

SUPREME COURT RULES

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SUPREME COURT RULES

1st day of April, 1985

Order 1

General Definitions

1. (1) These Rules may be cited as the Supreme Court Rules.
2. In these Rules, unless it is otherwise expressly provided or the context so requires:

‘Act’ means the Supreme Court Act, 1960 or any other Act amending or replacing it;

‘appeal’ includes an application for leave to appeal;

‘appellant’ means a party appealing from a decision or applying for leave in behalf therefore and includes the legal practitioner retained or assigned to represent him in the proceedings before the Court;

‘Chief Justice’ means the Chief Justice of Nigeria;

‘Constitution’ means the Constitution of the Federal Republic of Nigeria, and includes any amendment thereto or modification thereof or any enactment replacing it;

‘Court’ means the Supreme Court of Nigeria;

‘court below’ means the Court of Appeal;

‘Court of first instance’ means the court or tribunal sitting either in original or appellate jurisdiction, immediately below the court below;

‘Committee’ means the Rules of Court Advisory Committee established under these Rules;

‘Court of Appeal’ means the Court of Appeal established by the Constitution;

‘High Court’ means the Federal High Court, the High Court of the Federal Capital Territory, Abuja, or High Court established for a State by the Constitution;

‘Justice’ means a Justice of the Court;

‘judgment’ includes any order made by the court in question after judgment;

‘record’ means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, judgments and briefs) proper to be laid before the Court on the hearing of the appeal;

‘Registrar’ means the Chief Registrar of the Supreme Court and includes any other officer of the Registry working under him;

‘Registrar of the court below’ means the Chief Registrar of the Court of Appeal and includes the Deputy Chief Registrar and any Registrar or Deputy Registrar or other officer working under him and exercising functions analogous to the Chief Registrar of the Court of Appeal;

‘respondent’ in a civil means any party (other than the appellant) directly affected by the appeal, and in a criminal appeal means the person who undertakes the defence of the judgment appealed against and includes the

legal practitioner retained or assigned to represent them in the proceedings before the court;

‘Rules’ means these Rules or any amendment thereto or any other additional Rules made under the Constitutional and includes the Schedule appended to these Rules.

Order 2

Administration And General Procedure

1. (1) Any reference in these Rules to an address for service means an address within Nigeria where notices, pleadings, orders, summons, warrants and other documents, proceedings, and written communications, if not required to be served personally, may be left, or to which they may be sent.
 - (2) Where under these Rules any person has given an address for service, any notice or other written communication which is not required to be served personally shall be sufficiently served upon him if it is left at that address or sent by registered post to that address, and in any case where the date of service by post is material, section **26** of the Interpretation Act shall apply.
 - (3) Where under these Rules any notice of other application to the Court, or to the court below, is required to have an address for service endorsed on it, shall not be deemed to have been properly filed unless such an address is endorsed on it.
 - (4) Any person desiring to change his address for service shall notify the Registrar, who shall thereupon communicate the new address for service to anyone to whom he may have communicated the former address.
2. Where any person has given the address of a legal practitioner as his address for service and the legal practitioner is not or has ceased to be instructed by him for the purpose of the proceedings concerned, it shall be the duty of the legal practitioner to inform the Registrar as soon as may

be that he is not or no longer authorised to accept service on behalf of such person, and if he omits to do so he may be ordered to pay any costs occasioned thereby.

3. (1) Except as may be otherwise provided in these Rules or in any other written law, no notice or other written communication in proceedings in the original or appellate jurisdiction of the Court, need be served personally except -

(a) in proceedings in the original jurisdiction of the Court, the writ of summons or other documents issued by the Court for the institution of the proceedings; and

(b) in proceedings in the appellate jurisdiction of the Court, the notice of appeal:

Provided that if the Court is satisfied that the notice of appeal has in fact been served in the manner prescribed by sub-rule (2) of this Rule, and communicated to the respondent, no objection to the hearing of the appeal shall lie on the ground only that the notice of appeal was not served personally.

(2) Where any document is required by these rules to be served personally, it shall be sufficiently served if it is served in the manner prescribed by law for the personal service of a writ of summons issued by the Federal High Court and if it appears to the Court that for any reason personal service cannot be conveniently effected, the Court shall have the same power as that High Court to direct that service be effected in some other way.

4. The Registrar of the court below shall, after the notice of appeal has been filed, cause to be served a true copy thereof upon each of the parties mentioned in the notice of appeal, it shall not be necessary to serve any party not directly affected:

Provided that in criminal cases, service on the Attorney-General of the Federation or on the Attorney-General of a State (as the case may require) shall be deemed to be good and sufficient service on the respondent in a criminal appeal other than an appeal in a private prosecution.

