination under rule 15 but the examination cannot be held because the debtor has absconded or is medically unfit to appear or for any other reason, the Court may proceed under this rule as if the examination had been held.

#### Rule 17—Liability to Arrest, and Seizure of Property

(1) Where insolvency proceedings are in progress against a debtor and it appears to the Court that the proceedings are or may be impeded by reason that the debtor,

(a) has absconded, or is likely to do so,

(b) has removed, concealed, destroyed or damaged any property, or is likely to do so, or

(c) is likely to fail to attend as required before the Court, the Official Trustee or a meeting of creditors,

the Court may, without prejudice to its powers in relation to contempt of court, issue a warrant for the arrest of the debtor or the seizure of the property in question, or for both the arrest and the seizure.

(2) Where a warrant of arrest is issued under subrule (1), the provisions of the Criminal Procedure Code, 1960 (Act 30) relating to arrest shall apply in the same way as they apply to the arrest for a criminal offence and a debtor arrested under that warrant may, for the purposes of the insolvency proceedings, be conveyed to custody for a hearing by the Court or the Official Trustee, or to a meeting of creditors.

(3) Property seized under subrule (1) shall be dealt with as the Court may direct, but property which does not belong to the debtor and is not likely to be subject to the powers of the Official Trustee shall be returned to its owner within twenty eight days or such other period as the Court may decide.

#### Rule 18—Liability to Interception of Letters

(1) Where, during the period between the making of a protection order and the termination of the insolvency proceedings, it appears to the Court that the proceedings may be impeded unless the Official Trustee is enabled to inspect the debtor's incoming correspondence, the Court may make an order directed to the Minister responsible for Communications requiring the Minister to cause a postal article in course of transmission by post or telegraphic means of communication to the debtor during the period, not exceeding six months, specified in the order, to be re-addressed to the office.

(2) Subrule (1) is subject to clause (2) of article 18 of the Constitution.

(3) After taking the copies and retaining the articles that the Official Trustee considers expedient for the purposes of the proceedings, the Official Trustee shall transmit the remaining articles to the debtor within seven days.

#### Rule 19—Earlier Discharge where Payment is made

(1) (a) A person requesting for an earlier discharge of a bankrupt shall apply to the Official Trustee stating the terms of payment and any other relevant information.

(b) The Official Trustee shall apply to the Court for directions.

(2) Where the Court, on an application by the Official Trustee for a decision on proposals for an earlier discharge of a bankrupt, is satisfied that it will be proper to discharge the debtor on the date specified in the proposal, it shall make an order

(a) fixing a date as the appointed discharge date, and

(b) requiring the person making the proposal to pay the sum of money specified in the order to the Official Trustee within the period that is specified in the order.

#### Rule 20—Alteration of Discharge Date

(1) Where upon the submission of a report seeking the substitution of an earlier or later date for the appointed discharge date to the Court by the Official Trustee, the Court is satisfied that the date should be altered, it shall make an order fixing as the appointed discharge date a new date, it considers appropriate.

(2) The Court may if it considers it just deal in the same proceedings with applications under rule 19 and under this rule.

#### Termination of Proceedings

Rule 21—When Proceedings come to an end

- (1) Where an insolvency order is not made, insolvency proceedings shall come to an end on
  - (a) the withdrawal or dismissal of the petition by which the proceedings were initiated;
  - (b) the confirmation of an arrangement with creditors under rule 12; or
  - (c) the rescission of the protection order under rule 13.
- (2) Where an insolvency order is made, the insolvency proceedings shall come to an end on the making by the Court of an order under rule 22.

Rule 22—Order Terminating Proceedings

- (1) Upon an application to the Court by the Official Trustee for an order terminating the insolvency proceedings, the Court shall grant the application if satisfied that the Official Trustee has satisfied the conditions for terminating proceedings.
- (2) If on the application of the debtor or a creditor it appears to the Court before the termination of the insolvency proceedings that assets have been lost to the estate by reason of a default by the Official Trustee, the Court may order that the debtor's official account be credited with the sum of money that may appear to the Court to be just and that an equivalent sum of money be debited to the fees account.

Rule 23—Enquiries by the Court

- (1) Upon an application by the Official Trustee, the Court may examine a debtor or any other person whose examination the Official Trustee believes will enable the administration of the debtors property.
- (2) In proceedings under subrule (1), the Court may
  - (a) examine on oath or otherwise the person brought before it;
  - (b) order delivery up by that person of assets to which the Official Trustee is entitled under the law governing insolvency;
  - (c) make any other order that it thinks just.

Rule 24—Power of the Court to Correct Omission of Proof of Debt by Creditor

On an application to the Court by a creditor who has omitted to lodge a proof of debt within the period allowed by law, the Court shall make an order requiring the Official Trustee, to pay to the applicant the sum of money that would have been payable to the applicant if the omission had not occurred so far as may be practicable without disturbing dividends already declared if it is of the opinion that the omission was excusable.

Rule 25—Arrangement Voidable unless Registered

- (1) Upon an application by the Official Trustee or a person interested in the matter to the Court for a declaration that a binding arrangement with a creditor is voidable, if it appears to the Court that the arrangement is voidable by virtue of the failure to register, the Court shall declare the arrangement to have been void from the beginning or from a later date that appears just, unless the Court considers that the failure to register was neither wilful nor negligent.
- (2) An arrangement which is voidable shall not on that ground be avoided otherwise than by the Court under subrule (1).

(3) Where an arrangement is declared void under this rule, the Court may make a protection order against the debtor and these rules shall apply as if the protection order had been made on a creditor's petition by the Official Trustee.

#### Rule 26—Setting aside of Arrangement

(1) Where, on the application of a person interested, it appears to the Court, with regard to arrangement which is not an arrangement subject to avoidance,

(a) that default has been made in carrying the arrangement into effect;

(b) that for a reason it is impracticable or would be unjust to proceed with the arrangement; or

(c) that the agreement of creditors to the arrangement was procured by fraud,

the Court may set aside the arrangement but without prejudice to anything previously done under the arrangement.

(2) Where an arrangement is set aside under subrule (1), the Court may make a protection order against the debtor and these Rules shall apply as if the protection order had been made on a creditor's petition by the Official Trustee.

#### Rule 27—Debtors not of Age or of Unsound mind

Where in any proceedings in insolvency, the debtor is a person who has not attained eighteen years of age or is a person of unsound mind, the Court may on an application of the Official Trustee or a person interested, appoint a person to act as the debtor's guardian in the proceedings.

#### Rule 28—Deceased Insolvent - Order Terminating Administration

Where the Official Trustee applies to the Court for an order terminating the administration of the estate of a deceased debtor which is administered by the Official Trustee by virtue of any enactment, the Court shall grant the application if satisfied that it is duly made.

#### ORDER 61—DEBENTURE HOLDER'S ACTION

##### Rule 1—Receiver's Register

(1) In an action to enforce registered debentures or registered debenture stock, the Court may appoint a receiver.

(2) Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers and other transactions of title to the debentures or stock, in this Order referred to as "the Receivers Register".

##### Rule 2—Registration of Transfers

(1) A receiver, directed to keep a Receiver's Register, shall register the transfer or other transmission of title upon the application of any person entitled to the debenture or debenture stock if provided with such reasonable evidence or identity of the applicant as the receiver may require.

(2) Before registering a transfer the receiver shall unless the due execution of the transfer is proved by affidavit, send a notice by registered post to the registered holder of the debentures or debenture stock at the registered holder's registered address stating

(a) that an application for the registration of the transfer has been made; and

(b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period specified has lapsed.

(3) The period to be specified in the notice referred to in subrule (2) (b) shall not be less than twenty-eight days after the posting of the registered letter.

(4) On registering a transfer or other transmission of title under this rule the receiver shall indorse a memorandum on the debenture or certificate of debenture stock transferred or transmitted containing a reference to the action and to the order appointing the receiver.

#### Rule 3—Application for Rectification of Receiver's Register

(1) Any person aggrieved by anything done or omission made by a receiver under rule 2 may apply to the Court for rectification of the Receiver's Register, and the application shall be made in the action in which the receiver was appointed.

(2) Notice of the application shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the notice to be served on any other person who appears to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is a party to the application to have the party's name entered in or omitted from the Receiver's Register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

#### Rule 4—Receiver's Register Evidence

Any entry made in the Receiver's Register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

#### Rule 5—Proof of Title

(1) This rule applies to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made in it certifying the holders of the debentures or certificates referred to in subrule (1), the title of any person who claims to be a holder shall, in the absence of notice of any defect in the title, be sufficiently proved by the production of the debenture or debenture stock certificate together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced, certifying the person who is the holder of it and giving the name and address of the holder.

(3) Where a debenture or certificate referred to in subrule (1) is produced, the lawyer of the plaintiff in the action shall cause to be indorsed on it a notice stating that

(a) the person whose name and address is specified in the notice as the holder of the debenture or certificate in the certificate of identification produced under subrule (2) has been recorded in the register as the holder of the debenture or debenture stock certificate;

(b) the person shall, on producing the debenture or debenture stock certificate, be entitled to receive payment of any dividend in respect of that debenture or debenture stock unless before payment, a new holder proves the new holder's title in accordance with subrule (2); and

(c) if a new holder neglects to prove title as stated the new holder may incur additional delay and expense in obtaining payment.

(4) The lawyer of the plaintiff in the action shall preserve any certificate of identification produced under subrule (2) and shall keep a record of the debenture and debenture stock certificate produced and the names and addresses of the persons producing them, and of the holders and, if the Court requires it, the lawyer shall verify the record by affidavit.

#### Rule 6—Payments

Where in an action to enforce any debenture or debenture stock an order is made for payment in respect of the debenture or debenture stock, the Controller and Accountant-General shall not make a payment in respect of the debenture or debenture stock unless there is produced to the Controller and Accountant-General the certificate referred to in rule 5 or the Court has, for special reason dispensed with the need for the certificate and directed payment to be made without it.

#### ORDER 62—MARITIME ACTION

##### Rule 1—Application and Interpretation

(1) These Rules apply to maritime action subject to the provisions of this Order.

(2) In this Order

"action" means a maritime action;

"caveat against arrest" means a caveat entered in the Caveat Book under rule 3 (1);

"caveat against release and payment" means a caveat entered in the Caveat Book under rule 12 (1);

"Caveat Book" means the book kept in the registry in which caveats issued under this Order are entered;

"ship" includes any description of vessel used in navigation.

##### Rule 2—Warrant of Arrest

(1) After a writ has been issued in an action, a warrant for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or defendant.

(2) A party applying for the issue out of the registry of a warrant to arrest any property shall search the Caveat Book to ascertain whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a request for the issue of the warrant together with an affidavit made by the party or the party's agent containing the particulars required by subrules (5) and (6) of this rule but the Court may allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with leave of the Court a warrant of arrest against a foreign ship belonging to a port of a state that has a consulate in Ghana in an action for possession of the ship or for wages, shall not be issued until notice that the action has begun has been sent to the consul.

(5) Every affidavit shall state

(a) the name, address and occupation of the applicant for the warrant;

(b) the nature of the claim or counterclaim in respect of which the warrant is required and the fact that it has not been satisfied; and

(c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(6) Every affidavit in an action for possession of a ship or for wages shall state the nationality of the ship against which the action is brought and that the notice, if any, required by subrule (4) of this rule has been sent; and a copy of the notice shall be annexed to the affidavit.

#### Rule 3—Caveat against Arrest

(1) A person who wishes to prevent the arrest of any property shall file in the registry a request for a caveat against arrest, signed by the person or the person's lawyer, undertaking

(a) to file appearance in any action that may commence against the property described in the request; and

(b) to give bail in the action in a sum not exceeding an amount specified in the request or to pay the amount specified into court within fourteen days after receiving notice that an action has commenced,

and on the filing of the request, a caveat against the issue of a warrant to arrest the property described in the request shall be entered in the Caveat Book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

#### Rule 4—Remedy where Property Protected by Caveat is Arrested

(1) Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court for an order under this rule.

(2) On hearing the application the Court, unless it is satisfied that the party procuring the arrest of the property had good and sufficient reason for doing so, may by order discharge the warrant and may also order the party procuring the arrest to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

#### Rule 5—Service of Writ

(1) Subject to subrule (2), a writ shall be served on the property against which the action is brought except

(a) where that property is freight, in which case it shall be served on the cargo in respect of which the freight is payable or on the ship in which that cargo is carried; or

(b) where that property has been sold and the proceeds of sale paid into Court, in which case it shall be served on the Registrar.

(2) A writ need not be served on the property or on the Registrar if the writ is deemed to have been duly served on the defendant by virtue of Order 7 rule 4 (2) or (3).

(3) Where the plaintiff in an action or the lawyer of the plaintiff becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, the writ shall be served immediately on the person at whose instance the caveat was entered.

#### Rule 6—Committal of Lawyer Failing to Comply

Where the lawyer of a party to an action fails to comply with a written undertaking given by the lawyer to any other party, or the lawyer fails to file appearance in the action, give bail or pay any money into court in lieu of bail, the lawyer shall be liable to committal for contempt.

#### Rule 7— Execution of Warrant of Arrest

(1) A warrant of arrest is valid for twelve months beginning from the date of its issue.

- (2) A warrant of arrest may be executed only by a bailiff.
- (3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the Registrar, to pay the fees and expenses of the bailiff has been lodged in the registry.
- (4) A warrant of arrest shall not be executed if the party at whose instance it has been issued lodges a written request to that effect with the Registrar.
- (5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which the cargo is carried or on both of them.
- (6) Subject to subrule (5), a warrant of arrest shall be served on the property against which it is issued.
- (7) No instrument except a warrant of arrest shall be served on a Sunday.
- (8) Within seven days after the service of a warrant of arrest, the warrant shall be filed in the registry by the bailiff who served it or by the party who produced it to be issued.

#### Rule 8—Service of Warrant or Writ on Ships

- (1) Subject to subrule (2), service of a warrant of arrest or writ in an action against a ship, freight or cargo shall be effected by
  - (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and
  - (b) on removing the warrant or writ, leaving a copy of it affixed, in the case of the warrant, in its place and in the case of the writ on a sheltered conspicuous part of the ship.
- (2) Service of a warrant of arrest or writ in an action against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected
  - (a) by placing the warrant or writ for a short time on the cargo and on removing the warrant or writ, leaving a copy of it on the cargo; or
  - (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

#### Rule 9—Applications Relating to Property under Arrest

- (1) The Registrar may at any time apply to the Court for directions with respect to property under arrest in an action and if the Court so directs, shall give notice of the application to any or all of the parties to each action against the property.
- (2) The Registrar shall send a copy of any order made under subrule (1) to all the parties to each action against the property to which the order relates.

#### Rule 10—Release of a Property under Arrest

- (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, the property shall only be released under the authority of an instrument of release, in this rule referred to as a "release", issued out of the registry.
- (2) A party at whose instance any property is arrested may, before appearance is filed in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to subrules (3) and (5), be issued with respect to that property.
- (3) Unless the Court otherwise orders, a release shall not be issued with respect to property for which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court orders, or, subject to subrule (3), if all the other parties to the action in which the warrant of arrest is issued consent.

(5) Before a release is issued the party entitled to its issue shall

(a) if there is a caveat against release in force for the property in question, give notice to the party at whose instance it is entered or the party's lawyer, requiring the caveat to be withdrawn; and

(b) file a request for the issue of a release.

(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it is issued shall, in accordance with the directions of the Registrar, either pay the costs, charges and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to do so.

(7) The Court may, on the application of any party who objects to directions given to the party by the Registrar under subrule (6), vary or revoke the directions.

#### Rule 11—Caveat against Release

(1) A person who desires to prevent the release of any property under arrest in an action or the payment out of court of any money paid into court representing the proceeds of sale of that property shall file in the registry a request for a caveat against the issue of a release with respect to the property or the payment out of court of the proceeds of sale.

(2) On the filing of the request, a caveat against the issue of a release with respect to that property or the payment out of court of that money shall be entered in the Caveat Book.

(3) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person who has an interest in that property may apply to the Court for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had good and sufficient reason for doing so, may make an order accordingly.

#### Rule 12—Duration of Caveats

(1) Every caveat entered in the Caveat Book is valid for six months beginning with the date of its entry but the person at whose instance a caveat is entered may withdraw it by filing a request that the caveat be withdrawn.

(2) The period of validity of a caveat may not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

#### Rule 13—Bail

(1) Bail on behalf of a party to an action shall be given by bond, and the sureties to the bond shall enter into the bond before a Notary Public, not being a Commissioner who, or whose partner, is acting as lawyer or agent for the party on whose behalf the bail is given.

(2) Subject to subrule (3), a surety to a bail bond shall make an affidavit stating that the surety is to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under subrule (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it shall be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given shall serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on behalf of the party and of the Notary Public before whom the bail was entered into; and after the expiration of three days from the service of the notice, or sooner with the consent of the opposite party, the party may file the bond and shall at the same time file the affidavit proving the service of the notice of bail; a copy of which notice shall be exhibited.

#### Rule 14—Interveners

(1) Where property against which an action is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but is not a defendant to the action may, with leave of the Court, intervene in the action.

(2) In application for the grant of leave under this rule shall be made ex-parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action shall file appearance within the period specified in the order granting leave; and Order 9 shall, with the necessary modifications, apply to the filing of appearance by an intervener as if the intervener were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be specified.

#### Rule 15—Judgment by Default

(1) Where a writ is served under rule 5 (3) on a party at whose instance a caveat against arrest is issued, if

(a) the sum claimed in the action commenced by the writ does not exceed the amount specified in the undertaking given by that party or that party's lawyer to procure the entry of that caveat; and

(b) that party or that party's lawyer does not within fourteen days after service of the writ fulfil the undertaking given as stated,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Where a defendant to an action fails to file appearance within the time limited for appearing, then on the expiration of fourteen days after service of the writ and upon filing an affidavit proving due service of the writ, and verifying the facts on which the action is based with a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(3) Where the writ is served on the defendant by virtue of Order 7 or is served on a Registrar under rule 5 of this Order, an affidavit proving due service of the writ need not be filed under subrule (2) but the writ as indorsed by the Registrar with a statement that he accepts service of the writ shall be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action fails to file a defence for service on the plaintiff, after the expiration of the period fixed by or under these Rules for service of the defence, and upon filing an affidavit stating that no defence was served on the plaintiff by the defendant during that period, and an affidavit verifying the facts on which the action is based and a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action fails to file a defence to counterclaim for service on the defendant making the counterclaim, then after the expiration of the period fixed by or under these Rules for filing of the defence to the counterclaim, the defendant making the counterclaim upon filing an affidavit stating that no defence to the counterclaim has been filed by the first-mentioned defendant during that period, with an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, may apply to the Court for judgment by default.

(6) If, on hearing an application under this rule, the Court is satisfied that the applicant's claim is well founded, it may give judgment for the claim and may at the same time order the property against which the action or counterclaim is brought to be valued and sold and the proceeds paid into court or may make such other order as it considers just.

(7) In a default action, evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction for that purpose.

(8) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(9) Order 10 and Order 13 shall not apply to actions under this Order.

#### Rule 16—Request for Appraisal and Sale of Property

(1) A commission to appraise and sell any property under an order of the Court shall not be issued until the party applying for it has filed a request for such commission.

(2) The commission shall be executed by the Registrar unless the Court otherwise orders.

(3) The commission shall not be executed until an undertaking in writing satisfactory to the Registrar to pay the fees and expenses of the Registrar on demand has been lodged in the registry.

(4) The Registrar shall pay into Court the gross proceeds of the sale of any property sold by the Registrar under a commission to sell and shall bring into court the account relating to the sale, with vouchers in support, in order that it may be passed by the Court.

(5) On the consideration by the Court of the Registrar's account relating to a sale, any person interested in the proceeds of the sale shall be entitled to be heard, and any objection to the account shall be heard by the Court.

#### Rule 17—Payment into and out of Court

(1) Order 18, except rules 3 to 5, shall apply to a maritime action as it applies to an action for debt or damages.

(2) Subject to Subrule (3), money paid into Court shall not be paid out except in pursuance of an order of the Court.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled in the following cases

(a) where property has been sold and the proceeds of the sale paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons; or

(b) where there is no dispute between the parties.

#### Rule 18—Agreement between Lawyers may be made by Order of Court

Any agreement in writing between the lawyers of the parties to any cause or matter, dated and signed by those lawyers, may be filed in the registry and thereupon the Court may make an order giving effect to the agreement.

### ORDER 63—INTELLECTUAL PROPERTY RIGHTS PROCEEDINGS

#### Rule 1—Commencement of Intellectual Property rights Proceedings

(1) An action for the enforcement of an intellectual property right shall commenced by the issue of a writ of summons

(a) in either the Commercial Division of the High Court in which case the Commercial Court Rules under Order 58 shall apply; or

(b) in any other Division of the High Court as may be directed by the Chief Justice in which case Orders 2 to 16 of these Rules shall apply, except that

(i) a statement of defence and any counterclaim shall be filed within fourteen days after the service of the writ;

(ii) a pre-trial conference as provided for in rules 4, 5, 6 and 7 of the Commercial Court Rule, Order 58 shall be held in place of summons for directions, not later than 21 days after the service of the statement of defence; and

(iii) where the matter is not settled at the pre-trial conference, the trial shall start not later than 30 days after the pre-trial conference.

#### Rule 2—Production of Evidence or Document by other Party

Where in an action in the Court, a party presents reasonable evidence to support that party's claims and specifies that some other relevant evidence or document necessary to substantiate the claims is in the possession or control of the other party, the Court may order that other party to produce the evidence or document subject to such conditions as the Court may determine for the protection of confidential information.

#### Rule 3—Failure of other Party to Produce Evidence or Document

Where a party ordered by the Court under rule 2 to produce evidence,

(a) refuses without good reason to produce or give access to the evidence;

(b) does not produce the evidence within the time specified by the Court, which shall in any case not exceed fourteen days; or

(c) does any thing which impedes the enforcement of a right, the provisions of order 21 rule 14 shall apply.

#### Rule 4—Imported or Manufactured Infringing Goods

(1) The Court may upon an application on notice by the holder of an intellectual property right, order

(a) that imported goods which have not yet been cleared and which are alleged or actually infringe the property rights of the holder be seized by the Customs, Excise and Preventive Service and prevented from entering into the channels of trade;

(b) that imported goods that are alleged or actually infringe the property rights of the holder should not be allowed to enter the channels of trade by the person who has custody of the goods immediately after customs clearance;

(c) that manufactured goods still at the factory or other place of manufacture that are alleged or actually infringe the property rights of the holder should not be allowed to enter the channels of trade by the person who has custody of the goods.

(2) Where the Court upon hearing the application finds that the person who imported the alleged or actually infringing goods, did not know or did not have reasonable grounds to know that those goods infringe an intellectual property right, the Court shall not issue a restraining order.

(3) The Court shall not make any order on an application brought under subrule 4(1) unless the person bringing the application gives an undertaking to pay for the cost of the imported or manufactured goods or deposits money as security in lieu of the undertaking.

#### Rule 5—Ex parte Application for Actual or Threatened Infringement

(1) The Court may upon an ex parte application by a party make interim orders it considers necessary in order to

(a) prevent an actual or threatened infringement of an intellectual property right from occurring and notwithstanding rule 4(1), in particular to prevent the entry into the channels of commerce of goods, including imported goods; or

(b) preserve relevant evidence relating to an alleged actual or threatened infringement

on the ground that a delay is likely to cause irreparable harm to the right holder or that there is a considerable risk of evidence being destroyed.

(2) An applicant for an interim order under subrule (1) shall satisfy the Court that

(a) the applicant is the right holder

(b) that the applicant's right is being infringed or that an infringement is imminent

and shall provide sufficient security to protect the respondent.

(3) The Court may order an applicant under subrule (1) to provide information necessary for the identification of any goods referred to in the application to the authority that will execute the interim order.

#### Rule 6—Notice of Interim Order

(1) Where the Court makes an interim order under rule 5 (1), the party affected by the order shall be given notice of the order within seven days after the making of the order and in any case within twenty four hours after the execution of the order.

(2) Where an interim order is made by the Court, the party affected by the order may apply to the Court to revoke the order, if proceedings leading to a decision on the merits of the case are not initiated within twenty-one days.

(3) Where the Court revokes an interim order or where an interim order lapses due to an act or omission by the applicant, or where the Court finds that there has been no infringement or threat of an infringement of an intellectual property right, the Court may upon an application by the respondent, order the applicant to provide appropriate compensation for any injury caused by the order.

#### Rule 7—Compensation

The Court may order a party on whose application measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained, adequate compensation for the injury suffered because of the abuse.

#### Rule 8—Damages for Infringement and Cost

(1) Where in an action for actual or threatened infringement of an intellectual property right the infringement is proved, the Court may order the party responsible for the infringement to pay to the right holder damages which are adequate to compensate for the injury, the right holder has suffered.

(2) The Court may in addition to awarding damages under subrule (1), order a person whom it has found to have infringed the property right of a right holder, to pay the costs of the right holder.

#### Rule 9—Other Remedies for Infringement

(1) Where in an action for actual or threatened infringement of an intellectual property right it is established that the defendant did not believe and had no reason to believe that the right subsisted in

the property to which the action relates, the Court shall, subject to subrule (2), not award damages to the plaintiff but may award any other remedy.

(2) Notwithstanding subrule (1) and rule 5 (2), the Court may order a person who did not knowingly infringe or did not have reasonable grounds to know that he has infringed the property rights of the rights holder, to pay back the profits earned as a result of the infringement or to pay pre-established damages to the right holder.

#### Rule 10—Additional Damages

The Court may in an action for actual or threatened infringement of an intellectual property right, having regard to the circumstances and in particular to

(a) the flagrancy of the infringement, and

(b) the benefit accruing to the defendant by reason of the infringement award additional damages as the case may require.

#### Rule 11—Disclosure in Respect of Infringement

The Court may, where it considers appropriate, on its own motion or on an application by the plaintiff, order the defendant, upon satisfactory proof of the infringement, to disclose to the plaintiff;

(a) the identity of other persons known to the defendant to be involved in the production and distribution of the infringing goods or services, and

(b) the channels of distribution of the infringing goods or services.

#### Rule 12—Infringing Article or Article Designed to Aid Infringement

(1) Where a person is in possession or has custody or control,

(a) in the course of business of an article which infringes a property right, or

(b) of an article that is designed or adapted to be used to aid or facilitate the infringement of a property right and the person who has possession, custody or control knows or has reason to believe that the article has been used or is to be used for the purposes of infringement of a property right

the holder of the property right may apply to the Court for an order for the delivery of the article to the right holder, or to any other person the Court may determine.

(2) A person to whom an article is delivered under subrule (1) shall keep the article, pending the determination by the Court of the final disposal of the article.

#### Rule 13—Time for Application for Delivery

(1) Subject to subrule (2) an application for an order for the delivery of an article under rule 12, may not be made after a period of six years from the date the infringement occurred.

(2) If during the whole or part of the period referred to in subrule (1), the holder of the property right

(a) is under disability, or

(b) is prevented by reason of fraud or concealment from discovering the fact that will enable the holder to apply for an order,

an application may be made before the end of the period of six years from the date on which the holder ceased to be under a disability or could have, with reasonable diligence, discovered those facts.

Rule 14—Disposal of Infringing Article by the Court

- (1) The Court may either on an application by the right holder or on its own motion order that
- (a) an article in respect of which the Court has found that there has been infringement
    - (i) be forfeited to the right holder; or
    - (ii) be destroyed or disposed of outside the channels of commerce in a manner that will not cause any harm to the right holder;
  - (b) a material or implement which has being predominantly used for an infringement be disposed of outside the channels of commerce in a manner that will minimize further infringement without compensation of any sort.
- (2) The Court shall before disposing of an article under subrule (1), serve notice of the disposal on any person who has an interest in that article.
- (3) A person who claims an interest in an article to be disposed of by the Court may
- (a) appear personally or by a lawyer or any other person in proceedings for the order for the disposal of the article whether or not that person was served with notice;
  - (b) appeal against the order for disposal whether or not that person appeared in the proceedings.
- (4) An order for disposal of an article shall not take effect unless
- (a) the period within which a notice of appeal may be given has expired, and
  - (b) where an appeal has been filed, the appeal has been finally determined or abandoned.
- (5) Where there is more than one person interested in an article to be disposed of, the Court may make an order that it thinks just and may in particular direct that the article be sold or otherwise dealt with and the proceeds divided in a manner prescribed by the Court.

Rule 15—Licence and Licensees

- (1) If in proceedings for infringement of an intellectual property right in respect of which a licence is available, the defendant undertakes to take a licence on terms that may be agreed on,
- (a) an injunction shall not be granted against the defendant;
  - (b) an order of delivery shall not be made against the defendant; and
  - (c) the amount recoverable against the defendant by way of damages or on account of profits shall not exceed double the amount which would have been payable by the defendant as a licensee if a licence on the terms agreed on had been granted before the infringement.
- (2) Where an action for infringement of an intellectual property right relates to an infringement in which the property right owner and an exclusive licensee have concurrent rights of action
- (a) the Court shall in assessing damages take into account
    - (i) the terms of the licence; and
    - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
  - (b) an account of profits shall not be directed if an award of damages has been made, or an account of profits has earlier been directed in favour of either of them in respect of the infringement; and

(c) the Court shall, if an account of profits is directed, apportion the profits between the parties as the Court considers just, subject to any agreement between the parties

(3) The provisions of subrule (2) apply whether or not the intellectual property right owner and exclusive licensee are both parties to the action.

#### Rule 16—Presumptions of Authorship and Ownership

(1) In proceedings brought with respect to a literary, dramatic, musical or artistic work, where a name purporting to be that of the author appears on copies of the work as published or appeared on the work when it was made, the person whose name appeared on the work shall, unless the contrary is proved, be presumed

(a) to be the author of the work;

(b) to have made the work not in the course of employment or as a contractor of any person, or organisation.

(2) Where a work is alleged to be a work of joint authorship, subrule (1) applies to each person alleged to be one of the authors.

(3) Where a name does not appear, purporting to be that of the author as in subrule (1) but

(a) the work qualifies for intellectual property right protection

(b) a name purporting to be that of the publisher appears on copies of the work as first published,

the person whose name appears shall be presumed, unless the contrary is proved, to have been the owner of the right at the time of publication

(4) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed in the absence of evidence to the contrary

(a) that the work is an original work, and

(b) that the plaintiff's allegation as to what was the first publication of the work and as to the country of first publication are correct.

#### Rule 17—Presumptions Relating to Copyright in sound Recording, Audio-visual Works and Computer Programmes

(1) In proceedings with respect to a sound recording where copies of the recording as issued to the public bear a label or other mark stating

(a) that a named person was the owner of copyright in the recording at the date of issue of the copies, or

(b) that the recording was first published in a specified year or in a specified country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(2) In proceedings with respect to audio-visual works,

(a) where copies of the audio-visual work as issued to the public bear a statement

(i) that a named person was the author or director of the audio-visual work;

(ii) that a named person was the owner of copyright in the audio-visual work at the date of issue of the copies, or

(iii) that the audio-visual work was first published in a specified country, or

(b) where the audio-visual work as shown in public broadcast or included in a cable programme service bears a statement

(i) that a named person was the author or director of the audio-visual work, or

(ii) that a named person was the owner of copyright in the audio-visual work immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In proceedings with respect to a computer programme, where copies of the programme are issued to the public in electronic form bearing a statement

(a) that a named person was the owner of copyright in the programme at the date of issue of the copies,

(b) that the programme was first published in a specified country; or

(c) that copies of it were first issued to the public in electronic form in a specified year,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) The presumptions in this rule apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the work or copies of the work were made available to the public.

#### Rule 18—Presumptions in Relation to the State's Copyright

In proceedings under this Order with respect to any work protected by copyright law, the copyright of which is owned by the State, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

#### ORDER 64—ARBITRATION

##### Rule 1—Order of Reference

If the parties to an action desire that any matter in dispute between them in the action shall be referred to the final decision of an arbitrator, either party or both parties may apply to the Court at any time before final judgment for an order of reference, and on application the Court may make an order of reference accordingly.

##### Rule 2—Appointment of Arbitrator

(1) The arbitrator shall be appointed by the parties in such manner as may be agreed upon between them.

(2) If the parties cannot agree on the appointment of the arbitrator, or if the person appointed by them does not accept the appointment, and the parties desire that the appointment be made by the Court, the Court shall appoint the arbitrator.

##### Rule 3—Form of Order of Reference

(1) The Court shall, by an order under its seal, refer to the arbitrator the matter in dispute in the action which the arbitrator is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award.

(2) The order referring the matter to arbitration under this rule shall be as in Form 19 or 19A in the Schedule.

#### Rule 4—Appointment of Umpire where Necessary

If the reference is to two or more arbitrators, provision shall be made in the order for the determination of a difference of opinion among the arbitrators by the appointment of an umpire or by declaring that the decision shall be with the majority or by empowering the arbitrators to appoint an umpire or otherwise as may be agreed upon between the parties; or if they cannot agree, as the Court may determine.

#### Rule 5—Enforcing Attendance of Witnesses

(1) Where a reference is made to arbitration by an order of the Court, the process to the parties and witnesses whom the arbitrator or umpire may wish to have examined shall issue as in an ordinary action.

(2) Persons not attending in compliance with the process or making any other default or refusing to give their testimony or being guilty of any contempt of the arbitrator or umpire during the investigation shall be subject to the same disadvantages, penalties and punishments by order of the Court, on the representation of the arbitrator umpire, as they would incur for the same offences in proceedings tried before the Court.

#### Rule 6—Extension of time for making Award

(1) If the arbitrator is not able to complete the award within the period specified in the order, the Court may if it considers appropriate extend the period for delivery of the award.

(2) Where an umpire has been appointed, the umpire may enter on the reference in lieu of the arbitrators, if they have allowed their time (or their extended time) to expire without making an award or if they have delivered to the Court or to the umpire a written notice stating that they cannot agree.

(3) An award shall not be set aside only because it has not been completed within the period allowed by the Court, unless

(a) it is proved that the delay in completing the award arose from misconduct of the arbitrator or umpire; or

(b) the award was made after the issue of an order by the Court superseding the arbitration and recalling the action.

#### Rule 7—Power of Court in Case of Incapacity

(1) If in a case of reference to arbitration by an order of the Court, an arbitrator or umpire dies or fails or refuses to act or becomes incapable of acting, the Court may appoint a new arbitrator or umpire in replacement.

(2) Where arbitrators are empowered by the terms of the order of reference to appoint an umpire, and do not do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if no umpire is appointed within seven days after the notice is served, the Court upon the application of the party who serves the notice, and upon proof to its satisfaction that the notice has been served, may appoint an umpire

(3) An arbitrator or umpire appointed under this rule, has the same power to act in the reference as if the arbitrator's or umpire's name had been stated in the original order or reference.

#### Rule 8—Finding to be Conclusive

The award shall contain a conclusive finding on each of the matters referred, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to.

#### Rule 9—Special Case

Upon any reference by an order of the Court the arbitrator or umpire may, if the parties have not made any agreement to the contrary, state the award as to the whole or any part of the matters referred in the form of a special case for the opinion of the Court.

#### Rule 10—Power to modify or Correct Award

The Court may, on the application of any party, modify or correct an award

(a) where it appears that a part of the award is on matters not referred to the arbitrator, if that part can be separated from the other part, and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting the decision on the matters referred.

#### Rule 11—Power to Remit Award for Reconsideration

The Court may remit the award or any of the matters referred to arbitration for reconsideration by the arbitrator or umpire upon such terms as it may think proper in any of the following cases

(a) if the award has left undetermined some of the matters referred to arbitration or if it has determined matters not referred to arbitration;

(b) if the award is so indefinite as to be incapable of execution; or

(c) if an error with regard to the legality of the award is apparent on the face of the award.

#### Rule 12—Setting aside Award

(1) No award shall be set aside except on the ground of perverseness or misconduct of the arbitrator or umpire.

(2) An application to set aside or remit an award may be made at any time within six weeks after the award has been made and published to the parties; but the Court may by order extend the time either, before or after it has elapsed.

#### Rule 13—Effect of Filing Award

If no application is made within the period referred to in rule 12 to set aside the award or to remit the award or any of the matters referred for reconsideration or if the Court has dismissed any application, either party may file the award in Court, and the award shall be incorporated in an order of the Court and shall have the same force and effect for all purposes as a judgment of the Court.

#### Rule 14—Arbitration Act, 1961

The provisions of this Order do not derogate from the provisions of the Arbitration Act, 1961 (Act 38) or any other enactment that governs arbitration.

### ORDER 65—MATRIMONIAL CAUSES OR MATTERS

#### Preliminary Matters

#### Rule 1—Application of Order

This Order applies to proceedings under the Matrimonial Causes Act, 1971 (Act 367) referred to in this Order as "the Act"

Rule 2—Proceedings to be Commenced by Petition

All proceedings for divorce, nullity, presumption of death and dissolution of Marriage, maintenance orders and child custody orders under the Act, shall commence by petition.

Rule 3—Leave to Commence Proceedings within two Years

(1) An application under section 9(2) of the Act for leave to commence proceedings for divorce within two years from the date of the marriage shall be made by motion on notice.

(2) The applicant shall file in support of the motion an affidavit stating

(a) where the ground for the application is substantial hardship suffered by the plaintiff or depravity on the part of the defendant, particulars of the hardship or depravity alleged;

(b) where any children of the household are alive, their names and ages and where and with whom they are living; and

(c) whether any attempts at reconciliation have been made and if so what attempts.

(3) A copy of the petition by which it is proposed to commence the proceedings for divorce shall be exhibited to the affidavit.

Rule 4—Procedure before Hearing

(1) The motion by which the application for leave is made under rule 3 shall, unless the Court otherwise directs, be personally served on the defendant at least five clear days before the return date.

(2) A person on whom the motion under rule 3 is served may file an affidavit stating the grounds, if any, on which the person opposes the application.

Rule 5—Hearing of Application

At the hearing of the motion the Court shall, in the presence of the parties that attend or their lawyers, proceed to determine the application in accordance with section 9 (2) and (3) of the Act.

Progress of Proceedings

Rule 6—Contents of Petition

(1) The petition referred to in rule 2 shall state

(a) the names of the parties to the marriage, the place and date of the marriage and the status of the parties before the marriage;

(b) the principal address at which the parties to the marriage have

(i) cohabited in the country; or

(ii) cohabited in any place other this country;

and if that is not the case that there has been no cohabitation;

(c) the occupation and place of residence of each party to the marriage at the date of issue of the petition;

- (d) whether any children of the household are living, and if so, their names and ages;
- (e) whether there have been any previous Court proceedings with reference to the marriage or the children of the household by or on behalf of either party to the marriage, and if so, the date and effect of any judgment or order made in the proceedings, and, in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the judgment or order;
- (f) facts sufficient to show that the court has jurisdiction in the proceedings by virtue of section 31 of the Act;
- (g) the grounds on which relief is sought;
- (h) in the case of proceedings for divorce, the facts on which the petitioner intends to rely for the purpose of showing that the marriage has broken down beyond reconciliation, set out in separate paragraphs;
- (i) in the case of proceedings for divorce or nullity, full particulars of the arrangements proposed by the petitioner for the care and upbringing of every child of the household under the age of eighteen years or, the reasons why it is impracticable to make such arrangements;
- (j) in the case of proceedings for nullity on any of the grounds referred to in section 13(2) (b), (c) or (d) of the Act, whether the petitioner was at the time of the marriage aware of the facts alleged and whether sexual intercourse with the consent of the petitioner has taken place since the petitioner discovered the existence of grounds for instituting proceedings;
- (k) in the case of proceedings for presumption of death and dissolution of marriage; the last place of cohabitation of the parties, the circumstances in which they ceased to cohabit, the date when and the place where the respondent was last seen or heard of, and the steps which have been taken to trace the respondent;
- (l) where the petitioner claims relief under section 16 or 17 of the Act, or any ancillary relief under Part III of the Act, a concise statement in general terms of the petitioner's income, assets and liabilities in so far as they are within the petitioner's knowledge or belief.

(2) The petition shall conclude by setting out particulars of the relief claimed, including any claim for ancillary relief required under Part III of the Act.

(3) The petition shall be signed by the petitioner if the petitioner acts in person or by a lawyer.

#### Rule 7—Co-respondent and intervener

(1) Where an alleged adulterer is named in the petition for divorce, that person may be made a co-respondent in the proceedings, and where he or she is not made a co-respondent that person shall be entitled to appear and intervene in the proceedings.

(2) Unless the Court otherwise directs, a party intervening shall join in the proceedings at the stage which the proceedings have reached at the time he or she appears and the title of the proceedings shall thereupon be amended to include his or her name.

#### Rule 8—Service of Petition

Subject to these Rules, a copy of the petition shall be served personally on the respondent and every co-respondent named in it.

#### Rule 9—Proof of Service

Unless the Court otherwise directs, a matrimonial action shall not proceed to trial unless every person required by rule 8 to be served with a copy of the petition

(a) has filed appearance; or

(b) is shown by affidavit to have been served with the petition personally or in accordance with an order for substituted service.

#### Rule 10—Appearance

An appearance to a petition under this Order may be either general or limited to any claim for ancillary relief or for costs made in the proceedings.

#### Rule 11—Amended Petition

(1) The petition may be amended without leave before it is served but only with leave after it has been served.

(2) The petitioner in a matrimonial action may by leave of the Court amend the petition in order to add co-respondent not named in the original petition.

(3) An application for leave under this rule shall unless the Court otherwise directs be supported by an affidavit stating and verifying any new facts alleged and shall, unless the Court otherwise directs be served on every other party who has filed appearance, or may be made ex-parte if no appearance has been filed.

(4) An order of the Court granting leave to amend under subrule (2) shall

(a) in cases where appearance has been filed, fix the time within which the petitioner or co-respondent may file an answer to the amended petition;

(b) if made after a date has been fixed for trial, fix the time within which the defendant or co-defendant may file an answer to the petition;

(c) if made after a date has been fixed for trial, fix a new date for trial and the time within which an answer to the amended petition shall be filed.

(5) Rule 9 shall apply to an amended petition as it applies to an original petition.

#### Rule 12—Answer

(1) A respondent, co-respondent or intervener who has filed appearance to a petition may, within fourteen days after the expiration of the time limited for appearance, file an answer.

(2) A co-respondent or intervener who intends only to deny an allegation of adultery made in the petition shall be entitled to limit his or her answer to a denial of the allegation of adultery only.

(3) If a general appearance has been filed and no answer has been filed within the time allowed, the petitioner shall before proceeding with the action file an affidavit stating that a search as been made and that no answer has been filed by or on behalf of the party who has filed appearance.

#### Rule 13—Reply

(1) A petitioner on whom an answer is served may within fourteen days from the date of service file a reply to the answer.

(2) No subsequent pleading shall be filed except by leave.

#### Rule 14—Close of Pleadings

Eight days after service of a reply pleadings shall be closed.

#### Rule 15—Service of Pleadings

A copy of every statement of answer, reply or subsequent pleading shall as soon as possible after it has been filed, be served on the other parties or their lawyers.

#### Rule 16—Pleadings out of time

No pleading shall be filed out of time without leave of the Court.

#### Rule 17—Particulars

(1) Any party may by letter require any other party to give particulars of any allegation or other matter pleaded and, if the other party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

(2) All particulars, whether given in pursuance of an order or otherwise, shall be filed within three days of being furnished to the party requiring them.

#### Rule 18—Discovery

The provisions of these Rules that relate to the furnishing of further and better particulars, discovery, inspection and production of documents, interrogatories and notice to admit facts and documents shall apply to proceedings under this Order.

#### Rule 19—Medical Examination

(1) In proceedings for nullity on the ground of impotence or incapacity, the petitioner shall, after an answer has been filed, or, if no answer or appearance is filed to the proceedings, after the expiration of the time allowed for filing an answer or appearance, apply to the Court for the determination of the question whether a medical practitioner should be appointed to examine the parties.

(2) Upon such application, the Court may, if it thinks fit, appoint a medical practitioner to examine the parties and to report to the Court the result of the examination, and shall order the parties to attend the medical practitioner for the purpose of the examination.

(3) Notice of the time and place appointed for the medical examination shall be served on the respondent, and the service shall be personal service even where the respondent has not filed appearance.

(4) In proceedings for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent, either party may apply to the Court for the appointment of a medical practitioner to examine the parties and to report to the Court the result of the examination, and on such application, the Court shall appoint one or if necessary two medical practitioners, and either of the parties shall be at liberty to submit himself or herself for examination.

(5) Every examination under this rule shall be held at such place as the Court may direct.

(6) Where a party presents himself or herself for examination under this rule, the party shall sign a statement verifying the examination, and the statement shall be signed by the medical practitioner and annexed to the report of the medical practitioner to the Court.

(7) Every report made in pursuance of this rule shall be filed, and either party may be supplied with a copy on payment of the prescribed fee.

(8) If a party fails or refuses to present himself or herself for examination under subrule (2), the fact shall be brought to the notice of the Court and the Court may make such order or give such directions as it considers fit.

#### Rule 20—Evidence

(1) Subject to section 39 of the Act and this rule, the witnesses at the trial of any proceedings under this Order shall be examined orally and in open Court, provided that the Court may order that

(a) subject to subrule (2) of this rule, any particular facts to be specified in the order may be proved by affidavit;

(b) the affidavit of any witness may be read at the trial on such conditions as the Court considers reasonable;

(c) evidence of any particular facts to be specified in the order shall be given at the trial by a statement on oath of information or belief, or by production of documents or entries in books or otherwise as the Court may direct;

(d) not more than a specified number of expert witnesses may be called.

(2) Where it appears to the Court that any party reasonably desires the attendance of witness for cross-examination and that the witness can be produced, an order shall not be made authorising the evidence of that witness to be given by affidavit, but the expenses of that witness at the trial shall be specially reserved.

(3) Nothing in any order made under this rule shall affect the power of the Court at the trial to refuse to admit evidence tendered in accordance with the order if in the interest of justice it should think fit to do so.

#### Rule 21—Setting down Proceedings for Trial

(1) Not later than fourteen days after pleadings are closed the petitioner or the lawyer of the petitioner shall notify the Registrar that the action is fit to be set down for trial and shall pay to the Registrar the prescribed fee for service of a notice of trial.

(2) The notice required to be given under subrule (1) shall be served on the respondent and other parties who have filed appearance.

(3) The Registrar shall not later than fourteen days after, set the action down for trial and serve a notice of trial on the parties.

(4) If the petitioner fails to give notice as required by subrule (1), any other party to the proceedings may issue the notice in accordance with subrule (1) or may apply to the Court to dismiss the petitioner's action; but on the hearing of such an application the Court may instead of dismissing the action, fix a date for the trial of the action upon such terms as to costs, as it considers fit.

#### Rule 22—Copies of Judgment

A sealed or other copy of any judgment of the Court may be issued to any person who requires it on payment of the prescribed fee.

#### Ancillary Relief

#### Rule 23—Application for Ancillary Relief

(1) A petitioner who has not included in the petition, a claim for ancillary relief may apply for the relief at any time after submission of the petition, and a respondent may apply for this relief at any time after filing appearance.

(2) The guardian of any child of the household, or any person who has obtained leave to intervene in the proceedings for the purpose of applying for the custody of the child, or who has under an order of the Court the custody, or the care and control, of the child, may apply for an order under section 22 of the Act concerning the child at any time after filing appearance to the petition.

(3) Subject to subrules (1) and (2), an application for an order under section 22 of the Act may be made to the Court at any time either before or after judgment.

(4) No application for financial provision, property settlement or conveyance of title to property shall be made later than one month after judgment except by leave of the Court.

#### Rule 24—Notice of Application

(1) The notice of an application for ancillary relief shall, if the respondent to the application has not already filed appearance to the petition, contain a notice requiring the respondent to appear.

(2) Every notice of an application for ancillary relief shall contain a notice to file an affidavit setting out full particulars of the respondent's income, assets and liabilities.

(3) Unless the Court otherwise directs, a copy of every notice of an application for ancillary relief shall be served on the respondent and where the respondent has not filed appearance, or has filed limited appearance under rule 10, the copy shall subject to these Rules, be personally served on the respondent.

(4) The respondent may, after filing appearance, be heard in respect of the application.

#### Rule 25—Evidence of Income

(1) Where a respondent's spouse is served with notice of an application for ancillary relief, that spouse shall within fourteen days after the service of the notice file an affidavit setting out full particulars of his or her income, assets and liabilities.

(2) If in an affidavit filed in pursuance of this rule the respondent spouse alleges that the petitioner has income or assets, the petitioner may, within fourteen days after receiving that affidavit, file an affidavit in reply to that allegation; but no further evidence shall be filed by any party without leave of the Court.

#### Rule 26—Hearing of Application

(1) On the expiration of the time limited for filing affidavits under rule 25(1), the applicant may obtain an appointment for the attendance of the parties before the Court for the hearing of the application, and a day and time for their attendance shall be fixed by a notice signed by the Registrar.

(2) Where a respondent served with notice of the application fails to file an affidavit within the time limit, the applicant may apply to the Court for an appointment for the hearing of the application, and if the Court is satisfied that no affidavit has been filed, it shall appoint a day and time for the hearing of the application on such conditions as it thinks fit.

(3) At the hearing of the application the Court shall, in the presence of such of the parties that attend or their lawyers, proceed to investigate the allegations made in support of and in answer to the application, and for that purpose the Court may

(a) order the parties to be examined or cross-examined;

(b) take the oral evidence of witnesses;

(c) order the discovery or production of any document;

(d) call for further affidavits.

(4) After conducting its investigations the Court may make such order upon the application as it considers fit.

#### Rule 27—Modification Order

(1) A petitioner or a respondent, may at any time apply to the Court for an order under section 27 of the Act rescinding or varying a previous order in respect of maintenance pending suit and financial provisions, or the care, custody and support of any child.

(2) The application shall set out the grounds on which it is made and, where appropriate, shall state the nature of the variation proposed.

(3) The application shall, unless the Court otherwise directs, be supported by an affidavit of the applicant setting out full particulars of the marriage, any children of the household, any existing financial arrangements, and the income, assets and liabilities of the applicant and the respondent.

(4) The application shall be served on the other party to the action and such other person as the Court may direct, and any party served may within fourteen days after the service, file an affidavit in answer but no further evidence shall be filed by any party without leave of the Court.

(5) On an application for rescission or variation under this rule, the Court may direct that any children of the household be separately represented by a lawyer and may assign a guardian ad litem by whom any infant child may appear on the application.

(6) An affidavit of fitness of any proposed guardian shall be filed as supplementary.

#### Rule 28—Service of other Document

(1) Service of any document on a party who has not filed appearance shall be personal service, unless the Court makes an order for substituted service under Order 7 rule 6 (1).

(2) Order 7 rule 12 (2) and (3) shall apply to service of a petition under this Order.

(3) A copy of every affidavit in support of or in answer to any application under this Order, or in pursuance of an order for particulars, interrogatories or discovery, shall be served on the other party, if the party has filed appearance, at the party's address for service as soon as possible after the affidavit has been filed and, if the party has not filed appearance and the time for appearance has not expired, a copy of the affidavit shall be personally served on the other party with the writ and statement of claim or the notice in support of which the affidavit is filed.

#### Rule 29—Motions

(1) Notice of any motion to be made to the Court, other than an ex-parte motion, shall be served on every party who may be affected by the proposed order; and unless the Court otherwise directs, there shall be at least five clear days between the service of the notice of motion and the day named in the notice for hearing the motion.

(2) A copy of the notice served shall be filed in the registry, and the affidavits to be used in support of the motion and original documents referred to therein or intended to be used at the hearing of the motion, shall at the same time be lodged in the registry.

(3) Copies of all the affidavits or documents shall be delivered on request to any party entitled to be heard on the motion.

#### Rule 30—Other Proceedings Relating to Child of Household

On any application under this Order relating to a child of the household, if there are any proceedings relating to the child pending in any Court, a statement as to the nature of the proceedings shall be filed.

### ORDER 66—PROBATE AND ADMINISTRATION

#### Preliminary Matters

##### Rule 1—Application for Probate or Letters of Administration

(1) An application for probate or letters of administration in respect of the estate of a deceased person may be made only to the court with jurisdiction where the deceased had at the time of death a fixed place of abode.

(2) Notwithstanding subrule (1) where any person dies within or outside the country without a fixed place of abode in the country, the court in the area where any property of the deceased may be found, shall, subject to the Courts Act, 1993 (Act 459) or any other enactment for the time being in force, have jurisdiction for the purposes of granting probate or letters of administration in respect of the estate.

(3) Where the deceased has property within the jurisdiction of more than one court, the application shall be made to only one of the courts in respect of all the properties.

(4) Notice of an application made under subrule (3) shall be given to the registrar of every Court with jurisdiction in the areas where the property may be found and any caveat filed in the courts shall be brought to the notice of the court before which the application is pending, which may stay the hearing of the application until it is satisfied that no caveat has been filed in another court.

(5) In this Order "property" means movable and immovable property.

#### Rule 2—Preservation of Property

(1) The Court to which an application is made under rule 1 of this Order may, for the preservation of the property of the deceased within its jurisdiction or for the discovery or preservation of the will of the deceased, take such interim measures as it considers necessary.

(2) The Court within whose jurisdiction the property is situated shall, where the circumstances so require, on the death of the person or as soon as may be practicable after that, appoint an officer of the Court or such other person as it considers fit, to take possession of the property within its jurisdiction or put it under seal until it is dealt with in accordance with law.

#### Rule 3—Intermeddling with Property

Where any person, other than the person named as executor in a will or appointed by Court to administer the estate of a deceased person, takes possession of and administers or otherwise deals with the property of a deceased person, the person shall be subject to the same obligations and liabilities as an executor or administrator and shall in addition be guilty of the offence of intermeddling and liable on summary conviction to a fine not exceeding 500 penalty units or twice the value of the estate intermeddled with or to imprisonment for a term not exceeding 2 years or to both.

#### Rule 4—Neglect to Apply for Probate

Where a person named executor in the will of a deceased person takes possession of and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within three months after the death, or after the termination of any proceedings in respect of probate or administration, the person may in addition to any other liability which the person may incur, be guilty of contempt of Court, and shall also be guilty of the offence of intermeddling and liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 2 years or to both.

#### Rule 5—Production of Testamentary Papers

Where it appears to the Court that any paper of the deceased being or purporting to be testamentary, is in the possession or under the control of any person, the Court may, whether any proceedings relating to probate or administration are pending, order the person to produce the paper in court.

#### Rule 6—Examination in Respect of Testamentary Papers

(1) Where it appears to the Court that there are reasonable grounds to believe that any person has knowledge of any paper purporting to be testamentary (although it is not shown that the paper is in the person's possession or under the person's control), the Court may, whether or not any proceedings that relate to probate or administration are pending, order the person to be examined on the matter in court or on interrogatories and for the paper to be produced before the Court after the examination.

(2) The order to produce papers for examination shall be as in Form 20 in the Schedule.

#### Rule 7—Notice to Executors to come in and prove will

(1) The Court may of its own motion or on the application of any person who claims an interest under a will give notice to the executors, if any, named in the will to come in and prove the will or renounce probate.

(2) The executors or any one or more of them shall within fourteen days after receipt of the notice come in and prove the will or renounce probate.

(3) Where an executor who has received a notice under this rule does not come in and prove the will or renounce as required by subrule (2), the right of the executor to executorship shall be extinguished and an application for letters of administration with will annexed may be made by any person entitled to that.

(4) Form number 21 in the Schedule shall be used for the purpose of rule 7(2).

#### Application for Grant of Probate or Letters of Administration

#### Rule 8—Affidavits in support of Application

(1) Every application for grant of probate or letters of administration shall be supported by an affidavit sworn by the applicant and with such other documents as the Court may require.

(2) In the application the relevant forms in the Schedule to these Rules shall be used with such modifications as may be necessary.

#### Rule 9—Declaration of Property of the Deceased

(1) On an application for the grant of probate or letters of administration, the Court may require evidence of the identity of the applicant in addition to that provided by the applicant, where such additional evidence seems necessary or desirable.

(2) The Court shall ascertain the time and place of the death of the deceased and require proof of death by production of a death or burial certificate or such other evidence to the satisfaction of the Court.

(3) The applicant shall make a declaration of the value of the property of the deceased and the Court shall as correctly as the circumstances allow ascertain the value.

(4) Form 22 in the Schedule shall be used for the declaration under this rule.

#### Rule 10—Notice of grant

(1) The Court shall not allow any grant of letters of administration to issue unless after the grant, notice of it is given for a period of not less than twenty-one days, or such other period as the Court may order in the following manner

(a) in the Court where the application for grant was made;

(b) in any public place within the jurisdiction of the Court where it is likely that the notice will be seen by those who may have an interest in the estate; and

(c) at the last known place of abode of the deceased in respect of whose estate the grant has been made.

(2) Where the grant is in respect of the estate of a person who died intestate, notice must be given whenever practicable to all persons entitled to a share of the estate of the deceased under the

Intestate Succession Law, 1985 (P.N.D.C. Law 111); the Court may, however, dispense with such notice to beneficiaries if it considers it expedient to do so.

(3) The Court shall not allow any grant of probate or letters of administration to issue until all inquiries which it sees fit to make have been answered to its satisfaction.

(4) The Court shall afford as great a facility as possible for obtaining probate or letters of administration as is consistent with due regard to the prevention of error and fraud.

(5) Notice under this rule shall be as in Form 23 specified in the Schedule.

#### Rule 11—Caveat

(1) Any person who has or claims to have an interest in the estate of a deceased and who wishes to ensure that no grant of probate or letters of administration is issued without notice to the person, may file a caveat as in Form 24 specified in the Schedule.

(2) The caveat may be filed either before or after an application has been made for probate or letters of administration, but before grant.

(3) A caveat filed before an application for probate or letters of administration shall be brought to the notice of the Court by the Registrar as soon as the application is filed.

(4) A caveat filed after an application for probate or letters of administration shall be brought immediately to the notice of the Court by the Registrar.

(5) On being given notice of a caveat, the Court shall direct the Registrar to bring it to the notice of the applicant or the lawyer of the applicant as in Form 25 in the Schedule and shall decline to take any further steps until the applicant duly warns the caveator.

(6) A caveat shall remain in force for three months from the date on which it is filed, but may be renewed from time to time.

(7) The Registrar shall not allow any grant of probate or letters of administration to be sealed if the Registrar has knowledge of an effective caveat in respect of it, except that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is filed or on which a copy of it is received.

(8) A person who files a caveat shall be warned as in Form 26 in the Schedule, issued by the Registrar at the instance of the applicant or by any person interested, to file an affidavit, stating the nature and particulars of any interest that person may have in the estate of the deceased.

(9) If the warning is not duly obeyed, the applicant shall move the Court in respect of the applicant's original motion for the grant of probate or letters of administration and where the Court considers it fit it shall direct that notice be served on the caveator.

(10) If the warning is obeyed, a copy of the affidavit filed shall be served on the applicant by the Registrar.

(11) The applicant shall then move the Court to grant probate or letters of administration on notice to the caveator who shall at the expense of the applicant, be served with copies of any affidavits on which the applicant intends to rely.

(12) When the motion comes on for hearing, if the parties agree among themselves as to the person to whom a grant of probate or letters of administration shall be made, the Court may order that the caveat be removed from the file and a grant be made to that person.

(13) Failing such agreement between the parties the Court shall determine who is entitled to a grant of probate or letters of administration summarily or may order that the applicant issue a writ against the

caveator within fourteen days from the date of the order, to determine who is entitled to grant of probate or letters of administration, if in the opinion of the Court it is necessary to do so.

Rule 12—Order of Priority for grant where Deceased Leaves a will

(1) Where a person dies leaving a will, the person entitled to grant of probate or letters of administration with the will annexed shall be determined in accordance with the following order of priority

(a) the executor;

(b) any specific legatee or devisee or any creditor or the personal representative of any such person, provided that administration shall be given to a living person in preference to the personal representative of such a deceased person who would, if living be entitled in the same degree;

(c) any legatee or devisee whether residuary or specific who claims to be entitled on the happening of any contingency;

(d) any residuary legatee or devisee holding in trust for any other person;

(e) the ultimate residuary legatee or devisee where the residue is not disposed of by the will; or

(f) any person who has no interest under the will of the deceased but who would have been entitled to a grant if the deceased had died intestate.

(2) The Court may make a grant to a specific legatee or devisee if satisfied that the interest of the person entitled to the residue is so small as to justify the person being passed over.

Rule 13—Order of Priority of grant where a Person Dies Intestate after Enactment of P.N.D.C.L. 111

Where a person dies intestate on or after 14th June 1985, the persons who have beneficial interest in the estate of the deceased shall be entitled to a grant of letters of administration in the following order of priority

(a) any surviving spouse;

(b) any surviving children;

(c) any surviving parents;

(d) the customary successor of the deceased.

Rule 14—Grant where two or more Persons are Entitled in the same Degree

(1) Unless otherwise provided by any enactment, the number of persons to whom a grant of letters of administration may be made shall not exceed four.

(2) Where two or more persons are entitled to a grant in the same degree, the Court may make a grant to any one of them without joining the others.

(3) Where there is a dispute between persons entitled to a grant in the same degree, the Court shall summarily determine the dispute and may make a grant to such of them as it considers fit.

Rule 15—Notice to Accept or Refuse grant of Probate or Administration

(1) Where a person who has a prior right to a grant of probate or administration delays or refuses to take it and does not agree to renounce the person's right, a person who has an inferior right may serve a notice as in Form 27 in the Schedule on the person with prior right calling on the person with prior right to take a grant or renounce the right.

(2) If upon being served with a notice under subrule (1), the person with prior right does not apply for a grant or renounce the right within fourteen days, the person serving the notice may apply for a grant and the Court shall make a grant to the applicant if it is of opinion that it is desirable to do so.

#### Probate or Administration with Will Annexed

##### Rule 16—Custody of Wills

(1) Any person may in his or her lifetime deposit for safe custody in the Court that has jurisdiction over the area in which he or she has a fixed place of abode his or her will sealed up under his or her seal and the seal of the Court.

(2) Every original will or probate or letters of administration with a will annexed, shall be filed and kept in the registry of the court which makes the grant in such manner as to secure the presentation and convenient inspection of the will and a copy of every such will or probate or letters of administration with will annexed or both shall be preserved in a book kept for that purpose in the registry of the Court in the Region in which the will, probate or letters of administration with will annexed was granted.

(3) No original will shall be delivered out for any purpose without the direction in writing of the Court where the will is filed.

(4) A certified copy of the probate or letters of administration with a will annexed may be obtained from the Court.

##### Rule 17—Examination of Will

(1) On receiving an application for probate or for letters of administration with a will annexed the Court shall inspect the will and see whether it appears to have been signed by the testator, or by some other person in his or her presence and by his direction, and to have been subscribed by two witnesses in accordance with the Wills Act, 1971 (Act 360) and shall not proceed further if the will does not appear to be so signed and subscribed.

(2) If the will appears to be so signed and subscribed, the Court shall then refer to the attestation clause, if any, and consider whether it shows the will to have been in fact executed in accordance with the Wills Act, 1971 (Act 360).

##### Rule 18—Attestation clause and Witnesses

(1) If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one subscribing witness, if either of them is living, to prove that the will was in fact executed in accordance with the Wills Act, 1971 (Act 360).

(2) The affidavit shall form a part of the probate so that the probate shall be a complete document on the face of it.

(3) If on perusal of the affidavit it appears that the will was not in fact executed in accordance with the Wills Act, 1971 (Act 360), the Court shall refuse probate.

(4) Where both the subscribing witnesses are dead, or if from other circumstances an affidavit cannot be obtained from either of them, the Court may resort to an affidavit as in Form 28 in the Schedule from other persons, if any, present at the execution of the will; but if no such affidavit can be obtained, proof shall be required of that fact and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances that raise a presumption in favour of the due execution of the will.

(5) An attestation clause and an affidavit of handwriting shall be as in Forms 29 and 30 respectively in the Schedule.

##### Rule 19—Blind or Illiterate Testator

Where the testator was blind or illiterate, the Court shall not grant probate of the will or administration with will annexed unless the Court is first satisfied, by proof or by what appears on the face of the will, that the will was read over to the deceased before its execution or that the deceased had at that time knowledge of its contents.

#### Rule 20—Interlineations, Alterations, Erasures, Obliterations

(1) The Court on being satisfied that the will was duly executed, shall carefully inspect it to see whether there are any interlineations, alterations, erasures, or obliterations that appear in it and require to be accounted for.

(2) Interlineations, alterations, erasures and obliterations are invalid unless they have been executed and attested in the mode required by the Wills Act, 1971 (Act 360) or unless they have been made valid by the re-execution of the will, or by the subsequent execution of a codicil to the will.

#### Rule 21—Documents Referred to in a Will

(1) Where a will contains a reference to any document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the Court shall require the production of the document with a view to ascertaining whether or not it forms a constituent part of the will; and if it is not produced, a satisfactory account of its non-production shall be proved.

(2) A document cannot form part of a will unless it was in existence at the time the will was executed.

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

#### Rule 22—Marking Copy of a Will Sworn to

Each will or copy of a will to which an executor or an administrator is sworn, shall be marked by the executor or administrator and by the person before whom the executor or administrator is sworn as in Forms 31 and 32 respectively in the Schedule.

#### Rule 23—Examination of Person making Affidavit

In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if he or she is within the jurisdiction, to be orally examined before the Court in respect of the matter of his or her affidavit.

#### Rule 24—Double Probate

Where on the grant of probate, the estate of a deceased is granted to one of the executors named in the will, the Court may make the same grant to any other executor named in the will, and the grant shall be as in Form 33 in the Schedule.

#### Rule 25—Proof of a Will Proof in Common Form

Where a will appears regular on the face of it and there is no dispute as to its validity, the application for probate may be sufficiently supported by affidavit deposing to the due execution and attestation of the will and by such other documents or papers as the Court may require.

#### Rule 26—Proof of will in Solemn Form

(1) Where for any reason the executors of a will are in doubt as to its validity or the validity of the will is disputed, the executors may if they consider it necessary to do so, prove the will in solemn form in an action commenced by writ asking the Court to pronounce the will as valid.

(2) Any person who claims to have an interest in the estate of a deceased person may by notice in writing request the executors named in the will of the deceased to prove the will in solemn form.

(3) The notice required to be given under subrule (2) shall state

(a) the name, address, and description of the person filing it;

(b) the interest the person has in the estate of the deceased; and

(c) the specific grounds upon which the validity of the will is disputed.

(4) The notice must be signed by the person who desires proof in solemn form or by the person's lawyer and shall be filed in the registry and served on all executors named in the will and the beneficiaries under the will.

(5) Where a notice is served on an executor under subrule (4) the executor shall not later than 8 days after the service, file in the registry an answer to the notice stating the intention of the executor either to prove the will in solemn form or to renounce probate and the Registrar shall upon receiving such answer serve the person who files the notice with a copy of the answer.

(6) If an executor who is served with notice under this rule declares the intention to renounce probate or fails to file an answer as required under subrule (5)

(a) the right of the executor to executorship shall wholly cease and the representation of the testator and the administration of the estate may be effected as if the executor had never been appointed; and

(b) in the case where the executor defaults in filing an answer and shows good cause for failing to file it, the Court may extend the time within which the executor must file an answer.

(7) An extension of time given under subrule (6) (b) shall be upon such terms if any, as the Court may see fit to impose.

#### Rule 27—Issue of Writ to have will Pronounced Valid

(1) An executor who files an answer under subrule (5) of rule 26 stating the executor's intention to prove the will, shall not later than eight days after filing an answer, issue a writ claiming that the will must be pronounced valid and admitted to probate.

(2) If the executor fails to issue a writ within the time specified in subrule (1) the person who issues the notice may apply to the Court for an order that the right of the executor to the executorship shall cease, and the Court may either make that order or extend the time within which the executor must issue a writ and upon such terms, if any, as it considers just.

(3) A writ issued under subrule (1) shall join as defendant the person who issues the notice calling on the executor to prove the will in solemn form; and the Court may either of its own motion or on application, join as plaintiff or defendant any person who claims or appears to have an interest in the estate of the deceased.

(4) Where the executor who files an answer under rule 26(5), renounces probate or having been served with a notice fails to file an answer or having filed an answer fails to issue a writ and the Court makes an order under subrule (2), any person named as a beneficiary in the will may issue a writ to establish the validity of the will and to claim grant of letters of administration with will annexed.

(5) In an action brought under subrule (4) the person who files and serves a notice on the executor shall be joined as a defendant but the Court may either on application or of its own motion, order to be joined as plaintiff or defendant any person who claims, or appears, to have an interest in the estate.

#### Rule 28—Action to Declare will Invalid

(1) Any person who claims to leave an interest in the estate of a deceased testator may, instead of issuing a notice to the executor to prove the will under rule 26 (2) of this Order, bring an action against the executor for a declaration that the will is invalid.

(2) In an action brought by an interested party under subrule (1), the Court may join as plaintiff or as defendant any person who claims or appears to have an interest in the estate of the deceased.

#### Rule 29—Action to revoke grant of Probate or Letters of Administration

(1) Where grant of probate or letters of administration has been issued, any person who seeks to have the grant revoked by the Court may issue a writ to seek the relief.

(2) In any action brought under rules 25 to 29 of this Order, rules 32 to 43 shall apply.

#### Administration not with Will Annexed

#### Rule 30—General Procedure for Administration

(1) The Court in granting letters of administration shall proceed as far as the case may be as in the case of probate.

(2) Where administration is applied for by one or more persons with priority or equal interest, the Court shall require proof that notice of the application has been given to the other person with prior or equal interest.

#### Rule 31—Bond Forms

(1) The person to whom administration is granted shall give bond as in Form 34 or 35 in the Schedule, with two or more sureties as in Form 36 to the Registrar for duly collecting, getting in and administering the property of the deceased.

(2) The bond shall be an amount equal to double the value of the property of the deceased as sworn to, unless the Court in any case considers it just to reduce the amount.

(3) The Court may in any case direct that more than one bond be given so as to limit the liability of any surety to such amount as the Court considers reasonable.

(4) If administration is granted to the Administrator-General or if the administrator-General is appointed to act in any capacity, the Administrator-General shall not be required to give such bond or security as would be required if the grant had been made to a private person; the Administrator-General shall, however, be subject to the same liabilities and duties as if the Administrator-General had given such bond or security.

(5) When it is subsequently discovered that the deceased died possessed of property which was not included in the grant or in the original affidavit, a corrective affidavit as in Form 37 in the Schedule giving full particulars shall be given to the Registrar of the Court.

(6) Where the bond already given is not sufficient to cover the whole estate including the increased amount, a further bond shall be given in a sum sufficient to meet the deficiency.

(7) The penalty in the bond shall be double the value of additional property and the word "intended" coming before the word "administrator" shall be omitted.

(8) The Registrar may on being satisfied that an undertaking in the bond has been broken, assign it as in Form 38 in the Schedule to some person, and that person may upon that sue on the bond in that person's own name as if it had originally been given to that person instead of the Registrar and, may recover on it, as trustee for all persons interested, the full amount recoverable in respect of any breach of an undertaking in the bond.

#### Contentious Probate Matters

#### Rule 32—Interpretation

For the purpose of contentious probate matters as provided for under this Order, "probate action" means an action for the grant of probate of the will or letters of administration of the estate of a deceased person or for the revocation of such grant or for a judgment or order pronouncing for or against the validity of an alleged will, being an action which is contentious or not common form probate business.

#### Rule 33—Commencement of Probate Action

- (1) A probate action shall be commenced by writ.
- (2) The writ must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased.
- (3) Before a writ for the revocation of the grant of probate of a will or letters of administration of the estate of a deceased person is issued out, notice shall be given under rule 37, unless the probate or letters of administration has or have been lodged in the registry of the Court.

#### Rule 34—Intervention

- (1) A person not already a party to a probate action may apply to the Court for leave to intervene in the action.
- (2) The application must be supported by an affidavit which shows the interest of the applicant in the estate of the deceased and shall be served on all the existing parties.
- (3) Where the Court grants leave under this rule, it may give such directions as to the service of pleadings, filing of affidavit or of testamentary scripts and other matters as it considers necessary.

#### Rule 35—Application for Notice to an Interested Person

- (1) On the application of the plaintiff or of any other party who has pleaded in a probate action, a notice as in Form 39 in the Schedule may be issued against any person not already a party to the action who has an interest adverse to the applicant notifying that person that if that person does not enter an appearance in the action, judgment may be given without further notice to that person.
- (2) A notice under this rule shall be issued out of the registry and shall be accompanied by an affidavit sworn by the applicant specifying the alleged adverse interest of the person on whom it is served.
- (3) Issue of a notice takes place upon its being sealed by the Registrar.
- (4) A notice issued under this rule shall be served personally unless in a particular case the Court considers it necessary to order some other mode of service.

#### Rule 36—Entry of Appearance

- (1) A person authorised to intervene under rule 34 or on whom a notice has been served under rule 35 shall enter appearance within the time specified in the order authorising him to intervene or if the appearance is not limited then within eight days from the date of the making of the order or service of the notice.
- (2) Where a person on whom notice is served under rule 35 fails to enter an appearance in the action, the party on whose application the notice is issued shall file an affidavit proving due service of the notice before the application shall be heard at the trial.

#### Rule 37—Notice to bring in Grant

- (1) Where an action is brought for the revocation of a grant of probate or letters of administration of the estate of a deceased person, the plaintiff shall serve a notice on the person to whom the probate or

letters of administration is granted requiring the person to bring and leave at the registry of the Court the probate or letters of administration.

(2) A person on whom a notice is served under subrule (1) shall comply with the notice not later than four days from the date of service of the notice.

(3) Where a person served with a notice under subrule (1) does not comply with it within the time specified, the plaintiff may apply to the Court for an order directing that the probate or letters of administration shall be brought and left at the registry of the Court within such time as the Court may specify.

#### Rule 38—Affidavit of Testamentary Script

(1) In this rule "testamentary script" means a will or a draft of it, written instructions for a will made by or at the request or under instructions of the testator and any document purporting to be evidence of the contents or to be a copy of a will which is alleged to have been lost or destroyed.

(2) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate action shall swear an affidavit as in Form 40 in the Schedule describing any testamentary script of the deceased person whose estate is the subject of the action

(a) of which the deponent has any knowledge or stating that the deponent knows of no such script; and

(b) if any such script is not in the possession of the deponent or the deponent does not know under whose control it is, stating that the deponent does not know the name or address of that person.

(3) Any such script in the possession or under the control of the deponent shall be annexed to the affidavit.

(4) An affidavit required by this rule, together with any testamentary script annexed to it, shall be filed within fourteen days after entry of appearance by a defendant to the action or if no defendant enters appearance and the Court does not otherwise direct, before the action is set down for trial.

(5) Except with leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed under this rule by any other party to the action or any testamentary script annexed to it, unless an affidavit sworn by the party containing the information referred to in subrule (2) has been filed.

#### Rule 39—Default of Appearance

(1) A judgment in default of appearance shall not be entered in a probate action.

(2) Where the defendant or any of several defendants fails to enter an appearance, the plaintiff upon filing an affidavit proving due service of the writ or notice of the writ, may after the time limited for appearance set down the action for trial.

(3) Where the plaintiff sets down the action for trial under subrule (2), the plaintiff shall take an affidavit of testamentary scripts as required by rule 38 (2).

#### Rule 40—Pleadings

(1) Every writ in a probate action shall be accompanied with a statement of claim which shall be served on the defendant in the action and any person who intervenes.

(2) Every defendant who is served with a writ and a statement of claim and who enters an appearance shall file a statement of defence not later than fourteen days after appearance.

(3) Where the plaintiff in a probate action disputes the interest of a defendant, the plaintiff shall state in the plaintiff's statement of claim that the plaintiff denies the interest of the defendant.

(4) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest shall show in that person's pleading that if the allegations made in it are proved, the disputing party would be entitled to an interest in the estate.

(5) Any party who pleads that at the time when a will, the subject of the action is alleged to have been executed, the testator did not know and approve of its contents shall specify the nature of the case on which the party intends to rely.

(6) Any party referred to in subrule (5) shall specifically plead the following matters if the party intends to rely on any of them

(a) that the will was not duly executed;

(b) that at the time of the execution of the will, the testator was not of sound mind, memory and understanding;

(c) that the will was a forgery; or

(d) that the execution of it was obtained by undue influence or fraud.

#### Rule 41—Counterclaim

A defendant to a probate action who alleges that the defendant has any claim or is entitled to any relief or remedy, in respect of any matter relating to the grant of probate or letters of administration of the estate of the deceased person which is the subject of the action, shall add to the defence a counterclaim in respect of the claim, relief or remedy.

#### Rule 42—Default of Pleading

(1) A judgment shall not be given in default of pleadings in a probate action.

(2) Where any party to a probate action fails to file a pleading which the party is required by this Order to file, then unless the Court strikes out the action, the other party may, after the expiration of the period fixed under this Order for the filing of that pleading, apply to the Court for leave to set down the action for trial.

#### Rule 43—Discontinuance

(1) A probate action shall not be discontinued except by leave of the Court.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered an appearance, order the action to be discontinued on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate or letters of administration in respect of the estate which is the subject matter of the action be made to the person entitled to it.

#### Administration and Similar Actions

##### Rule 44—Interpretation

For the purpose of rules 45 to 47 of this Order "administration action" means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust created by a will.

##### Rule 45—Determination of Question or Relief without Administration

(1) An action may be brought for the determination of any question or for any relief which could be determined or granted in an administration action, and the question need not involve a claim for the

administration or execution under the direction of the Court of the estate or a trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of subrule (1), an action may be brought for the determination of any of the following—

(a) any question that arises in the administration of the estate of a deceased person or in the execution of a trust;

(b) any question as to the composition of any class of persons who have a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;

(c) any question as to the right or interest of a person who claims to be a creditor of the estate of a deceased person or to be entitled under a will or on an intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of subrule (1), an action may be brought for any of the following reliefs—

(a) an order requiring an executor or administrator to furnish and if necessary, verify accounts;

(b) an order requiring the payment into court of money held by a person in trust in the person's capacity as executor, administrator or trustee;

(c) an order directing a person to do or abstain from doing a particular act in the person's capacity as executor, administrator or trustee;

(d) an order approving any sale, purchase, compromise or other transaction by a person in the person's capacity as executor, administrator or trustee;

(e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed under the direction of the Court.

#### Rule 46—Directions by the Court in Administration Action

(1) Where in an administration action the Court makes an order for the full administration of the estate of a deceased person or for the execution of a trust, the Court shall give directions as to the manner in which the estate shall be administered or the trust executed.

(2) The order may expressly stipulate that no account or inquiry not immediately and manifestly required shall be taken or made without leave.

(3) The Court may stay proceedings under this rule if in its opinion it is not necessary for proceedings to take its full course and may make such consequential orders as it thinks fit.

#### Rule 47—Parties

(1) All the executors or administrators of the estate or trustees of a trust, to which an action referred to in rule 44 relates, shall be parties to the action, and where the action is brought by executors, administrators or trustees; any of them who does not consent to being joined as a plaintiff shall be made a defendant.

(2) Persons who have a beneficial interest in or claim against the estate or have a beneficial interest under a trust to which an action mentioned in rule 44 relates, need not be parties to the action, but the plaintiff may make such of those persons as the plaintiff thinks fit parties, having regard to the nature of the relief claimed in the action.

(3) Where in proceedings under a judgment or order given or made in an action for administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party, other than the executors or the administrators of the estate, shall be entitled to appear in any proceedings relating to the claim without leave of the Court, and the Court may direct or allow any other party to appear either in addition to or in substitution for the executors or administrators on such terms as to costs or otherwise as it considers fit.

#### Limited and Special Grants

##### Rule 48—Lost, Damaged or Unobtainable Wills

(1) Where an original will or codicil is lost, destroyed or damaged, an application may be made to the Court for an order admitting the will to proof as contained in a copy, draft or by parol evidence.

(2) In making an order under subrule (1), the Court may grant probate until the original will or codicil or a more authentic copy is found and proved.

(3) Where a will is unobtainable within the jurisdiction because it is in the custody of a foreign court or official or person resident abroad, duly authenticated copies may be admitted to probate either without limitation or until the original is produced and admitted to probate.

##### Rule 49—Grant to Person with Power of Attorney

(1) Where a person entitled to a grant of letters of administration is resident outside the country, the grant may be made as in Form 41 in the Schedule to the attorney of the person for the person's use and benefit until the person obtains a grant.

(2) Where the person entitled to a grant is an executor, a grant of administration with the will annexed may be made to his or her attorney for the use and benefit of the executor until the executor applies for and obtains probate; provided that a grant shall not be made to the attorney unless notice is given to other executors.

(3) The notice shall be left at the last known address of the executor to be served or sent to that address by registered post.

(4) A power of attorney under this rule shall be as in Form 42 and shall be notarised and deposited in the registry of the Court.

(5) If the power of attorney is in a language other than English, a certified English translation of it shall be annexed to it.

(6) The affidavit in support of the attorney's application for grant shall be accompanied by an office copy of the power of attorney deposited in court under subrule (4).

##### Rule 50—Grant for the use of Minors

(1) Where a person entitled to a grant of probate or letters of administration is under the age of eighteen years a grant shall not be made to the person but to his or her guardian for the child's use and benefit until the child attains full age.

(2) An application by a guardian for a grant for the use and benefit of a child shall be supported by an affidavit as in Form 43 in the Schedule which shall depose to the fact that the person entitled to the grant is under the age of eighteen years and must contain particulars of the estate.

(3) Where a sole executor is a child, his or her guardian may be granted administration with will annexed until the child attains full age when a grant of probate may be made to the person.

(4) The Court may instead of making a grant to a minor's guardian, make a grant to such other person as it considers fit.

(5) Where one of several executors is a child, probate may be granted to any others not with disability provided that the right of the child to a grant shall be reserved on the child attaining full age.

(6) The right of an executor who is a child to probate on attaining the age of eighteen years shall not be renounced by any person on his or her behalf.

#### Rule 51—Persons to whom Grants may be made as Guardians of Children

The persons to whom grants may be made as guardians for the use and benefit of a child are,

(a) the child's parents jointly, include adoptive parents;

(b) a guardian appointed by one of the parents to be the testamentary guardian after that parent's death to act jointly with the surviving parent, but if the surviving parent objects to the testamentary guardian or if the testamentary guardian considers the surviving parent unfit, the surviving parent or testamentary guardian may apply to the Court for directions as to who should act as guardian of the child; or

(c) any guardian appointed by a court of competent jurisdiction in cases where a child has no testamentary guardian or where the guardian has died or refused to act or where the child has no parents or persons with parental rights.

#### Rule 52—Disability grants

(1) Where a person otherwise entitled to a grant is by reason of mental or physical disability unable to manage his or her affairs, a grant may be made for his or her use and benefit during the period of the disability.

(2) A grant of probate shall not be made under subrule (1) unless there are no other persons entitled in the same degree as the person with disability or the Court directs otherwise.

(3) Where one of several executors is under mental or physical disability, a grant of probate may be made to the others.

(4) A grant under subrule (1) or (3) may be made by the Court to a person entitled to the residuary estate or on intestacy, to any person the Court considers fit where the person has an interest in the estate.

(5) Before a grant is made under subrule (1) or (3), medical evidence of incapacity shall be produced to the satisfaction of the Court.

#### Rule 53—Incapacity after Grant

Where a person to whom a grant has been made becomes incapable after the grant, it shall be revoked and a new grant shall be made on the application of any person interested in the estate or any other person as the Court considers fit.

#### Rule 54—Grant in Respect of Person Serving Prison Sentence

(1) A grant shall not be made to a person serving a sentence of imprisonment, however where a person otherwise entitled to a grant is serving a sentence of imprisonment, a grant may be made to his or her attorney for his or her use and benefit, but the Court may appoint another person as administrator in place of the prisoner.

(2) Where a person to whom a grant has been made is sentenced to a term of imprisonment the grant shall be revoked and the Court may make a grant to that person's attorney or to another person as provided in subrule (1)

#### Rule 55—Grant Limited by the Terms of the Will

(1) Where a testator appoints one person as a general executor and another person for a special purpose both may apply for probate.

(2) If the application for probate is made by both executors at the same time, one grant shall be made but the powers of the executors, shall be distinguished.

(3) If an application is first made by one of the executors, a grant may be made to that executor reserving the right of the other executor.

#### Rule 56—Absentee Grant

Where any personal representative to whom a grant has been made resides outside the country, the Court may on the application of any creditor or person interested in the estate of the deceased, make a limited grant until the absent representative returns to the jurisdiction.

#### Rule 57—Grant for the Preservation of the Estate

(1) The Court may make grant for the preservation of the estate of a deceased before those entitled to a grant apply.

(2) The application may be made ex-parte by a creditor or a person who has an interest in the estate of the deceased.

(3) Any grant made under this rule shall be limited only to the collection and receipt of property that forms part of the estate and the doing of such acts as may be necessary for its preservation and until a grant is made to the person entitled.

(4) The Court may make a grant under this rule to the Administrator-General upon application by the Administrator-General.

#### Rule 58—Administration Pendente Lite

(1) After a probate action has been commenced, an application may be made to the Court to grant administration pendente lite in accordance with section 80 of the Administration of Estates Act, 1961 (Act 63).

(2) An application under subrule (1) may be made by one of the parties to the suit or by any person interested in the estate.

(3) The parties may agree on the person to be appointed administrator pendente lite, otherwise the Court shall appoint such persons as it considers fit.

(4) If a person to be appointed as administrator pendente lite is connected with the suit the consent of the parties to the suit shall be sought unless the Court decides otherwise.

(5) A person appointed administrator pendente lite shall submit accounts as in Forms 44 and 45 in the Schedule to the Court for them to be passed at such intervals as the Court may direct, but shall in any case submit an account at the end of each year of administration and upon being discharged.

(6) The account to be submitted under subrule (5) shall consist of an inventory of assets in the hands of the administrator pendente lite and a cash account and shall be verified by affidavit and lodged in the registry of the Court.

(7) An appointment shall be made for the purpose of passing the accounts.

(8) An administrator pendente lite shall give security in such sum and in such manner as the Court shall direct.

(9) An administrator pendente lite shall be entitled to such reasonable remuneration as the Court thinks fit and such remuneration shall be paid out of the estate or the income of the estate and shall be fixed on the taking of accounts.

(10) The Court in fixing remuneration under subrule (9) shall take into account the duration and complexity of the administration, the professional skill, business, knowledge or other qualification of the administrator pendente lite and the total work done by the administrator pendente lite.

(11) The remuneration and charges of an administrator pendente lite and the costs of applying for the appointment of the administrator pendente lite may be paid out of the estate or by the party ordered by the Court to pay the costs of the action.

#### Rule 59—Special Grant in Respect of Unadministered Assets (De-bonis non)

(1) Where all the persons to whom a grant of probate has been made have died without completing administration and the chain of representation has been broken, a grant with the will annexed shall be made in respect of the unadministered assets to those entitled.

(2) Where all the persons to whom a grant of letters of administration has been made have died without completing the administration, the Court shall make a grant in respect of the unadministered assets to those entitled.

(3) The grant shall be as in Form 46 in the Schedule.

#### Rule 60—Second Grants

Where a limited grant is made to one person for the use and benefit of another and that person dies before completing administration, or where the original grant is limited in time or until the happening of an event and the time expires or the event occurs, the Court shall make a re-grant to such person as is entitled to it.

### ORDER 67—ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

#### Rule 1—Application for Redress under Article 33 of the Constitution

A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under article 33 (1) of the Constitution shall submit an application to the High Court.

#### Rule 2—Mode of Submission of Application

(1) The application shall be made to the Court by motion supported by an affidavit signed by the applicant or by the applicant's lawyer and shall contain the following particulars

(a) the full name and address for service of the applicant and the lawyer of the applicant;

(b) the facts upon which the applicant relies;

(c) the relief or remedy sought by the applicant and the grounds on which the applicant seeks the relief or remedy; and

(d) the full name and address for service of any person directly affected by the application.

(2) A copy of the application shall be served on the Attorney-General and such other persons as the Court may direct.

#### Rule 3—Time for Submission of Application

(1) The application shall be submitted to the High Court within

(a) six months of the occurrence of the alleged contravention; or

(b) three months of the applicant becoming aware that the contravention is occurring or is likely to occur.

(2) Notice of the application shall be served on the Attorney-General and all parties named in the affidavit of the applicant as being directly effected.

(3) Notice of the application shall also be served on a person not named in the application if the Court considers it desirable and so orders.

#### Rule 4—Response to Application

(1) The Attorney-General and any other person served with notice of the application shall file an affidavit in answer to the application within twenty-one days of service of the notice on him.

(2) The response shall state the facts and law, if any, on which the respondent relies in support of the respondent's case.

(3) The Court may upon application permit a party to the action to amend the grounds relied upon or to file a further affidavit not later than seven days from the date of grant of the leave.

(4) A party shall supply every other party copies of affidavit to be used at the hearing.

#### Rule 5—Setting down the Application for Hearing

Within twenty-one days of the service of an affidavit in reply to the application, the applicant shall set down the application for hearing and shall give notice to the other parties to the proceedings.

#### Rule 6—Hearing of Application

(1) A party to the proceedings is entitled to call any witness in support of the party's case.

(2) The Court may call any witness whose evidence is in the opinion of the Court likely to be relevant to the proceedings.

(3) The Court may also receive evidence by affidavit.

#### Rule 7—Appearance of Lawyer

The applicant and respondent and any person on whom notice of the application is served is entitled to appear in person or by a lawyer.

#### Rule 8—Court to issue Directions, Orders or Writs

The Court may issue such directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms of the Constitution to the protection of which the applicant is entitled.

#### Rule 9—Appeal against Direction, Order or Writ

A person dissatisfied with a direction, order or writ issued by the Court under rule 8 may appeal to the Court of Appeal and has further right of appeal to the Supreme Court.

#### ORDER 68—PROCEEDINGS TRANSFERRED TO HIGH COURT

#### Rule 1—Papers to be filed

Where an order has been made for the transfer of proceedings to the High Court from any other court and the relevant documents are received in the High Court, the Registrar shall immediately file them and make an entry of the filing in the Cause Book.

#### Rule 2—Parties to be Notified

After filing the documents, the Registrar shall within three days give notice to all parties that the action is proceeding in the High Court and that the defendant is required to file appearance in the action within eight days of service of the notice.

#### Rule 3—Appearance

Within eight days after receiving the notice referred to in rule 2, the defendant shall file appearance in accordance with Order 9 rules 1 to 5 and those rules shall apply as if the proceedings transferred were an action commenced by writ in the High Court.

#### Rule 4—Default of Appearance

If the defendant fails to file appearance within the period prescribed by rule 3, the plaintiffs, may with leave of the Court, enter judgment against the defendant with costs.

#### Rule 5—Application for Directions or Summary Judgment

(1) Where a defendant files appearance in the action, the plaintiff shall within seven days after the appearance is filed, either

(a) file a notice of an application for directions which shall be served on the defendant at least seven days before the day named in the notice for hearing the application; or

(b) make an application under Order 14 rule 1 for summary judgment against the defendant except where the defendant is the Republic.

(2) Where notice of an application for directions is served on the defendant under subrule (1) (a), Order 32 shall, with necessary modifications, apply as if the application were an application for directions under that Order.

### ORDER 69—SERVICE OF FOREIGN PROCESS

#### Rule 1—Service of Foreign Process

(1) This rule applies to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country, where a letter of request from the tribunal requesting service on a person in Ghana of the process sent with the letter, is received by the Minister for Foreign Affairs and is sent to the Judicial Secretary asking that it is desirable that effect should be given to the request.

(2) In order that service of the process may be effected in accordance with this rule, the following documents shall be submitted and, unless the documents are in English, there shall also be submitted translation of them in English

(a) the letter of request; and

(b) two copies of the process to be served.

(3) Subject to subrule (4) and to any enactment which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

(4) The Attorney-General may apply to the Court for an order for substituted service of the process, and where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or attempts to effect service of it have failed, the process server shall file with the Registrar a copy of the process and a copy of an affidavit made by the process server, stating when, where and how he or she did or attempted to effect the service and a statement of the costs incurred in effecting or attempting to effect service.

(6) The Registrar shall send to the Minister for Foreign Affairs a certificate

(a) identifying the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in subrule (5);

(b) certifying that the method of service of the process and the proof of service are as required by these Rules regulating the service of process or that service of the process could not be effected for the reasons specified in the certificate; and

(c) certifying the cost of effecting or attempting to effect service.

#### Rule 2—Service under Civil Procedure Convention

(1) This rule applies to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country, which is a country with which there exists a Civil Procedure Convention that provides for service in Ghana of process of the tribunals of that country, upon receipt of a letter of request by the Judicial Secretary from a consular or other authority of that country requesting service on a person in Ghana of the process sent with the letter.

(2) In order that service of the process may be effected in accordance with this rule, the following documents shall be submitted and, unless the documents are in English, there shall also be submitted translations of them in English

(a) the letter of request; and

(b) two copies of the process to be served.

(3) Subject to any enactment which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

(4) After service of the process has been effected or attempts to effect service of it have failed, the process server shall file with the Registrar an affidavit made by the process server, stating when, where and how he or she did or attempted to do so, and a statement of the costs incurred in effecting or attempting to effect service.

(5) The Registrar shall send to the consular or other authority by whom the request for service was made a certificate certifying

(a) that the process or a copy of the process was served on the person, at the time, and in the manner specified in the certificate or that service of the process could not be effected for the reason specified; and

(b) the costs of effecting or attempting to effect service.

#### Rule 3—Costs to be Certified

A statement of the costs incurred in effecting or attempting to effect service under rule 1 or 2 shall be submitted to the Registrar who shall certify the amount payable in respect of those costs.

#### Rule 4—Certificates

The certificates given by the Registrar under rules 1(6) and 2(5) shall be sealed with the seal of the Court.

#### ORDER 70—OBTAINING EVIDENCE FOR FOREIGN COURTS

##### Rule 1—Application for Order

Subject to rule 2, an application for an order under section 75 of the Courts Act, 1993 (Act 459) shall be made ex-prate by a person duly authorised to make the application on behalf of the Court or tribunal in question and shall be supported by affidavit.

##### Rule 2—Certificate or other Document

There shall be exhibited with the affidavit in support of the letter of request a certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it, the evidence of the witness to whom the application relates or the production of any document and, if that document is not in the English language, a translation of it in that language.

##### Rule 3—Application by Attorney-General

Where a letter of request, a certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained is received by

(a) the Minister for Foreign Affairs, the Minister shall send the request to the Judicial Secretary with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Ghana of any party to the matter pending before the Court or tribunal; or

(b) the Judicial Secretary in pursuance of a Civil Procedure Convention from any person in Ghana, for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of the party,

the Judicial Secretary shall send the document to the Attorney-General, who may make an application for an order under section 75 of the Courts Act, 1993 (Act 459), and take such other steps as may be necessary to give effect to the request.

##### Rule 4—Taking of Examination

(1) Any order made in pursuance of this Order for the examination of a witness may direct the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the Court or before any other qualified person as the Court considers fit.

(2) Subject to any special direction contained in any order made in pursuance of this Order for the examination of a witness, the examination shall be taken in the manner provided by Order 39 rules 4 to 10, and an order may be made under Order 39 rule 14 for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

(3) If the examination is directed to be taken before one of the examiners of the Court, Order 39 rule 13 shall apply in relation to the examination.

##### Rule 5—Dealing with Deposition

Unless any order made under this Order for the examination of a witness otherwise directs, the examiner before whom the examination is taken shall send the deposition of that witness to the Registrar who shall

(a) give a certificate sealed with the seal of the Court identifying the letter of request, the certificate or other document from the court or tribunal outside the jurisdiction requesting the examination, the order of the Court for the examination and the deposition taken in pursuance of the order; and

(b) send the certificate with the documents to the Minister for Foreign Affairs, or, where the letter of request, certificate or other document was sent to the Judicial Secretary by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to that court or tribunal.

## ORDER 71—RECIPROCAL ENFORCEMENT OF JUDGMENTS

### Rule 1—Powers Exercisable by Judge in Chambers

The powers conferred on the High Court by section 82 of the Courts Act, 1993 (Act 459) may be exercised by a Judge in chambers.

### Rule 2—Application for Registration

An application to have a foreign Judgment registered in the High Court under section 82 of the Courts Act, 1993 (Act 459) may be made by motion ex-parte.

### Rule 3—Evidence in Support of Application

(1) An application for registration shall be supported by an affidavit

(a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy of it, and where the judgment is not in English a translation of it in English certified by a notary public or authenticated by affidavit;

(b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as is known to the deponent;

(c) stating to the best of the information or belief of the deponent that

(i) the judgment creditor is entitled to enforce the judgment;

(ii) at the date of the application, the judgment had not been satisfied;

(iii) at the date of the application, the judgment can be enforced by execution in the country of the original court and that if it were registered, the registration would not be set aside under section 83 of the Courts Act, 1993 (Act 459); and

(d) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the application for registration.

(2) Where the sum payable under a judgment sought to be registered is expressed in a currency other than the currency of Ghana, the affidavit shall also state the amount which that sum represents in the currency of Ghana calculated at the appropriate Bank of Ghana rate of exchange prevailing at the date of the judgment.

(3) Where a judgment sought to be registered is in respect of different matters, and some, but not all, or the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit shall state the provisions in respect of which it is sought to register the judgment.

(4) The affidavit shall be accompanied with such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment as may be registered, having regard to the provisions of the legislative instrument made in respect of that country under section 81 (1) of the Courts Act, 1993 (Act 459).

#### Rule 4—Security for Costs

Except as otherwise provided by any relevant legislative instrument, the Court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

#### Rule 5—Order for Registration

(1) An order giving leave to register a judgment shall be drawn up by or on behalf of the judgment creditor.

(2) An order giving leave to register a judgment drawn up as required by subrule (1), shall be served on the judgment debtor unless the Court otherwise directs.

(3) Each order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period, either as originally fixed or as subsequently extended, within which an application to have the registration set aside may be made.

#### Rule 6—Register of Judgments

There shall be kept under the direction of the Judicial Secretary, a register of the judgments ordered to be registered under section 82 of the Courts Act, 1993 (Act 459), and there shall be included in the register particulars of any execution issued on a judgment ordered to be so registered.

#### Rule 7—Notice of Registration

(1) Subject to subrule (2), a notice of the registration of a judgment shall be served on the judgment debtor personally, unless the Court otherwise orders.

(2) Service of such a notice out of the jurisdiction may be effected without leave, and Order 7 rules 5 to 9 shall apply in relation to the notice as they apply in relation to notice of a writ.

(3) The notice of registration shall state

(a) full particulars of the judgment registered and the order for registration;

(b) the name and address of the judgment creditor or of the lawyer of the judgment creditor or agent on whom any notice issued by the judgment debtor may be served;

(c) the right of the judgment debtor to apply to have the registration set aside; and

(d) the period within which an application to set aside the registration may be made.

#### Rule 8—Indorsement of Service

After service of the notice of registration, the notice or a copy of it shall be indorsed by the person who serves it with the day of the week and date on which it is served, and until the notice is so indorsed the judgment creditor may not issue execution on the judgment debtor to whom the notice relates without leave of the Court.

#### Rule 9—Application to set aside Registration

(1) An application to set aside the registration of a judgment shall be supported by affidavit.

(2) The Court hearing the application may order any issue between the judgment creditor and judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered or that it is not just or convenient that the judgment should be enforced in this country or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

#### Rule 10—Issue of Execution

(1) Execution shall not issue on a judgment registered under section 82 of the Courts Act, 1993 (Act 459), until after the expiration of the period which, in accordance with rule 5(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the Court, until after the expiration of that period as extended.

(2) Where an application is made to set aside the registration of a judgment, execution on the judgment shall not issue until after the application is finally determined.

(3) A party who wishes to issue execution of a registered judgment, shall satisfy the Registrar that notice of the registration of the judgment and any other order of the Court in relation to the judgment, has been served on the judgment debtor.

#### Rule 11—Determination of Question

If any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the relevant provisions contained in the legislative instrument made in respect of that country under section 81 (1) of the Courts Act, 1993 (Act 459).

#### Rule 12—Rules to have Effect Subject to Legislative Instrument

The rules of this Order shall, in relation to any judgment registerable under section 82 or any registered judgment sought to be set aside under section 84 of the Courts Act, 1993 (Act 459), have effect subject to any provisions contained in the legislative instrument made under section 81(1) of that Act in respect of the country of the original court, as are declared by the instrument to be necessary to give effect to the agreement made between Ghana and that country in relation to matters with respect to which there is power to make those rules.

#### Rule 13—Certificate Copy of High Court Judgment

(1) An application under section 88 of the Courts Act, 1993 (Act 459) for a certified copy of a judgment entered in the High Court shall be made ex-parte and supported by affidavit.

(2) The affidavit shall

(a) give particulars of the cause or matter in which the judgment was obtained;

(b) have annexed to it a copy of the writ and statement of claim, the evidence of service of it, appearance by the defendant, copies of the other pleadings, if any, and a statement of the grounds on which the judgment was based;

(c) state whether the defendant did or did not object to the jurisdiction, and, if he did, on what grounds;

(d) show that the judgment is not subject to any stay of execution;

(e) state that the time for appealing has expired or the date on which it will expire and in either case whether notice of appeal against the judgment has been filed; and state the rate at which the judgment carries interest.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the Court and endorsed with a certificate signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the High Court of Ghana and that it is issued in accordance with section 88 of the Courts Act, 1993 (Act 459).

(4) There shall also be issued a certificate signed by the Registrar and sealed with the seal of the Court to which shall be attached a copy of the process by which the cause or matter was begun, and stating

(a) the manner in which the originating process was served on the defendant or that the defendant appeared to it;

(b) what objections, if any, were made to the jurisdiction;

(c) what pleadings, if any, were served;

(d) the grounds on which the judgment was based;

(e) whether notice of appeal against the judgment has been entered;

(f) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment; and

(g) the rate at which the judgment carries interest.

#### ORDER 72—FOREIGN MAINTENANCE ORDERS

##### Rule 1—Transmission of Copy of Order of Foreign Court

(1) Where a certified copy of a maintenance order made by a court outside Ghana is transmitted to the Minister responsible for Justice under section 90 (3) of the Courts Act, 1993 (Act 459), the order shall, where it was made by a court of superior jurisdiction, be sent to the Registrar of the Court in the Region in which the defendant is alleged to be living.

(2) A certified copy of a provisional order made by a court of superior jurisdiction outside Ghana and received by the Minister under section 91 (2) of the Courts Act, 1993 (Act 459), shall be sent to the Registrar of the Court, with accompanying documents and a requisition for the issue of summons to the party affected by the order to show cause why the order should not be confirmed.

##### Rule 2—Registration of Orders

The Registrar to whom an order is sent in accordance with rule 1 shall enter it in the register of the Registrar on the date on which it is received, in the same manner as if the order had been made at the Registrar's Court, distinguishing it from the other entries in a convenient manner so as to show that it is entered in pursuance of Sub-Part II of Part V of the Courts Act, 1993 (Act 459).

##### Rule 3—Notice of Confirmation

When an order provisionally made outside the country has been confirmed with or without modification under section 91 of the Courts Act, 1993 (Act 459) by the Court, or when the Court has decided not to confirm it, the Registrar of the Court shall send notice of it to the Court from which it was issued and also to the Minister responsible for Justice.

##### Rule 4—Direction as to Payments

(1) When an order has been registered in the Court under section 90 of the Courts Act, 1993 (Act 459), or a provisional order has been confirmed by the Court under section 91 of that Act, the Court shall, unless satisfied that it is undesirable to do so, direct that all payments due under the order shall be made through an officer of the Court, or such other person as the Court may specify.

(2) The direction may be given without any application, and notwithstanding any other provision of these Rules.

#### Rule 5—Collection of Payment

The person through whom the payments are directed to be made shall collect the moneys due under the order, and may take proceedings in the name of the judgment creditor for enforcing payment, and shall send the moneys when collected to the court from which the order was originally issued.

#### Rule 6—Notice of taking of further Evidence

When a provisional order, made under section 93 of the Courts Act, 1993 (Act 459) has been remitted under subsection (4) of that section to the Court in the Region where the defendant is alleged to be residing, for the purpose of taking further evidence, a notice stating the provisional order shall be sent by the Registrar of the Court to the person on whose application the provisional order is made.

### ORDER 73—ARREST OF ABSCONDING DEFENDANT

#### Rule 1—Defendant leaving the Jurisdiction; Application for Security

(1) A plaintiff may at the institution of an action or at any time before final judgment, make an application ex parte supported by an affidavit to the Court for an order that security be taken for the appearance of the defendant to answer any judgment that may be given against the defendant in the action where the amount involved in the action exceeds ø5 million, and

(a) the defendant has disposed of or removed all or part of the property of the defendant from the country; or

(b) the defendant is about to leave the country.

(2) Where the Court is satisfied that the provisions in paragraph (a) or (b) of subrule (1) have been substantiated and that the execution of any judgment in the action against the defendant is likely to be obstructed or delayed, it may issue a warrant to bring the defendant before the Court to show cause why the defendant should not give good and sufficient bail for the defendant's appearance.

#### Rule 2—Bail for Appearance

Where the defendant fails to show cause, the Court shall order the defendant to give bail for the defendant's appearance at any time while the action is pending until the execution or satisfaction of any judgment that may be given against the defendant in the action, and the surety shall undertake to pay any money that may be adjudged to be paid by the defendant in the action, in default of the appearance of the defendant.

#### Rule 3—Deposit in Lieu of Bail

A deposit of money or other valuable property by the defendant sufficient to satisfy the claim and costs of the action may be accepted by the Court in lieu of bail.

#### Rule 4—Committal in Default of Security or Deposit

Where the defendant fails to furnish security or to provide sufficient security the defendant may

(a) be committed to custody until the determination of the action; or

(b) if the judgment is against the defendant, until the execution of the order if the Court so orders

except that the Court may at any time release the defendant upon reasonable cause being shown and upon terms such as security or other matters of relevance.

#### Rule 5—Court with Jurisdiction

(1) An application under this Order may be made to any court where the defendant may be found and the court may, issue the warrant to detain and bring the defendant before the court and may make such further orders as the court considers just in the circumstances.

(2) Where the warrant is issued by a court other than the Court before which the action is pending, that court shall transmit the application and the evidence to the Court where the action is pending, upon the request of either party to the action.

(3) Where subrule (2) applies, the court transferring the application shall take sufficient security for the appearance of the defendant in that court or send the defendant to the other Court in the custody of an officer of court; and the Court where the action is pending shall deal with the application in accordance with this Order.

#### Rule 6—Cost of Keeping the Arrested Person

(1) The expenses incurred for keeping the arrested person in custody shall be of such sum as shall be determined by the court, and shall be paid by the plaintiff in advance to the prison authority.

(2) Any amount expended under subrule (1) may be recovered by the plaintiff in the action unless the court otherwise orders.

(3) The court may order the release of the person in custody if the plaintiff fails to pay the subsistence expenses or in the case of serious illness, order the removal of the person to a hospital.

#### ORDER 74—COSTS

##### Rule 1—Costs in the Discretion of Court

(1) Subject to this Order the costs of and incidental to proceedings in the Court shall be at the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid.

(2) In any case where the Court considers fit to award costs to any party, the Court may by order direct taxation of the costs of the party and payment or direct payment of the sum in lieu of taxed costs.

##### Rule 2—Assessment of Costs by Court

(1) The amount of Costs to be awarded shall be assessed by the Court.

(2) Before any assessment, the parties or their lawyers may briefly address the Court on the question of costs.

(3) Without prejudice to the powers and discretion of the Court, an award of costs shall ordinarily be designed to

(a) compensate for expenses reasonably incurred and court fees paid by the party in whose favour the award is made; and

(b) provide reasonable remuneration for the lawyer of that party in respect of work done by the lawyer.

(4) In assessing the amount of costs to be awarded to any party, the Court may have regard to

(a) the amount of expenses, including travel expenses, reasonably incurred by that party or that party's lawyer or both in relation to the proceeding;

(b) the amount of court fees paid by that party or that party's lawyer in relation to the proceedings;

(c) the length and complexity of the proceedings;

(d) the conduct of the parties and their lawyers during the proceedings; and

(e) any previous order as to costs made in the proceedings.

(5) When the Court adjudges or orders any costs to be paid, the amount of the costs shall, if practicable, be summarily determined by the Court at the time of making the judgment or order, and shall be stated in the order.

(6) When the Court considers it to be impracticable to determine summarily the amount of any costs which it has adjudged or ordered to be paid, all questions relating thereto may either be determined upon taxation by the Court itself or may be referred by the Court to a taxing officer and be ascertained by the taxing officer and approved by the Court.

#### Rule 3—Stage at which Costs may be Dealt with

(1) Costs may be dealt with by the Court at any stage of proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, require the costs to be paid immediately notwithstanding that the proceedings have not been concluded.

(2) In the case of an appeal, the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal.

(3) In the case of any proceedings transferred or removed to the High Court from any other court, the costs of the whole proceedings, both before and after the transfer or removal, may, subject to any order of the court ordering the transfer or removal, be dealt with by the Court to which the proceedings are transferee or removed.

#### Rule 4 —When a Party is Entitled to Costs without an Order

(1) When the plaintiff's claim is for a liquidated demand only, and the defendant within the time limited for appearance pays the amount claimed to the plaintiff or the lawyer or agent of the plaintiff, the plaintiff shall be entitled, without an order of the Court, to costs of the action.

(2) Where a plaintiff by notice in writing and without leave either wholly discontinues an action against any defendant or withdraws any particular claim made by the plaintiff against any defendant, the defendant shall be entitled, without an order of the Court, to costs of the action or costs occasioned by the matter withdrawn.

(3) Where a defendant by notice in writing and without leave discontinues a counterclaim against any party or withdraws any particular claim made by the defendant against any party, that party shall be entitled, without an order of the Court, to costs of the counterclaim or costs occasioned by the claim withdrawn, incurred up to the time of receipt of the notice of discontinuance or withdrawal.

(4) Where a plaintiff accepts money paid into court in satisfaction of a cause of action, or any of the causes of action, in respect of which the plaintiff claims, or where the plaintiff accepts a sum or sums paid in respect of a loan or the specified causes of action and gives notice that the plaintiff abandons the others, the plaintiff shall be entitled, without an order of the Court, to costs incurred up to the time of receipt of the notice of payment into court.

(5) Where a plaintiff in an action for defamation against several defendants sued jointly accepts money paid into Court by one of the defendants, the plaintiff shall be entitled, without an order of the Court, to costs incurred up to the time of receipt of the notice of payment into Court.

(6) A defendant who has counterclaimed shall be entitled, without an order of the Court, to the costs of the counterclaim if

(a) the defendant pays money into court and in the notice of payment, the defendant states that the defendant has taken into account and satisfied the cause of action in respect of which the defendant counterclaims, and

(b) the plaintiff accepts the money paid in,

but the Costs of the counterclaim shall be limited to those incurred up to the time when the defendant receives notice of acceptance by the plaintiff of the money paid into court.

(7) Notwithstanding subrules (4), (5) and (6), where money paid into court in an action is accepted after the trial or hearing has begun, the party accepting that money shall not, without an order of the Court, be entitled to costs under subrules (4), (5) or (6).

(8) Where under any provision of subrules (1) to (6), or under any other provision of these Rules, a party becomes entitled to any costs without an order of the Court, that party may apply to the Court forthwith for the assessment of the amount of those costs under rule 2, and if the costs are not paid within seven days after assessment the party may sign judgment for that party's assessed costs

#### Rule 5—When Costs follow the Event

(1) Subject to rule 4 and to any other provision of these Rules, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) Where the Court in the exercise of its discretion considers it fit to make an order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except where it appears to the Court that in the circumstances of the case, some other order should be made as to the whole or any part of the costs.

(3) The costs of and occasioned by any amendment made without leave in the originating process or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these Rules, or any direction or order made under it, for serving or filing any document or doing any other act shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 23 refuses or neglects to admit the facts within seven days after the service on the party of the notice, or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by the party, unless the Court otherwise orders.

(6) If a party on whom a list of documents is served under Order 21, or on whom a notice to admit documents is served under Order 23 gives notice of non-admission of any of the documents in accordance with Order 23, the costs of proving that document shall be paid by the party, unless the Court otherwise orders.

#### Rule 6—Special Matters to be taken into Account

The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account

(a) any offer of contribution mentioned in Order 15 rule 10 which is brought to its attention in pursuance of a reserved right to do so; and

(b) any payment of money into court and the amount of the payment.

#### Rule 7—Costs in Probate, Trust and Mortgage issues

(1) Notwithstanding anything in this Order, unless the Court is of the opinion that there was no reasonable ground for opposing a will, no order shall be made for the costs of the other side to be paid

by the party opposing a will in a probate action if the defendant has given notice with the defence to the party setting up the will that the defendant insists upon the will being proved in solemn form so as to cross-examine the witnesses produced in support of the will.

(2) Where a person is or has been a party to any proceedings in the capacity of a trustee, personal representative or a mortgagee, the person shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee, personal representative or the mortgagee, and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, has in substance acted for the benefit of the trustee, personal representative or mortgagee rather than for the benefit of the fund.

#### Rule 8—Costs Arising from Misconduct or Neglect

(1) Where in any proceedings anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed, and that any costs occasioned by it to the other parties shall be paid by the defaulting party to them.

(2) Without prejudice to the generality of subrule (1), the Court shall for the purpose of that subrule have regard in particular to the following matters

- (a) the omission to do anything which if done would have saved costs;
- (b) the doing of anything calculated to occasion unnecessary costs; and
- (c) any unnecessary delay in the proceedings.

#### Rule 9—Personal Liability of Lawyer for Costs

(1) Where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any lawyer whom it considers to be responsible, whether personally or through a servant or agent, an order disallowing the costs as between the lawyer and the client of the lawyer and

- (a) direct the lawyer to repay to the client costs, which the client has been ordered to pay to the other party in the proceedings; or
- (b) direct the lawyer personally to indemnify the other party against costs payable to that party.

(2) No order under this rule shall be made against a lawyer unless the lawyer has been given a reasonable opportunity to appeal before the Court to show cause why the order should not be made.

(3) The Court may give the lawyer a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the lawyer

- (a) fails to attend in person or by a proper representative;
- (b) fails to deliver any document for the use of the Court, which ought to have been delivered or ought to have been prepared with any proper evidence or account; or
- (c) otherwise fails to proceed.

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

#### Rule 10—Set-off

A set-off for costs between parties to the proceedings may be allowed notwithstanding any lawyer's lien for costs in those proceedings.

#### Rule 11—Recovery of Costs

(1) Where the amount of any costs has been assessed by the Court, payment of that amount may, subject to subrule (2) be enforced in the same manner as a judgment or order for the payment of money.

(2) No steps shall be taken to enforce the payment of costs

(a) until seven days after the date on which the amount of those costs is assessed by the Court; or

(b) where an application for review is made under rule 12, until that application is determined.

#### Rule 12—Review

(1) Where the Court awards costs, or declines or fails to award costs, any party aggrieved by the award or failure or refusal of the Court to award costs to the party may, within fourteen days after the date of such award or failure or refusal, apply to the Court to review its decision.

(2) Where the Court assesses the amount of any costs, any party aggrieved by the assessment on the ground that

(a) the amount assessed in favour of that party is inadequate; or

(b) the amount assessed against that party is excessive,

may, within fourteen days after the date of such assessment, apply to the Court to review its decision.

(3) The application under subrule (1) or (2) shall be supported by an affidavit of the applicant or the lawyer of the applicant setting out

(a) the decision of which a review is sought;

(b) the reasons why the review is sought;

(c) any facts considered to be relevant in support of the application; and

(d) the new order sought on the review.

(4) Any relevant receipts or other documents referred to in the affidavit shall be exhibited to that affidavit.

(5) Notice of the application, together with a copy of the affidavit and any exhibited documents, shall be served on every other party to the proceedings.

(6) Within seven days after receipt of the notice and accompanying affidavit, any other party to the proceedings may file in the registry, and serve on the applicant, an affidavit by way of answer to the affidavit of the applicant, but except as aforesaid, no subsequent affidavits shall be filed or served.

(7) Within twenty-one days after the date of the decision of the Court which is sought to be reviewed, the applicant may obtain an appointment for the attendance of the parties before the Court for the hearing of the application, and a day and time for their attendance shall be fixed by a notice sealed with the seal of the registry.

(8) Not less than four clear days before the day fixed by notice under subrule (7) for the hearing of the application, the applicant shall serve that notice on every other party.

(9) At the time fixed for hearing, the Court shall proceed to hear the application in the presence of such of the parties as attend or their lawyers.

(10) At the hearing the Court may, after considering the affidavit and any documents annexed either

(a) dismiss the application, giving reasons; or

(b) review any previous order of the Court relating to costs, and make such new orders as may be just for the purpose of ensuring that all matters in controversy with respect to the costs of the proceedings are finally disposed of.

(11) Order 42 shall not apply to proceedings under this rule.

#### ORDER 75—LAWYERS

##### Rule 1—Change and Appointment of Lawyer

(1) A party represented by a lawyer may, subject to rule 2, change the lawyer at any time.

(2) A party represented by a lawyer may subject to rule 2, discharge the lawyer at any time and proceed to act in person.

(3) A party who acts in person may at any time appoint a lawyer to act in the cause or matter on the party's behalf.

##### Rule 2—Status of Former Lawyer

Unless and until a change or a discharge of a lawyer under rule 1 (1) or (2) is notified in accordance with rule 3, the former lawyer shall subject to rules 5 and 6, be considered the lawyer of the party until the conclusion of the cause or matter in the Court.

##### Rule 3—Notice of Change of Representation

(1) Where a party changes the party's representation under rule 1(1), (2) or (3), the party or the lawyer, if any, shall

(a) file a notice of the change at the registry of the appropriate Court; which notice shall indicate the number and the date of the current practising licence of the lawyer; and

(b) send a copy of the notice, endorsed with a statement that the notice has been duly filed in the registry, to the former lawyer, if any, and to every other party who is not in default as to filing of appearance.

(2) A notice of intention to act in person shall contain an address for service of the party giving the notice.

##### Rule 4—Notice of change of Agent Lawyer

A lawyer for whom another lawyer is acting as agent may change the lawyer so acting and shall

(a) file a notice of the change in the registry of the appropriate court; and

(b) send a copy of the notice, endorsed with a statement that the notice has been duly filed in the registry, to the former agent lawyer and to every party to the cause or matter, not being the party for whom the lawyer is acting or a party in default as to filing of appearance.

##### Rule 5—Removal of Lawyer from Record

(1) Where

(a) a lawyer who acts for a party in a cause or matter dies or becomes bankrupt or cannot be found or fails to take out a practising certificate or has been struck off the Roll of Lawyers or has been suspended from practising or has for any other reason ceased to practise; and

(b) the party has not given notice of change of lawyer or notice of intention to act in person in accordance with rule 3,

any other party to the cause or matter may apply to the Court for an order declaring that the lawyer has ceased to be the lawyer acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.

(2) Notice of an application for an order under this rule shall, unless the Court otherwise directs, be served on the party whose lawyer the application relates.

(3) The application shall be supported by an affidavit stating the grounds for the application.

(4) Where the Court makes an order under this rule, the Registrar shall immediately notify every party to the cause or matter, who has filed an appearance, of the making of the order.

(5) An order made under this rule shall not affect the rights of the lawyer and the party for whom the lawyer acted as between themselves.

#### Rule 6—Withdrawal of Lawyer who has ceased to act for Party

(1) Where a lawyer who acts for a party in a cause or matter ceases so to act and the party does not give notice of change of lawyer or notice of intention to act in person in accordance with rule 3, the lawyer may apply to the Court to make an order accordingly.

(2) Notice of an application for an order under this rule shall, unless the Court otherwise directs, be served on the party for whom the lawyer acted.

(3) The application shall be supported by an affidavit stating the grounds of the application.

(4) Where the Court makes an order under this rule, the Registrar shall immediately notify every party to the cause or matter, who has filed an appearance, on the making of the order.

(5) An order made under this rule shall not affect the rights of the lawyer and the party for whom the lawyer acted as between themselves.

#### Rule 7—Address for Service of Party whose Lawyer is Removed

Where an order is made under rule 5 or 6, then unless and until the party whose lawyer or to whom the order relates, gives notice of the appointment of another lawyer or of the party's intention to act in person in accordance with rule 3, his last known address or, where the party is a body corporate, its registered or principal office, shall be declared to be the address for service on the party of any document not required to be served personally.

#### Rule 8—Lawyer may be Ordered to Deliver Cash Account, Documents

(1) Where the relationship of lawyer and client exists or has existed, the Court may, on the application of the client or the client's personal representative, make an order for

(a) the delivery by the lawyer of a cash account;

(b) the payment or delivery by the lawyer of money, securities or documents and papers:

(c) the delivery to the client of a list of the moneys or securities which the lawyer has in his or her possession or control on behalf of the client; and

(d) the payment into or lodging in court of any such moneys or securities.

(2) An application for an order under this rule shall be made by motion with notice to the lawyer concerned.

(3) If the lawyer alleges that he or she has a claim for costs, the Court may make such order as it considers fit for the assessment and payment or securing the payment of the costs and the protection of the lawyer's lien, if any.

#### ORDER 76—REGISTRARS AND BAILIFFS

##### Rule 1—Cause Lists to be kept

Every Registrar shall, subject to the supervision and direction of the Chief Justice, prepare and maintain lists of causes or matters to be tried at the sittings of the Court, which shall be known as the General Cause List, the Short Cause List, Master's List and the Referee's List.

##### Rule 2—Power to Administer Oath

A Registrar has authority to administer oaths and take affidavits for the purpose of proceeding in the Court.

##### Rule 3—Custody of Money in Court

(1) When money is paid into or deposited in court, the Registrar shall immediately give a receipt from the counterfoil receipt book, and shall pay the money into the bank account of the Court.

(2) Upon receipt of the paying-in-slip from the bank, the Registrar shall forward the slip to the Controller and Accountant-General's Department.

(3) The Controller and Accountant-General shall comply with any direction in writing that he or she may receive from the Court in respect of the money and shall, on compliance with any such direction, be free and exonerated from any liability on account of or relating to that money.

(4) Any money paid into court may at any time, by order of the Court, be placed in the Bank of Ghana in an interest yielding account and any money paid into the bank under subrule (1) may at any time on the direction of the Court, be placed by the Registrar in the name "The Registrar of the High Court" in an interest yielding account in the Bank of Ghana.

(5) The interest on any money placed in the Bank of Ghana under subrule (4) shall be paid and dealt with as the Court may direct.

##### Rule 4—Custody of other Goods in Court

When anything other than money is deposited in court, the Registrar shall keep it in safe custody until the person entitled to it withdraws it, or until the Court gives directions to the Registrar as to its disposal.

##### Rule 5—Bailiff to make Returns

(1) At the end of every month, each bailiff shall make a full return to the Registrar of writs of execution which remained in the bailiff's hands not fully executed at the end of the preceding month, and of writs entrusted to the bailiff for execution during the past month, and shall set against each writ a statement of what has been done under it.

(2) The returns stated above shall be in such form as the Judicial Secretary may direct.

(3) The Registrar shall examine the returns and be satisfied, that they are correct.

(4) On completing the examination of each return the Registrar shall certify that the Registrar has examined the return in accordance with this rule.

## ORDER 77—PRODUCTION OF HIGH COURT DOCUMENTS

### Rule 1—Application of Order

Where a document filed in the registry or in the custody of the Registrar or any High Court is required to be produced to any other High Court or to a Circuit Court or a District Court, it shall not be necessary for an officer of the High Court, whether served with a subpoena in that behalf or not, to attend for the purpose of producing the document, but the document may be produced to the other court in accordance with this Order.

### Rule 2—Request for Production

(1) A Court or any party who requires any document filed in the registry of the Court to be produced in a court other than the court in which the action was commenced, shall deliver a request for that document from the Registrar of the court which requires the produce on to the Registrar of the Court.

(2) On receipt of the request the Registrar shall submit it to the Judge in chambers who may direct that the request be complied with.

(3) Before giving such direction the Judge in chambers may, if the Judge thinks fit, require to be satisfied that the request is made in good faith and that the document is required to be produced as stated.

(4) The Judge in chambers giving the direction may also, if the Judge thinks fit, require that before the document is sent, an office copy should be made and filed in the registry at the expense of the party requiring the document to be produced.

### Rule 3—Sending of Document, Certificate

(1) After the Registrar has received the direction of the Judge in chambers, the Registrar shall send the document by hand delivery or registered post to the Court, or Judge as directed in the request.

(2) The Registrar shall enclose an envelope addressed to the Registrar with the document to be used by the Court or Judge to return the document to the Registrar.

(3) The Registrar shall also enclose a certificate and a covering letter to the Court or Judge.

(4) The certificate shall refer to the order and contain a description of the document stating at whose request and for what purpose the document is sent.

(5) The covering letter shall contain a request that the document be returned to the Registrar as soon as practicable in the enclosed self addressed envelope when its use is no longer required.

### Rule 4—Safe Custody and Return of Documents

It is the duty of the Court to which the document is sent under this Order to keep it in safe custody, and to return it by hand delivery or registered post to the Registrar of the Court by whom it is sent, as soon as the receiving court no longer requires it.

### Rule 5—Records to be kept

(1) The Registrar of the court from which documents are sent pursuant to this Order shall keep a record containing a description of each document sent, the date when it is sent, the Court to which it is sent and the date of its return.

(2) It is the duty of every Registrar to see that each document is duly returned within a reasonable time and to make enquiries and report to the Judge in chambers as to any document which is not so returned, so that steps may be taken to ensure its return.

### Rule 6—Attendance of Registrar

Notwithstanding the preceding rules of this Order, the Judge in chambers may in any particular case in which there is sufficient reason for doing so, require that the Registrar shall attend the Court for the purpose of producing the document.

#### ORDER 78—PAPER, PRINTING, NOTICES AND COPIES

##### Rule 1—Quality and Size of Paper

Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Court shall be on foolscap or quarto size paper.

##### Rule 2—Printing and Writing

(1) Except where these Rules otherwise provide, every document prepared by a party for use in the Court shall be produced

(a) by printing;

(b) by writing, which shall be clear and legible; or

(c) by typewriting

and may be produced partly by one of those means and partly by another or others.

(2) For the purposes of these Rules a document is printed if it is produced by type lithography or stencil duplicating or computer printing.

(3) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these Rules as if it were printed, written or typewritten, as the case may be.

##### Rule 3—Notices

(1) In any case where a notice is required to be published, it may be published by advertisement in the Gazette unless otherwise provided in any particular case by any of these Rules or otherwise ordered by the Court.

(2) A notice required by these Rules may not be given orally except with leave of the Court.

##### Rule 4—Copies of Documents for other Party

(1) Where a document prepared by a party for use in the Court is printed, the party by whom it is prepared shall on receiving a written request from any other party entitled to a copy of that document and on payment of the relevant charges, supply the party with such number of copies of it as may be specified in the request.

(2) Where a document prepared by a party for use in the Court is written or typewritten, the party by whom the document is prepared shall supply any other party entitled to a copy of the document but who has not been served with the document with one copy of the document and, where the document in question is an affidavit, of any document exhibited to it.

(3) The copy referred to in subrule (2) shall be ready for delivery within three days after a written request for it, together with an undertaking to pay the proper charges, and shall be supplied thereafter on payment of those charges.

##### Rule 5—Requirement as to Copies

(1) Each copy of a document, whether an office copy or a copy supplied to a party under these Rules, shall show on the indorsement the number of pages it contains.

(2) Before a copy of a document is supplied to a party under these Rules, it shall be indorsed with the name and address of the party or lawyer by whom it is supplied.

(3) The party by whom a copy is supplied under rule 4 or, if the party sues or appears by a lawyer, the party's lawyer, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

#### ORDER 79—SITTINGS, OFFICE HOURS AND VACATIONS

##### Rule 1—Days and Hours of Sittings

(1) Subject to the Courts Act, 1993 (Act 459) as amended, the Chief Justice may appoint any day including vacations for the hearing of causes or matters as circumstances require.

(2) The sittings of the Court shall be for such hours as the Chief Justice shall direct.

##### Rule 2—Order of Business

Subject to special arrangements for any particular day, the business of the day shall be taken as nearly as circumstances permit in the following order

(a) at the commencement of the sitting, judgments shall be delivered in matters standing over for the purpose;

(b) motions shall be taken in the order in which they stand in the motion list; and

(c) the causes or matters on the cause list shall then be called on in their order unless the Court sees fit to vary the order.

##### Rule 3—Office Hours

(1) The offices of the Court shall, subject to subrule (2), be open to the public on every day of the year for such hours as the Chief Justice shall direct.

(2) Except as otherwise directed by the Chief Justice, the offices of the Court shall be closed on Saturdays, Sundays and public holidays.

##### Rule 4—Vacations

Subject to rule 1 (1) the following periods shall be observed in the High Court as vacations

(a) the period commencing on the Tuesday immediately following Easter Monday in each year and ending on the Friday immediately following;

(b) the period commencing on 1st August in each year and ending on 30th September in the year; and

(c) the period commencing on 23rd December in each year and ending on 6th January in the next year.

#### ORDER 80—TIME

##### Rule 1—Reckoning periods of time

(1) Any period of time fixed by these Rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with this rule.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins to run immediately after that date.

(3) Where the act is required to be done within or not later than a specified period before a specified date, the period ends immediately before that date.

(4) Where the act is required to be done a specified number of clear days before or after a specified date, at least that number of days shall intervene between the day on which the act is done and that date.

(5) Where, apart from this rule, the period in question is a period of seven days or less and would include a Saturday, Sunday or a public holiday, that day shall be excluded.

#### Rule 2—Vacations not Generally to be Reckoned in time for Service of Pleadings

Unless the Court otherwise directs, the times of the vacations in any year shall be excluded in reckoning any period prescribed by any enactment, these Rules or by any order or direction for serving, filing or amending a pleading.

#### Rule 3—Non-working days

Where the time prescribed by these Rules or by any judgment, order or direction, for doing any act at an office of the Court expires on a day on which that office is closed, and for that reason that act cannot be done on that day, the act shall be in time if done on the next day on which that office is open.

#### Rule 4—Extension or Reduction of time

(1) The Court may, on such terms as it thinks just, by order extend or reduce the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any cause or matter.

(2) The Court may extend any such period although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these Rules, or by any order or direction, to serve, file or amend a pleading or other document may be extended by consent (given in writing) without any order of the Court being made for that purpose.

#### Rule 5—Definition of Month

Without prejudice to section 23 of the Interpretation Act, 1960 (C.A. 4) in its application to these Rules, the word "month", where it occurs in any judgment, order, direction or other document that forms a part of any cause or matter in the Court, means a calendar month unless the context otherwise requires.

### ORDER 81—EFFECT OF NON-COMPLIANCE WITH RULES

#### Rule 1—Non-Compliance with Rules not to Render Proceedings Void

(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall not be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order in it.

(2) The Court may, on the ground that there has been such a failure as stated in subrule (1), and on such terms as to costs or otherwise as it considers just

(a) set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein; or

(b) exercise its powers under these Rules to allow such amendments to be made and to make such order dealing with the proceedings generally as it considers just.

#### Rule 2—Setting aside for Irregularity

(1) An application may be made by motion to set aside for irregularity any proceedings, any step taken in the proceedings or any document, judgment or order in it, and the grounds of it shall be stated in the notice of the application.

(2) No application to set aside any proceeding for irregularity shall be allowed unless it is made within a reasonable time and the party applying has not taken any fresh step after knowledge of the irregularity.

### ORDER 82—SUPPLEMENTARY AND MISCELLANEOUS PROVISIONS

#### Rule 1—Matters not Provided for

Where in respect of any matter of procedure, no provision is made by these Rules, the practice for the time being in force in any common law country may where convenient be applied.

#### Rule 2—Forms

(1) The forms contained in the Schedule to these Rules shall be used with such modifications as the circumstances of any particular case require.

(2) Where no form is provided in the Schedule to these Rules, the Judicial Secretary with the approval of the Chief Justice may authorise the use of a suitable form.

#### Rule 3—Interpretation

In these Rules unless the context otherwise requires

"action" means a civil proceeding commenced by writ or in such other manner as may be prescribed by these Rules or by any other enactment;

"address" means address for service in this country;

"airmail" includes international courier service;

"Cause Book" means the book kept in the Registry in which the number and other details relating to any proceedings are entered;

"Court" means the High Court or any one or more Judges of it, whether sitting in Court or in chambers and the Circuit Court when exercising jurisdiction in civil proceedings;

"court below" means the Court or body from which an appeal or other cause or matter is brought;

"General Cause List" means a list of all causes or matters, other than causes or matters on the Short Cause List, prepared by the Registrar with the approval of the Chief Justice;

"Ghana consul" means a Consular officer of the Republic of Ghana or anyone appointed to perform the functions of such office;

"interlocutory decision" means a decision which is not a final decision in any cause or matter;

"Judge" includes Chairman of a Regional Tribunal and a Circuit Judge;

"Judgment" includes any order, ruling or decree of the Court;

"lawyer" means a person whose name has been entered in the Roll of Lawyers to practise in Ghana and does not include a lawyer for the time being suspended from practice;

"officer" means an officer of the Court;

"out of the jurisdiction" means out of the jurisdiction of the Court;

"pleading" means the formal allegations by the parties to a law suit of their respective claims and defences with the intended purpose of providing notice of what is to be expected at the trial;

"Registrar" includes the Judicial Secretary and the Deputy Judicial Secretary and the Registrar of the Court;

"registry" means the registry of the Court;

"Schedule" means the Schedule to these Rules;

"Short Cause List" means a list of causes or matters prepared by the Registrar with the approval of the Chief Justice where any cause or matter on it is to be tried by a Judge alone and the time estimated for the trial does not exceed three days;

"signature" includes a thumb-print and a mark;

"term" means any period between vacations when the High Court is in session,

"writ" includes a writ of summons and statement of claim or a petition in a cause or matter.

#### Rule 4—Commencement of operation of Rules

The operation of these Rules shall take effect from .....

#### Rule 5—Application of L.I. 1515

On the date of the coming into operation of these Rules, the Probate and Administration Rules 1991 (L.I. 1515) shall cease to apply to probate and administration of estates causes and matters in the High Court and Circuit Court but shall continue to apply in the District Court.

#### Rule 6—Revocation

The coming into operation of these Rules revokes the following Instruments—

High Court (Civil Procedure) Rules, 1954 (L.N. 140A);

High Court (Civil Procedure) (Amendment) Rules, 1958 (L.N. 93);

High Court (Civil Procedure) (Amendment) (No.2) Rules, 1958 (L.I. 208);

High Court (Exchange Control) (Amendment) Rules, 1961 (L.I. 131);

High Court (Civil Procedure) (Amendment) Rules, 1963 (L.I. 241);

High Court (Civil Procedure) (Amendment) Rules, 1963 (L.I. 248);

High Court (Civil Procedure) (Legal Vacation) (Amendment) Rules, 1967 (L.I. 548);

High Court (Civil Procedure) (Amendment) Rules, 1975 (L.I. 1001);

High Court (Civil Procedure (Amendment) Rules, 1977 (L.I. 1107);

High Court (Civil Procedure) (Amendment) (No.2) Rules, 1977 (L.I. 1129);

Fundamental Human Rights Enforcement (Procedure) Rules, 1971 (C.I. 21);

High Court (Civil Procedure) (Amendment) Rules, 1981 (C.I. 18).

SCHEDULE

FORM 1

WRIT OF SUMMONS

(Order 2 rule 3(1))

DATE SUIT No.

IN THE HIGH/CIRCUIT COURT OF JUSTICE

BETWEEN

\*Name of plaintiff Plaintiff

AND

\*\*Name of defendant Defendant

TO

AN ACTION having been commenced against you by the issue of this writ by the above-named plaintiff.

YOU ARE HEREBY COMMANDED that within EIGHT DAYS after service of this writ on you inclusive of the day of service you do cause an appearance to be entered for you.

AND TAKE NOTICE that in default of your so doing, judgment may be given in your absence without further notice to you.

Dated this day of (month) (year)

Chief Justice of Ghana

\*State name, place of residence or business address of plaintiff if known (not P.O. Box number).

\*\*State name, place of residence or business address of defendant (not P.O. Box number).

NB: This writ is to be served within twelve calendar months from the date of issue unless, it is renewed within six calendar months from the date of that renewal.

The defendant may appear hereto by filing a notice of appearance either personally or by a lawyer in Form 5 at the Registry of the Court of issue of the writ at A defendant appearing personally may, if he desire give notice of appearance by post.

STATEMENT OF CLAIM

The Plaintiff's claim is for:

This writ was issued by

whose address for service is

Agent for

Address Number and date of lawyer's current licence.

Lawyer for the plaintiff who resides at

.....

Indorsement to be made within 3 days after service

This writ was served by me at

on the defendant

on the day of

endorsed the day of

Signed.....

Address.....

NOTE: If the plaintiff's claim is for a liquidated demand only, further proceedings will be stayed if within the time limited for appearance the defendant pays the amount claimed to the plaintiff, his lawyer or his agent or into court as provided for in Order 2 rule 3(2).

FORM 2

NOTICE TO PARTNER OR MANAGER WHEN SERVED WITH WRIT

(Order 6 rule 2 (4))

[Title as in action]

TAKE NOTICE that the writ served herewith is served on you as a partner in the above-named defendant firm of

[or as the person having the control or management of the partnership business or the above-named defendant firm or if the manager is also a partner add: and also as partner in the said firm.]

Dated at the day of

Signed

Lawyer for the plaintiff

The Registrar

High/Circuit Court

And to:

FORM 3

NOTICE OF WRIT OF SUMMONS TO BE SERVED OUT OF THE JURISDICTION

(Order 8 rule 1 (2))

[Title as in action]

TO

TAKE NOTICE that of has begun an action

against you, in the Court of justice in Ghana by a writ of summons dated the day of which writ is indorsed as follows:

[copy the endorsement]

and you are required within days after receipt of this notice, inclusive of the day of receipt, to cause an appearance to be entered for you in the Court to the said action, and in default of your so doing the Court may proceed therein and judgment may be given in your absence.

You may enter an appearance in person or by a lawyer either by handing in appropriate forms, duly completed, at the registry of the Court or by sending them to that office by post.

If you enter an appearance, then, unless a summons for judgment is served on you on the meantime, you must also serve a defence on the lawyer for the plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against you without notice.

Dated at the day of

Signature of party or his lawyer

NOTE: The directions in the above "copy the indorsement" should be carefully and fully followed including the heading "indorsement". Failure to comply with this direction may render the notice irregular.

FORM 4

REQUEST FOR SERVICE ABROAD

(Order 8 rule 7 (1) (a))

[Title as in action]

I hereby request that a notice of the Writ of Summons or [as the document may be described] in this action be sent through the proper channel to [name of country] for service on [name of party]

at or elsewhere in [name of city/town] and that it may be served through

[here insert the method of service provided by Order 8 or 6, which is desired, i.e. through the foreign government, or the foreign judicial authority or the Ghana consular authority if two methods are available, service by both methods may be inserted as alternatives].

I hereby undertake to be responsible personally for all expenses incurred by the Minister for Foreign Affairs in respect of the service requested and on receiving due notification of the amount of those expenses, to pay that amount to the Registrar of the Court or to the proper officer of the Court for transmission to the Minister for Foreign Affairs.

Dated at the day of

Signature of party or his lawyer

The Registrar

High/Circuit Court

FORM 5

NOTICE OF APPEARANCE

(Order 9 rule 3(1))

DATE SUIT No.

IN THE HIGH/CIRCUIT COURT OF JUSTICE

BETWEEN

Plaintiff

AND

Defendant

TAKE NOTICE that the defendant hereby enters appearance to the plaintiff's writ and that his address for service is as follows:

Dated at this day of

Signature of Defendant

The Registrar

High/Circuit Court

And to: The plaintiff or his lawyer

(Address)

\*[State place of residence or business of defendant in Ghana or where defendant has no place of residence in Ghana address of place in Ghana to which documents for him may be delivered or sent by hand]

FORM 5A

NOTICE OF APPEARANCE

(Order 9 rule 3(1))

DATE SUIT No.

IN THE HIGH/CIRCUIT COURT OF JUSTICE

BETWEEN

Plaintiff

AND

Defendant

\*TAKE NOTICE that the defendant hereby enters appearance by his lawyer whose address for service is as follows:

Number and date of lawyer's current licence:

Date at this day of

Signature of lawyer

The Registrar

High/Circuit Court

And to: The plaintiff or his lawyer

(Address)

[State business address of lawyer.]

Certificate

I Registrar of the Court

certify that appearance to the plaintiff's writ was entered on behalf of the defendant on this day of

Signature

Registrar

High/Circuit Court

FORM 6

THIRD PARTY NOTICE CLAIMING CONTRIBUTION OR INDEMNITY OR OTHER RELIEF OR  
REMEDY

(Order 15 rule 2(2))

[Title as in action]

THIRD PARTY NOTICE

Issued pursuant to the order of dated the day of

TO of in the of

TAKE NOTICE that this action has been brought by the plaintiff against the defendant.

In it the plaintiff claims against the defendant

[here state the nature of the plaintiff's claim as appears from the writ of summons] [or originating summons] a copy of which is served herewith [together with a copy of the statement of claim].

The defendant claims against you:

[here state the nature of the claim against the third party]

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, an appearance must be entered on your behalf within 8 days [or if the notice is to be served out of the jurisdiction insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction] after the service of this notice on you, inclusive of the day of service otherwise you will be deemed to accept the plaintiff's claim against

the defendant and the defendant's claim against you your liability to indemnify the defendant or to contribute to the extent claimed

[state the relief or remedy sought] and you will be bound by any judgment or decision given in the action and the judgment may be enforced against you in accordance with Order 15 of the High Court (Civil Procedure) Rules, 2003.

Dated at the day of

Signed

Defendant or his lawyer

The Registrar

High/Circuit Court

And to:

FORM 7

NOTICE OF PAYMENT INTO COURT

(Order 18 rule 1(3))

[Title as in action]

TAKE NOTICE that the defendant has paid the sum of

¢ into court.

The said ¢ is in satisfaction of [state cause of action] in respect of which the plaintiff claims.

OR

The said ¢ is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely

OR

The said ¢ is enough to satisfy the plaintiff's claim [for and the other part of the sum is enough to satisfy the plaintiff's claim for ]

Dated at the day of

Signed

Defendant or his lawyer

The Registrar

High/Circuit Court

And to:

FORM 8

NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT

(order 18 rule 3 (1))

[Title as in action]

TAKE NOTICE that accepts the sum of  $\phi$

paid in by in satisfaction of the cause(s) of action in respect of which it was paid in respect of which the [plaintiff claims against the defendant or the defendant claims against plaintiff] and abandons the other cause(s) of action in respect of which he claims in this action.

Dated at the day of

Signed

Party or his lawyer

The Registrar

High/Circuit Court

And to:

FORM 9

NOTICE OF PAYMENT INTO COURT BY PLAINTIFF IN SATISFACTION OF COUNTERCLAIM

(Order 18 rule 6 (2))

[Title as in action]

TAKE NOTICE that the plaintiff has paid the sum of  $\phi$  into court.

The said  $\phi$  is in satisfaction of [state cause of action] in respect of which the defendant counterclaims.

OR

The said  $\phi$  is in satisfaction of the following causes of action in respect of which the defendant counterclaims, namely

OR

of the said  $\phi$   $\phi$  is in satisfaction of the defendant's cause(s) of action for  $\phi$  and is in satisfaction of the defendant's cause(s) of action for

Dated at the day of

Signed

Plaintiff or his lawyer

The Registrar

High/Circuit Court

And to:

FORM 10

GENERAL FORM OF INTERROGATORIES

(Order 22 rule 1 (2))

[Title as in action]

### INTERROGATORIES

On behalf of the above-named [plaintiff] or [defendant] for the examination of the above-named [defendant] or [plaintiff] pursuant to the order herein dated the day of

1. Did you? [Here set out the interrogatories in the form of concise questions, each interrogatory to be set out in a separate paragraph and numbered consecutively.]

2. Did you not?

3. (a) Were you?

3. (b) If not, were you not?

[The defendant is required to answer the interrogatories numbered ]

[ a director or as the case may be of the defendant is required to answer the interrogatories numbered].

Dated at the day of

Signed

Party or his lawyer

The Registrar

High/Circuit Court

And to the above-named [defendants] [plaintiffs] or their lawyer.

FORM 11

### GENERAL FORM OF ANSWER TO INTERROGATORIES

(Order 22 rule 1(2))

[Title as in action]

THE ANSWER of the [defendant] or [plaintiff] to the interrogatories for [its] or [his/her] examination by the above-named [plaintiff] or [defendant] pursuant to the order herein dated the day of

In answer to the said interrogatories, [I, of [state residence] and of [state residence], severally or I, the above-named plaintiff of [state residence] make oath and say as follows:

1. To the 1st interrogatory, namely [state in full the interrogatory] that [state the answer]

2. To the 2nd interrogatory, namely [state in full the interrogatory] that [state the answer]

3. To the 3rd interrogatory, namely [state in full the interrogatory] that I object to answer it on the ground that [state the ground of objection]

Sworn at on the day of

Before me

FORM 12

REQUEST TO ADMIT FACTS

(Order 23 rule 2 (1))

[Title as in action]

TAKE NOTICE that the plaintiff [or defendant] in this action requires the [defendant] or [plaintiff] to admit for the purposes of this action only, the several facts respectively hereunder specified; and the [defendant] or [plaintiff] is hereby required within 14 days from the service of this request, to admit the said several facts, saving in this action all just exceptions to the admissibility of such facts as evidence in this action.

The facts the admission of which is required, are:

1. That John Sam died on (date)
2. That he died testate.
3. That James Sam was his only lawful son.
4. That Julius Sam died on (date)
5. That Julius Sam was never married.

Dated at the day of

Signed

Party or his lawyer

The Registrar

High/Circuit Court

And to the above-named party or his lawyer.

FORM 13

RESPONSE TO REQUEST TO ADMIT FACTS

(Order 23 rule 3(1))

[Title as in action]

The defendant [or plaintiff] in this action, for the purposes of this action only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this action.

Facts admitted Qualifications or Limitations if any, subject to which they are admitted

1. That John Sam died on 1.
2. That he died testate 2.
3. That James Sam was his lawful son 3. But not that he was his only lawful son

4. That Julius Sam died on 4. But not that he died on

5. That Julius Sam was never married 5.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion, or by any one other than the plaintiff [or defendant or party requiring the admission]

Dated at the day of

Signed

Party or his lawyer

The Registrar

High/Circuit Court

And to the above-named party or his lawyer.

FORM 14

WRIT OF SUBPOENA (AD TESTIFICANDUM/DUCES TECUM)

(Order 38 rule 10 (1))

[Title as in action]

To [name of witnesses]

YOU ARE COMMANDED to attend at the Court of Justice, presided over by sitting at Court or at [name of town and address of Court] on the day of fixed for the trial of the above-named cause, notice of which is hereby given to you, and from day-to-day thereafter until the end of the trial, to give evidence on behalf of

Witness day of

Issued on the day of

Signed

Party or his lawyer

If duces tecum add: And we also command you to bring with you and produce at the place aforesaid on the day notified to you [here describe the documents or things to be produced].

TAKE NOTICE that this writ is issued by the order of the

Court of Justice Ghana dated at the day of

FORM 15

REQUEST FOR WRIT OF SUBPOENA

(Order 38 rule 10(3))

[Title as in action]

Seal writ of subpoena ad testificandum/duces tecum on behalf of the plaintiff [or defendant], directed to [state name and address for service of the witness].

Returnable

Dated at the day of

Signed)

(Address)

Party or his lawyer

FORM 16

#### LETTER OF REQUEST FOR EXAMINATION OF WITNESS ABROAD

(Order 39 rule 3(2))

[Title as in action]

To the Competent Judicial Authority of in the of WHEREAS an action is now pending in the Court of Justice in Ghana, in which is plaintiff and is defendant and in which the plaintiff claims

AND WHEREAS it has been represented to the Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, namely of and of and it appears that such witnesses are resident within your jurisdiction.

NOW I Registrar of the Court of Justice in Ghana hereby request that for the reasons stated and for the assistance of the said Court you will be pleased to summon the said witnesses and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined viva voce or upon the interrogatories which accompany this letter of request touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend the examination.

AND I further request that you will permit the agents of both the plaintiff and defendant or such of them as shall be present to examine upon interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereto such witnesses as may, after due notice in writing, be produced on their behalf, and the other party to cross-examine the said witnesses upon cross-interrogatories and viva voce and the party producing the witness for examination to re-examine him viva voce.

AND I further request that you will be pleased to cause the evidence of the said witnesses or the answers of the said witnesses and all additional viva voce questions, whether on examination, cross-examination or re-examination to be reduced into writing and all books, letters, papers and documents produced on such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return it together with the interrogatories and cross-interrogatories and a note of the charges and expenses payable in respect of the execution of this request through the Ghana Consul from whom the same was received for transmission to the Court.

AND I further request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

Dated at the day of

Signed

Registrar

FORM 16A

INTERROGATORIES TO ACCOMPANY LETTER OF REQUEST

(Order 39 rule 3(2))

[Title as in action]

1 2

The following are the interrogatories referred to in the letter of request, issued herein to and dated the day of \*[Set out in column a translation of the contents of column 1 translated into the language of the country to which the letter of request is directed.]

(A) Interrogatories to be put to the witness M.N. of

named in the said letter of

request, viz:

1. Here set out the
2. interrogatories
3. etc.

(B) Interrogatories

to be put to the witness O.P. [etc., as above].

FORM 16B

LAWYER'S UNDERTAKING AS TO EXPENSES

(Order 39 rule 3(1) (e))

[Title as in action]

I, [or We] hereby undertake to be responsible for all expenses incurred by the Minister for Foreign Affairs in respect of the letter of request and on receiving due notification of the amount of the expenses, undertake to pay the same as directed by the Registrar of the Court.

The following have been appointed as agents for the parties in connection with the execution of the above Letter of Request.

Plaintiff's agent:

of

Defendant's agent:

of

Date at the day of

(Signed)

Lawyer for

CIVIL FORM 17

JUDGMENT FOR PLAINTIFF FOR DEBT OR DAMAGES AND COSTS AFTER TRIAL

(Order 41 rule 3(1))

[Title as in action]

Dated and entered the day of

This action having been tried before the Honourable Mr. Justice at the High Court of Justice [or as may be] and the said Mr. Justice having on the day of , ordered that judgment as hereinafter provided be entered for the plaintiff [and directed that execution be stayed for the period and on the terms hereinafter provided].

It is adjudged that the defendant do pay the plaintiff  $\phi$  and his costs of the action assessed at  $\phi$  [or to be taxed]

It is further adjudged that execution be stayed for according to the Judge's direction.

The above costs have been taxed and allowed at  $\phi$  as appears by a Taxing Officer's Certificate dated the day of

(Signed)

Lawyer for the plaintiff

OR

FORM 17A

JUDGMENT FOR PLAINTIFF ON CLAIM AND COUNTERCLAIM

(Order 41 rule 3 (1))

[Title as in action]

Dated and entered the day of

The action having been tried before the Honourable Mr. Justice at the High Court of Justice [or as may be] and the said Mr. Justice having on the day of ,ordered that judgment as hereinafter provided be entered for the plaintiff.

It is adjudged that the defendant do pay the plaintiff  $\phi$  on the claim and that the counterclaim be dismissed and that the defendant do pay the plaintiff his costs of the claim and counterclaim assessed at  $\phi$  [or to be taxed].

The above costs have been taxed and allowed at  $\phi$  as appears by a Taxing Officer's Certificate dated the day of

(Signed)

Lawyer for the plaintiff

FORM 17B

JUDGMENT FOR PLAINTIFF ON CLAIM AND FOR DEFENDANT ON COUNTERCLAIM

(Order 41 rule 3(1))

[Title as in action]

Dated and entered the day of [date of judgment]

This action having been tried before the Honourable

at the Court and the said

having on the day of , ordered that judgment as hereinafter provided be entered for the plaintiff on the claim and the defendant on the counterclaim and directed that the one judgment and costs be set off against the other and that execution do issue for the balance only.

It is adjudged that the plaintiff recovers against the defendant  $\phi$  and his costs of the claim assessed at  $\phi$  [or to be taxed] and that the defendant recovers against the plaintiff  $\phi$  and his costs of the counterclaim assessed at

$\phi$  [or to be taxed] and that the one judgment and costs be set off against the other and that execution do issue for the balance only.

The above costs on claim and counterclaim have been taxed and allowed at  $\phi$  and  $\phi$  respectively as appears by the Taxing Officer's Certificate dated

(Signed)

Lawyer for the plaintiff

The Registrar

High/Circuit Court

And to:

FORM 17C

JUDGMENT FOR PLAINTIFF IN ACTION FOR DETENTION OF GOODS

(Order 41 rule 3(1))

[Title as in action]

Dated and entered the day of [date of judgment]

This action having been tried before the Honourable at the Court and the said having on the day of , ordered that judgment as hereinafter provided be entered for the plaintiff.

It is adjudged that the defendant do deliver to the plaintiff the goods described in the writ of summons [or statement of claim] as [description of goods] [or pay the plaintiff  $\phi$  the assessed value of the said goods] [and that the defendant do also pay the plaintiff  $\phi$  the assessed damages for the detention of the said goods] and his costs of the action assessed at  $\phi$  [or to be taxed].

The above costs have been taxed and allowed at  $\phi$  as appears by a Taxing Officer's Certificate dated the day of

Signed

Lawyer for his plaintiff

The Registrar

High/Circuit Court

And to:

FORM 17D

JUDGMENT FOR INFANT PLAINTIFF—INVESTMENT BY REGISTRAR

(Order 41 rule 3(1))

[Title as in action]

Dated and entered the day of [date of judgment]

This action having been tried before the Honourable at the Court and the said having on the day of , ordered that judgment as hereinafter provided be entered for the plaintiff and directed that the money therein mentioned be dealt with as hereinafter provided.

It is adjudged that the plaintiff recovers against the defendant  $\phi$  and his costs of the action assessed at  $\phi$  [or to be taxed].

It is further adjudged that the said sum of  $\phi$  be paid by the defendant or the proceeds of any execution be dealt with as follows:

(1) That  $\phi$  be paid to the next friend of in infant plaintiff.

(2) That  $\phi$  be paid into court to be invested, applied, or otherwise dealt with for the benefit of the infant plaintiff in such manner as a Judge of the High Court shall think fit.

(3) That application for the directions be made to a Judge by the plaintiff's lawyer within seven days of the payment into court.

The above costs have been taxed and allowed at  $\phi$  as appears by a Taxing Officer's Certificate dated the day of

(Signed)

Lawyer for the plaintiff

The Registrar

High/Circuit Court

And to:

FORM 17E

JUDGMENT FOR THE DEFENDANT ON CLAIM

(Order 41 rule 3(1))

[Title as in action]

Dated and entered the day of [date of judgment]

This action having been tried before the Honourable

at the Court and the said

having on the day of , , ordered that judgment as hereinafter provided be entered for the defendant.

It is adjudged that the plaintiff do pay the defendant his costs of defence assessed at ¢ [or to be taxed].

The above costs have been taxed and allowed at ¢ as appears by a Taxing Officer's Certificate dated the day of

(Signed)

Lawyer for the defendant

The Registrar

High/Circuit Court

And to:

FORM 17F

JUDGMENT FOR DEFENDANT ON CLAIM AND COUNTERCLAIM

(Order 41 rule 3(1))

[Title as in action]

Dated and entered the day of [date of judgment]

This action having been tried before the Honourable

at the Court, and the said having on the day of , ordered that judgment as hereinafter provided be entered for the defendant on the claim and counterclaim.

It is adjudged that judgment be for the defendant on the claim and counterclaim and that the plaintiff do pay the defendant ¢ on the counterclaim and his costs of the claim and counterclaim assessed at ¢ [or to be taxed].

The above costs have been taxed and allowed at ¢ as appears by a Taxing Officer's Certificate dated the day of

(Signed)

Lawyer for the defendant.

The Registrar

High/Circuit Court

And to:

FORM 18

REQUEST FOR WRIT OF FI.FA.

(Order 43 rule 13)

Date SUIT No.

IN THE HIGH/CIRCUIT COURT OF JUSTICE

BETWEEN

Plaintiff

AND

Defendant

Seal a writ of fieri facias directed to the Registrar of

[insert the town or city of the Registrar to which the writ is directed] against of , upon a judgment [or order] dated the day of , for the sum of ¢ debt and ¢ costs, and interest, etc.

Indorsed to levy ¢ and interest thereon at per centum per annum from the day of , and costs of execution.

Dated at the day of

Signed

Lawyer for the party

The Registrar

High/Circuit Court

And to:

FORM 18A

WRIT OF FIERI FACIAS

(Order 43 rule 13)

WRIT ISSUED FROM

This Writ must be so moulded as to follow the substance of the order or judgment.

IN THE HIGH/CIRCUIT COURT OF JUSTICE

BETWEEN

Plaintiff

AND

Defendant

(1) Date of the Judgment or order, or day from which money directed to be paid or day from which interest is directed by the order to run, or as the case may be.

To the Registrar of

YOU ARE HEREBY COMMANDED that of the movable and/or immovable property of

in your area you cause to be made the sum of

and interest thereon at the rate of per centum per annum from the (1)  
day of , which

(2) Action or matter entitled "In the matter of etc." or as the case may be.

said sum of money and interest were before this court in a certain (2)  
wherein

(3) "Judgement or Order".

plaintiff and defendant

by a (3)

of the said court, dated

day of was(4)

(4) "Adjudged awarded or ordered

to be paid by the

to

(5) Amount of costs.

together with certain costs in the said (3) mentioned and which costs have been assessed at

or taxed and allowed by the Taxing Officer of the said Court at the sum of

(6) Day of judgment or order, or day from which money directed to be paid or day from which interest  
is directed by the order to run, or as the case may be.

as appears by the certificate of the said Taxing Officer, dated the

And that of the movable property of the said in your area you further cause to

be made the said sum of (5) together with interest thereon at the rate of per centum per annum from  
the (6) day or which day of and that you have that money and interest before the said Court  
immediately after the execution to be paid to the said

in pursuance of the said (3) and in what manner you shall have executed this Writ make appear to this  
Court immediately after the execution and have there indorsed on this writ accordingly.

LEVY  $\phi$  and  $\phi$  for costs of execution, etc. and also interest on  $\phi$  at  $\phi$  per centum per annum, from the  
day of until payment

[Registrar's poundage, Officer's fees, costs of levying, and all other legal incidental expenses  
inclusive].

THIS WRIT was issued by

address

agent for

for

Lawyer for the who resident at

The defendant is a

and resides at

in your area

FORM 18B

REQUEST FOR WRIT OF FI.FA. WITH CERTIFICATE UNDER THE EXCHANGE CONTROL ACT,  
1961

(Order 43 rule 13)

[Title as in action]

Seal a writ fieri facias directed to the Registrar

against , of , in the town/city of , upon a judgment [or order] dated the day of , in the sum of ¢ debt and  
¢ costs and interest, etc.

Indorsed to levy ¢ and interest thereon at per centum per annum from the day of , and costs of  
execution.

I certify that the Bank of Ghana's permission under the provisions of the Exchange Control Act, for the  
payment to [judgment creditor or other description] of the proceeds of execution has been given  
unconditionally or [upon conditions which have been complied with.]

Signed

Lawyer for [the party on whose behalf the writ is to issue].

Address

Dated at the day of

Note: This is a practice form for use where the party suing out the writ of fi.fa. is resident out of the  
jurisdiction but permission of the Bank of Ghana under the Exchange Control Act, has been obtained.

The Registrar

High/Circuit Court

And to:

FORM 18C

REQUEST FOR WRIT OF POSSESSION

(Order 43 rule 13)

[Title as in action]

Seal a writ of possession directed to the Registrar of to give possession to of [state premises in the  
judgment or order].

Judgment dated the day of

Signed

Lawyer for party

The Registrar

High/Circuit Court

And to:

FORM 18D

WRIT OF POSSESSION

(Order 43 rule 13)

[Title as in action]

To the Registrar of , greetings:

WHEREAS in the above-named action it was on the day of adjudged [or ordered] that [insert name of party requesting] do give [insert name of party against whom writ is issued] possession of [describe the land delivery of which has been adjudged or ordered] within your jurisdiction:

YOU ARE COMMANDED to enter the said land and cause to have possession of it.

And you are also commanded to indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement to [insert name of party requesting writ].

The Registrar

High/Circuit Court

And to:

FORM 18E

REQUEST FOR WRIT OF POSSESSION AND FI.FA. COMBINED

(Order 43 rule 13)

[Title as in action]

Seal a writ of possession and fieri facias combined directed to the Registrar of against of , within the jurisdiction of this Court, upon a judgment [or order] dated the day of , for possession of [state premises in the judgment or order] and for the sum of ¢ debt and ¢ costs and interest, etc.

To give possession to of the said premises and indorsed to levy ¢ and interest thereon at per cent per annum from the [date] and costs of execution.

Signed

Lawyer for

Registrar

High/Circuit Court

And to:

FORM 18F

REQUEST FOR WRIT OF DELIVERY

(Order 43 rule 13)

In the High/Circuit Court of Justice Date Suit No.

Between

plaintiff

and

defendant

SEAL a writ of delivery directed to the Registrar of to make delivery to [the above-named party] of the goods specified in the judgment [or order] dated the day of .

Signed

Party or his lawyer

Registrar

High/Circuit Court

FORM 18G

REQUEST FOR WRIT OF DELIVERY AND F.I.F.A. COMBINED

(Order 43 rule 13)

[Title as in action]

SEAL a writ of delivery directed to the Registrar of to make delivery to of the goods specified in the judgment [or order] dated day of

And also to levy against of within the jurisdiction of this Court the sum of ¢ and ¢ costs [or as may be] and interest at the rate of per cent per annum on the said amount from the day of

Dated at the day of .

Signed

Party or his lawyer

The Registrar

High/Circuit Court

OR

FORM 18H

WRIT OF SPECIFIC DELIVERY OF GOODS AND COSTS ONLY

(Order 43 rule 13)

[Title as in action]

To the Registrar of , greetings:

Whereas in the above-named action it was on the day of , adjudged [or ordered] that the defendant do deliver to the plaintiff the following goods, namely [describe the goods delivery of which has been adjudged or ordered] and do pay the plaintiff ₵ costs [or costs to be taxed, which costs have been taxed and allowed at ₵ ] as appears by the certificate of the taxing officer dated the day of

YOU ARE COMMANDED that you cause the said goods to delivered to and that of the goods, chattels and other property of [within your jurisdiction] authorised by law to be seized in execution and also interest , together with sheriff's poundage, officers fees, costs of levying and all other legal, incidental expenses and that immediately after execution of this writ you pay in pursuance of the said judgment [or order] the amount levied in respect of the said sum and interest.

YOU ARE FURTHER COMMANDED TO indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and sent a copy of the statement to

Witness , High/Circuit Court of Justice, the day of

This writ was issued by agent for or lawyer for the [or this writ was issued by the [plaintiff in person] who resides at

The defendant resides at

OR

FORM 18 I

WRIT OF DELIVERY AND F.I.FA. COMBINED—SPECIFIC DELIVERY OF GOODS, DAMAGES AND COSTS

(Order 43 rule 13)

[Title as in action]

WHEREAS in the above-named action it was on the day of adjudged [or ordered] that the defendant do deliver to the plaintiff the following goods, namely [describe the goods delivery of which has been adjudged ordered] and do pay the plaintiff ₵ damages and ₵ costs [or costs to be taxed which costs have been taxed and allowed at ₵ as appears by the certificate of the taxing officer dated the day of .

YOU ARE COMMANDED that you cause the said goods to be delivered to and that of the goods, chattels and other property of within your jurisdiction authorised by law to be seized in execution and also interest on ₵ at the rate of per cent per annum from the day of until payment together with Registrar's poundage, officers' fees, costs of levying and all other legal, incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [or order] the amount levied in respect of the sums and interest.

YOU ARE ALSO COMMANDED TO indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement to the Court and the judgment creditor.

Witness His Lordship, the Chief Justice of Ghana, the day of

THIS WRIT was issued by of [agent for or] lawyer for the [or this writ was issued by the plaintiff] in person who resides at

The defendant resides at

FORM 18 J

WRIT OF DELIVERY AND FI.FA. COMBINED DELIVERY OF GOODS OR ASSESSED VALUE AND DAMAGES AND COSTS

(Order 43 rule 13)

[Title as in action]

To the Registrar of , greetings

WHEREAS in the above-named action it was on the day of adjudged [or ordered] that the defendant do deliver to the plaintiff the following goods, namely [described the goods delivery of which has been adjudged or ordered] or do pay him ¢ being the assessed value of the said goods, [and do pay the plaintiff ¢ damages] and ¢ costs [or costs to be taxed, which costs have been taxed and allowed at ¢ as appears by the certificate of the taxing officer dated the day of ]

YOU ARE COMMANDED that you cause the said goods to be delivered to and that if possession of the said goods cannot be obtained by you cause to be made of the goods, chattels and other property of within your jurisdiction authorised by law to be seized in execution of ¢ the assessed value of the said goods and pay it to

AND YOU ARE ALSO COMMANDED that of the said property of within your jurisdiction you cause to be made the sums of ¢ for [damages and] costs and ¢ for costs of execution and also interest on ¢ at the rate of per cent, per annum from the day of, until payment together with Registrar's poundage, officers' fees, costs of levying and all other legal, incidental expenses and that immediately after execution of this writ you pay in pursuance of the said judgment [or order] the amount levied in respect of the said sums and interest.

AND WE ALSO COMMAND you that you indorse [conclude as in Form 18 I].

FORM 18K

WRIT OF ASSISTANCE

(Order 43 rule 13)

[Title as in action]

To the Registrar of greetings:

WHEREAS by an order dated the day of , made in an action in the Division of the Court between plaintiff, and , defendant, the said was ordered to give to the said possession of the land [or goods] therein described, namely [describe the land or goods], but he the said and other persons have refused to obey the order and keep the possession of the land [or goods] in contempt of us and our said Court:

AND WHEREAS by an order made in the said action dated the day of , it was ordered that a writ of assistance should issue to give the said possession of the said land [or goods]:

YOU ARE COMMANDED that you [enter the said land and eject the said , his tenants, servants, and accomplices, each and every one of them, from the said land and every part thereof and put the said and his assigns into full, peaceable and quiet possession thereof] [or put the said and his assigns into full, peaceable and quiet possession of the said goods] and defend and keep him and his assigns in such peaceable and quiet possession, when and as often as any interruption thereof is at any time effected, according to the intent of the said orders. And herein you are not in any wise to fail.

Witness , High/Circuit Court of Justice, the day of

This writ [conclude as in Form 18J].

FORM 19

ORDER REFERRING PENDING ACTION TO ARBITRATION (SHORT FORM)

(Order 64 rule 3(2))

[Title as in action]

Upon hearing , and by consent

It is ordered that all matters in difference in this action be [or as may be] referred, [if to a single arbitrator, say] to the award of [or if to two arbitrators, they appointing a third, say] to the award of of and of ,arbitrators, nominated by the said plaintiff and defendant, and of such third person as the said and shall by a memorandum under their hands [to be indorsed on these presents], before they proceed on the said arbitration, nominate and appoint as umpire and that the costs of this action be reserved and be dealt with by the said arbitrator [or arbitrators or umpire, as the case may be].

Dated at the day of

Signature of Judge

OR

FORM 19A

ORDER REFERRING PENDING ACTION TO ARBITRATION (LONG FORM)

(Order 64 rule 3(2))

[Title as in action]

Upon hearing , and by consent

It is ordered as follows:

1. [State matters to be referred] shall be referred to the award of (hereinafter called "the arbitrator").
2. The arbitrator shall have all the powers to certify and amend as a Judge of the High/Circuit Court [or as the case may be].
3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award), on or before the next, or on or before such further days as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.
4. The said parties shall in all things abide by and obey the award so to be made.
5. The costs of the said cause and the costs of the reference and award shall be in the discretion of the arbitrator.
6. The party in whose favour the award shall be made shall be at liberty within [twenty-one] days after service of a copy of the award on the lawyer of the other party, to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated at the day of

Signature of Judge

FORM 20

ORDER TO PRODUCE PAPER PURPORTING TO BE TESTAMENTARY

(Order 66 rule 6(2))

Heading

IN the matter of the estate of , deceased.

The day of .

To , of .

WHEREAS it appears (by a certain affidavit filed in this Court on the day of , and made by of ) , that a certain original paper being or purporting to be testamentary, namely [here describe the paper], bearing date the day of , is now in your possession or under your control:

Now this is to command you that within eight days after service inclusive of the day of service, you bring into and leave in this Court the original paper, or in case the original paper is not in your possession or under your control, that within eight days after service on you, inclusive of the day of service, you file in this Court an affidavit to that effect, and set out in the affidavit what knowledge you have of and with respect to the paper.

Signature of Judge

FORM 21

RENUNCIATION OF PROBATE OR ADMINISTRATION WITH WILL ANNEXED

(Order 66 rule 7(4))

Heading

IN the matter of the estate of , deceased.

WHEREAS , late of , deceased, died on the day of at having at the time of his death his fixed place of abode at within the jurisdiction of this Court and he made and duly executed his last will, dated the day of ,and appointed executor (and residuary legatee in trust or as the case may be).

NOW I, declare that I have not intermeddled in the movable or immovable property of the deceased, and will not intermeddle in it with intent to defraud creditors or any person interested in the administration or distribution of the movable or immovable property of the deceased; and further I expressly renounce all rights to probate of the will (and codicils, if any) and to administration with the will (and codicils, if any) annexed, of the movable and immovable property of the deceased.

IN witness I have set my hand this day of

Signed and delivered by the above-named

in the presence of

FORM 22

DECLARATION OF MOVABLE AND IMMOVABLE PROPERTY OF A TESTATOR OR AN  
INTESTATE

(Order 66 rule 9(4))

Heading

IN the matter of the estate of , deceased.

[The administrator with will annexed or the said administrator as the case may be. Oath or solemn Affirmation as the case may be.]

A True Declaration of all movable and immovable property of late of deceased who died on the day of ,at and had at the time of his death his fixed place of abode at ,within the jurisdiction of this Court, which have at any time since his death come to the possession or knowledge of made and exhibited upon and by virtue of the of the of the as follows:

[The details of the deceased's movable and immovable property must be inserted here (in as many sheets of paper as may be necessary) and value inserted opposite each item.]

First—We/I declare that the deceased was at the time of his death possessed of or entitled to:

LASTLY—WE/I say that no movable or immovable property of the deceased has at any time since his death come to our/my possession or knowledge, except as is stated.— DEPONENT

On the day of , were/was duly sworn to (solemnly affirm) the truth of the above written inventory.

BEFORE ME, .

FORM 23

NOTICE TO NEXT-OF-KIN

(Order 66 rule 10(5))

Heading

IN the matter of the estate of deceased. TO NEXT-OF-KIN (if any) and all other persons claiming any interest in the movable or immovable property of late of who died at intestate on the day of .

TAKE NOTICE that letters of administration of the movable and immovable property of the above-named have been applied for by of claiming to be of the deceased and that unless a notice to prohibit the grant is lodged in the Court within days from the date of this notice letters of administration will be granted to the applicant.

Dated at the day of .

Registrar

High/Circuit Court

FORM 24

CAVEAT

(Order 66 rule 11(1))

Heading

IN the matter of the estate of , deceased.

Let nothing be done in the matter of , late of ,deceased, who died on the day of at , within the jurisdiction of this Court, without warning being given to of [state address for service].

Dated at this day of .

Signed

caveator or caveatrix

CIVIL FORM 25

NOTICE OF FILING CAVEAT

(Order 66 rule 11(5))

Heading

IN the matter of the estate of , deceased.

To of

TAKE NOTICE that a caveat has been entered by of , against the issue of probate (or letters of administration, as the case may be) in the above-named matter and that no further steps will be taken in this matter until has been duly warned in accordance with the rules of court.

Dated at this day of .

Registrar

High/Circuit Court

FORM 26

WARNING TO CAVEATOR

(Order 66 rule 11(8))

Heading

IN the matter of the estate of , deceased.

To of

You are warned that within six days after the service of this warning upon you inclusive of the day of service, you are to come into this Court and file an affidavit setting out your interest in this matter, and in default of your so doing, the Court will proceed to do such acts and things as shall be necessary to be done in this matter without further warning to you.

This warning is issued at the instance of , of

(Here state what interest has, and if under a will or codicil state its date.)

Dated at this day of .

Registrar

High/Circuit Court

FORM 27

NOTICE TO EXECUTORS OR NEXT-OF-KIN TO TAKE A GRANT

(Order 66 rule 15(1))

Heading

IN the matter of the estate of , deceased.

To of one of or the executor(s) named in the last will and testament of late of who died on day of and who at the time of his death had his fixed place of abode at

TAKE NOTICE that within fourteen days of service upon you, you shall pursuant to Order 61 rule 15(1) either apply for a grant of probate/letters of administration or renounce your right to take out probate/letters of administration.

THIS NOTICE is issued at the instance of , of one of the executors named in the will of deceased or as son/daughter/father/mother, etc., and one of the next-of-kin of the deceased.

Dated at this day of

Signed by the within named

(An executor named in the will of or as next-of-kin of Deceased)

In the presence of:

Signature:

Name:

Address:

The Registrar

High/Circuit Court

FORM 28

AFFIDAVIT OF FINDING AND CONDITION OF WILL

(Order 66 rule 18(4))

Heading

IN the matter of

I , deceased.

make oath and say that I am the sole executor [or as the case may be] of the person named in the paper annexed purporting to be the last will of , late of , deceased who died on the day of , at , and had at his death his fixed place of abode at within the jurisdiction of this Court, the will bearing the date day of beginning thus ending thus , being signed , and the (here describe the finding of the will, and the various obliterations, interlineations, erasures, and alterations, if any, and the general condition of the will and state any other matters required to be accounted for; and if possible clearly trace the will from the possession of the deceased in his lifetime up to the time of the making of this affidavit), and I finally say that the writing is now in all respects in the same condition as when found (or as the case may be).

Sworn at this day of

Before me

FORM 29

ATTESTATION CLAUSE AND WITNESSES

(Order 66 rule 18(5))

Heading

IN the matter of the estate of deceased.

I, , of make oath and say that I am one of the subscribing witnesses to the last will (or codicil, as the case may be) of late of ,deceased, the will (or codicil) now annexed, bearing date ,and that the testator executed the will (or codicil) on the day of the date, by signing his name at the foot or end (or in the testimonium clause, or in the attestation clause, as the case may be)\* and the same now appears in the presence of me and of the other subscribed witness both of us being present at the same time, and we attested and subscribed the will (or codicil) in the presence of the testator.

Sworn at this day of

Before me

\*If the signature is in the testimonium clause, or attestation clause, insert "intending the same for his final signature of his will."

.FORM 30

AFFIDAVIT OF HANDWRITING

(Order 66 rule 18(5))

Heading

IN the matter of the estate of , deceased.

I, of make oath and say that I knew and was well acquainted with late of , deceased, who died on the day of at , for [state here period of knowing the deceased] before his death, and that during that time I had frequently seen him write and sign his name, whereby I have become well acquainted with his handwriting and signature, and having now with care and attention inspected the paper annexed purporting to be the last will of , beginning thus and ending thus , dated the day of and signed , I say that I believe the whole body and contents of the will, [as the case may be] together with the signature of , to be of the hand writing of , deceased.

Sworn at this day of .

Before me

FORM 31

OATH FOR EXECUTOR

(Order 66 rule 22)

Heading

IN the matter of the estate of deceased.

I, of , make oath and say that I believe the paper annexed, and marked by me, to contain the true and original last will (or last will with codicils) of , late of deceased, and that I am the sole executor (or one of the executors) named (or executor according to the tenor, executor during life, executrix during

widowhood, or as the case may be), and that I will faithfully administer the movable and immovable property of the testator by paying his just debts, and the legacies given by his will (or will and codicils), so far as his movable and immovable property shall extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever lawfully required; that the testator died at on the day of that at the time of his death he had his fixed place of abode at , within the jurisdiction of this Court; and that the whole of his movable and immovable property does not amount in value to the sum of cedis, to the best of my knowledge, information, and belief.

Sworn at this day of

Signature

Before me

FORM 32

OATH FOR ADMINISTRATOR WITH WILL ANNEXED

(Order 66 rule 22)

Heading

IN the matter of the estate of , deceased.

I, , of , make oath and say that I believe the paper writing, annexed and marked by me to contain the true and original last will (or will with codicils) of , late of deceased; that the executor named is dead, without having taken probate (or as the fact may be); that I am the residuary legatee in trust named (or as the fact may be); that I will faithfully administer the movable and immovable property of the testator by paying his just debts and the legacies given by his will (or will with codicils), so far as his movable and immovable property according to law; that I will exhibit an inventory and render an account of my administration whenever lawfully required; that the testator died at on the , that at the time of his death he had his fixed place of abode at within the jurisdiction of this Court, and that the whole of his movable and immovable property does not amount in value to the sum of cedis to the best of my knowledge, information, and belief.

Sworn at this day of

Signature

Before me

FORM 33

DOUBLE PROBATE

(Order 66 rule 24)

Heading

IN the matter of the estate of . deceased.

Sworn under and that the testator died on or about the day of

BE IT KNOWN, that on the day of , the last will (will codicils) of , late of . deceased who died on at , and who at the time of his death had his fixed place of abode at within the jurisdiction of this Court, was proved and registered in this Court and that administration of his movable and immovable property, and in any way concerning his will, was granted by the Court to , one of the executors named in the will (or codicil), he having been duly sworn, power being reserved of making the same grant to , the other executor named in the will. And be it further known that on the day of , the will of the

deceased was also proved in this court and the same administration was granted by this Court to the ,  
he having been duly sworn.

(Seal of Court)

Signature of Registrar

FORM 34

ADMINISTRATION BOND

(Order 66 rule 31(1))

Heading

IN the matter of the estate of , deceased.

KNOW ALL MEN, by these presents, that we ,of ,of ,and ,of are jointly and severally bound unto , the Registrar of the Court, in the sum of ¢ ,to be paid to , or the Registrar of the Court for which payment we bind ourselves and each of us, for himself, in the whole, ours and each of our successors, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated at the day of .

The condition of the above-written obligation is that if the above named ,the intended administrator of the movable and immovable property of , late of ,deceased, who died on the day of (left unadministered by . ), does make a true and perfect inventory of the movable and immovable property of the deceased, (so left unadministered) which has or shall come into his possession of any person for him, and the same so made shall exhibit into the

Court whenever required by law so to do; and the same property, and all other movable and immovable property of the deceased, which shall at any time after the making and exhibition of the inventory, come into the possession of , or of any person for him, do well and truly administer according to law, do pay the debts which the deceased owed at his death and do deliver and pay all the residue of the movable and immovable property to the person or such persons as shall be entitled by law; and further, do make a true and just account of his administration whenever lawfully required; and in case it shall appear that any will was made by the the deceased and the executor or executors or other persons named, do exhibit, the same for probate, then, if, being required, do duly render and deliver the letters of administration granted to him, then this obligation shall be void, otherwise shall remain in full force.

(LS)

(Signature of obligants) (LS)

(LS)

Signed, Sealed and delivered

in the presence of

FORM 35

ADMINISTRATION BOND (WITH WILL ANNEXED)

(Order 66 rule 31(1))

Heading

IN the matter of the estate , deceased.

KNOW ALL MEN, by these presents, that we , of of , and of are jointly and severally bound unto , the Registrar of the Court in the sum of ¢ , to be paid to , or the Registrar of the Court for which payment we bind ourselves and each of us for himself in the whole, ours and each of our successors, executors, and administrators, firmly by these presents. Sealed with our seals.

Dated at the day of .

The condition of the above-written obligation is that if hte abovenamed , the intended administrator of the movable and immovable property of , late of who died on the day of , does make a true and perfect inventory of the movable and immovable property of hte deceased (left unadministered by ) which has or shal come into his possession, or into the possession of any person for him, and the same so made do exhibit in the Court at whenever required by law ot do so, and the movable and immovable property and all other movable and immovable property (so left unadministered) of the deceased which shall at anytime after the making and exhibition of the inventory come into the possession of , or of any persons for him, do well and truly administer namely, od pay the debts which the deceased owed at his death, and then hte legacies given by the will annexed to the letters of administration, as far as the movable and immovable property will extend and the law bind him, and deliver ad pay all the residue of the movable and immovable property unto the person or such persons as shall be by law entitled, and further do make a true and just account of his administration whenever lawfully required, then this obligation shall be void, otherwise shall remain in full force.

(L.S.)

(Signature of obligants) (L.S.)

(L.S.)

Signed, Sealed and delivered

in the presence of

FORM 36

#### JUSTIFICATION OF SURETIES

(Order 66 rule 31(1))

Heading

IN the matter of the estate of , deceased.

We, , of , of and of severally make oath and say that we are the proposed sureties in the penal sum of ¢ , on behalf of C.D., (the intended administrator of the movable and immovable property of , late of deceased, for his faithful administration, and I, , for myself, make oath and say that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ¢ , and I, the , for myself make oath and say that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ¢

Sworn by at

this day of .

Before me.

FORM 37

#### AFFIDAVIT OF INCREASE OF ESTATE

(Order 66 rule 31(5))

Heading

IN the matter of the estate of deceased.

I , of (here state address not postal box number) make oath and say as follows:

That on the day of letters of administration of the movable and immovable property of deceased were granted to me by this Honourable Court.

That the gross value of the said estate was sworn to amount to ¢

That I have since discovered that the value of the estate exceeds that amount and the gross value is ¢

Sworn at on day of .

Before me. (signed)

The Registrar

High/Circuit Court

FORM 38

ASSIGNMENT OF BOND

(Order 66 rule 31(8))

Heading

IN the matter of the estate of , deceased

KNOW ALL MEN by these presents, that I Registrar of the Court pursuant to order 61 rule 31(8) of the High Court Rules, by these presents do and hereby assign to of (address and occupation of assignee), the annexed bond bearing date day of , with power to sue on the bond in his own name and to recover as trustee for all persons interested, the full amount recoverable in respect of the breach of the undertaking in the bond.

Dated at this day of .

LS

Registrar

Signed, Sealed and delivered by the

named Registrar

In the presence of

FORM 39

NOTICE OF PROCEEDINGS

(Order 66 rule 35(1))

Heading

IN the matter of the estate of , deceased.

WHEREAS it appears that a probate action has been started in the Court in accordance with the Writ of Summons attached; and whereas it appears that you are one of the persons who are interested in the estate of the deceased:

TAKE NOTICE that if you wish to be heard at the trial of the action you should apply to the Court either personally or by your lawyer to be added as a party to the action.

AND TAKE NOTICE that in default of your so doing the Court will proceed to hear the action and pronounce judgment, your absence notwithstanding.

Dated at day of

Signed

Registrar

FORM 40

#### AFFIDAVIT OF TESTAMENTARY SCRIPT

(Order 66 rule 38(2))

Heading

IN the matter of the estate of , deceased.

I, , of the plaintiff (or defendant) in this action make oath and say as follows:

I have no knowledge of any document being or purporting to be, or having the form or effect of, a will or codicil, or other testamentary script of , late of deceased, in this action, or being or purporting to be a draft of any will, codicil or other testamentary instrument of the said deceased or written instructions for such an instrument made by or at the request of or under the instructions of the said deceased or being or purporting to be evidence of the contents, or to be a copy, of any will, codicil or other testamentary instrument of the said deceased which is alleged to have been lost or damaged, save and except the true last will of the said deceased now produced and shown to me, the said will bearing date day of [also save and except]\*

Sworn at the day of .

Before me

FORM 41

#### POWER OF ATTORNEY TO TAKE ADMINISTRATION

(Order 66 rule 49(1))

Heading

IN the matter of the estate of , deceased.

WHEREAS , of deceased, died on day of intestate, leaving, his lawful widow (or as the case may be) and relict (and the only person now entitled to his estate):

NOW, I, the said at present residing at do hereby nominate, constitute and appoint of (occupation), and of (occupation) to be my lawful attorneys for the purpose of obtaining letters of administration of the estate of the said deceased, to be granted to them by the Court for my use and benefit, and until I

shall obtain letters of administration of the said estate. And I hereby promise to ratify and confirm whatever my said attorneys shall lawfully do or cause to be done in the premises.

In witness whereof I have hereunto set my hand and seal this day of .

Signed Sealed and delivered by the said L.S.

in the presence of

FORM 42

POWER OF ATTORNEY TO TAKE ADMINISTRATION WITH WILL ANNEXED GIVEN BY EXECUTORS

(Order 66 rule 49(4))

Heading

IN the matter of the estate of , deceased.

WHEREAS , of deceased, died on the day of having made and duly executed his last will and testament, bearing date the day of and thereon appointed and executors:

NOW we, the said and at present residing at and respectively do hereby nominate, constitute, and appoint of to be our lawful attorney for the purpose of obtaining letters of administration with the said will annexed of the estate of the said deceased to be granted to him by the Court for our use and benefit, and until we shall obtain probate of the said will\* and we hereby promise to ratify and confirm what our said attorney shall lawfully do or cause to be done in the premises.

In witness whereof we have hereunto set our hands and seal this day of .

Signed, Sealed and delivered by the said

LS

and in the presence of

FORM 43

AFFIDAVIT TO LEAD THE COURT'S ORDER ASSIGNING GUARDIANS TO MINOR FOR THE PURPOSE OF TAKING ADMINISTRATION OR PROBATE

(Order 66 rule 50(2))

Heading

IN the matter of the estate of , deceased.

WE, of , and , of , jointly and severally make oath and say:

1. That of died on the day of at intestate a widow/widower, domiciled in , leaving his lawful daughter/son (one of the persons entitled to his estate).
2. That there is no statutory, testamentary or other lawfully appointed guardian of the said minor.
3. That we are the lawful grandparents (or the lawful uncle and aunt of the whole blood, or as the case may be) (and nearest-of-kin) of the minor [or]

That the lawful grandfather and only nearest-of-kin of the said minor has renounced his right to the guardianship of the said minor. (Here state who has had the care and charge of the minor since the death of the deceased, and any other relied on in support of the application).

4. That the gross value of the estate of the said deceased is ¢ and that after the deduction of debts and encumbrances the value of the estate is ¢ .

5. That we hereby apply for an order assigning us as guardians of the said minor and until he shall attain full age.

Sworn at this day of

Before me.

[NOTICES: This form should be adapted in accordance with the circumstances. If both parents of the minor are alive, the affidavit should state the reason why they do not apply jointly for the grant.

If there is a statutory or other lawfully appointed guardian, unless such guardian has renounced the guardianship it should be shown for what reason it is desired to pass him or her over:

The form can be adapted to the case of the minority of a sole executor or residuary legatee or other person entitled to a grant where the deceased died intestate.]

FORM 44

ADMINISTRATOR'S CASH ACCOUNT

(Order 66 rule 58 (5))

Heading

IN the matter of the estate of , deceased.

THE (first) account of , the Administrator appointed by order dated the day of from the day of to day of both dates inclusive.

No. of	Item	Date when received	Names of persons from whom received	On what account received	Amount received	No. of	Item	Date when paid or allowed	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount paid or allowed
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Dated at this day of .

Signature of Administrator

The Registrar

High/Circuit Court

FORM 45

ADMINISTRATOR'S INVENTORY

(Order 66 rule 58(5))

Heading

IN the matter of the estate of , deceased.

Inventory as at the day of .

Particulars of property in estate Date of disposal

Dated at this day of .

Signature of Administrator

The Registrar

High/Circuit Court

FORM 46

LETTERS OF ADMINISTRATION DE BONIS NON

(Order 66 rule 59 (3))

Heading

Sworn under ☿ and that the testator died on or about the day of .

IN the matter of the estate of , deceased.

BE IT KNOWN, that , late of deceased, died on intestate, and had at the time of his death his fixed place of abode at within the jurisdiction of this Court, and that after his death, on the day of letters of administration of his movable and immovable property were granted by this Court to (insert the relationship or status of administrator) which letters of administration now remain on record in this Court, who, after taking such administration upon him, partly administered the movable and immovable property of the deceased and afterwards, namely on ,died leaving part thereof unadministered and that on the day of letters of administration of the movable and immovable property left unadministered were granted by this Court to , he having been duly sworn.

Seal of Court

Signature of Registrar

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