5. (1) Every person who by virtue of service on him of a notice of appeal becomes a respondent to any appeal or intended appeal shall within thirty days of service on him of the notice of appeal file with the Registrar of the court below notice of a full and sufficient address for service in such number of copies as the said Registrar shall require and the Registrar of the court below shall forthwith send a copy of the notice of address to the Registrar and shall cause a copy thereof to be served on the appellant.
 - (2) Such notice may be signed by the respondent or the legal practitioner representing him.
 - (3) If any respondent fails or omits to file such notice of address for service, then delivery of any document or proceedings at the address shown in the notice of appeal shall be deemed to be good and proper service on him.
 - (4) Any party to an appeal or intended appeal may change his address for service at any time by filing and serving on all other parties to the appeal or intended appeal notice of such change.
6. Where a Minister or Commissioner or the Attorney-General or the Director of Public Prosecutions or other like functionary of a Government is a party *ex-officio* or is representing the Federal Government or a State Government, as the case may be, in any proceedings in the Court, whether civil or criminal, service of any notice or other document shall be deemed to be sufficiently and duly served if it is delivered (as the case may require) to the Attorney-General of the Federation in his office or the Attorney-General of the appropriate State capital or through the Liaison Office of the State Government in Lagos.
7. (1) Where any person out of the jurisdiction is a necessary or proper party to an action commenced in the original jurisdiction of the Court and properly brought against some other person duly served within the jurisdiction, the Court may allow service of a summons out of the jurisdiction.
 - (2) Every application for an order for leave to serve a summons on a defendant out of the jurisdiction shall be supported by evidence by affidavit or otherwise showing in what place or country such

defendant is or probably may be found, and the grounds upon which the application is made.

(3) Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time after such service within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the summons is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as *prima facie* evidence thereof.

8. Notices of Appeal, Applications for leave to appeal, Briefs and all other documents whatsoever prepared in pursuance of the appellate jurisdiction of the Court for filing in accordance with the provisions of these Rules, shall reflect the same title as that which obtained in the

Court of Trial

9. (1) A respondent intending to rely upon preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with ten copies thereof with the Registrar within the same time.

(2) If the respondent fails to comply with the rule the Court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.

(3) No objection shall be taken to the hearing of an appeal on the ground that the amounts by the Registrar of the court below under Rule 3(1) of Order 7 were incorrectly assessed.

10. At any time before hearing of the appeal any party to the appeal may file a declaration in writing that he does not wish to be present in person or represented by a legal practitioner on the hearing of the appeal, **and he** shall serve a copy of such declaration upon every other party who has filed an address for service and thereupon the appeal shall be dealt with as if the party had appeared.

11. (1) Subject to the provisions of these Rules, if the appellant fails to appear when his appeal is called on for hearing the appeal may be dismissed with or without costs as the case may be and if the respondent fails to appear the Court may proceed to hear the appeal *ex parte*
- (2) When an appeal has been dismissed under this Rule, the Court may, in civil proceedings on such terms as to costs or other as it may deem just, direct the appeal to be re-entered for hearing.
- (3) Where an appeal has been heard *ex parte* under this Rule and any judgment has been given therein adverse to the respondent, he may apply to the Court and the Court may, in civil proceedings, set aside such judgment and rehear the appeal.
- (4) No application to set aside and rehear under this rule shall be made after the expiration of twenty-one days from the date of the judgment sought to be set aside:

Provided that a respondent who has failed within the aforesaid period to make application under this rule may, nevertheless at any time within a further period of three months thereafter, apply to the Court on notice to the appellant to set aside such judgment, and the court may, where exceptional circumstance is shown, grant the application and make such order in relation thereto or as to costs as it may deem fit in the circumstances.

- (5) ***Any application under sub rules (3) and (4) of this Rule shall be motion accompanied by an affidavit setting forth the reasons and grounds for the application and a brief of argument filed simultaneously. The court may acting under subrule (3) of this Rule set aside the judgment and order the appeal to be reheard at such time and upon such conditions as to costs or otherwise as it may think fit.***

12. (1) A party who wishes the Court to receive the evidence of witnesses (whether they were or were not called at the trial) or to order the production of any document, exhibit or other thing connected with the proceedings in accordance with the provisions of section 33 of the Act, shall apply for leave on notice of motion prior to the date set down for the hearing of the appeal.

- (2) The application shall be supported by affidavit of the facts on which the party relies for making it and of the nature of the evidence or the document concerned.
- (3) It shall not be necessary for the other party to answer the additional evidence intended to be called but if leave is granted the other party shall be entitled to a reasonable opportunity to give his own evidence in reply if he so wishes.

13. (1) Subject to the provisions of these Rules, the fees set out in the Second Schedule hereto shall be payable in respect of the matters to which they relate and shall be paid to the Registrar of the court below or of the court, as the case may be.

- (2) No fee shall be payable in respect of any matter where such fee would be payable by the government of the Federation or of a State, or any Government Departure:

Provided that when any person is ordered to pay the Costs of the Government of the Federation or of a State or of any Government Department in any case, all fees which would have been payable but for the provisions of this paragraph, shall be taken as having been paid and shall be recoverable from such person.

14. (1) Any party may apply to the Court for leave to prosecute or defend an appeal as a poor person and such application shall be by notice of motion, supported by affidavit, and shall be served on the other parties to the proceedings. No fees shall be payable on filing any such application.

- (2) No party shall be permitted to proceed as a poor person unless he satisfies the Court that he has a reasonable probability of success.

- (3) A person permitted to proceed as a poor person shall not be liable to pay any of the Court fees prescribed by these Rules nor shall he be required to make the deposit or to give security for costs.

- (4) Where the Court grants leave to a party under this Rule, the Chief Justice shall assign a legal practitioner to that party.
- (5) The Court may for good cause shown review, rescind or vary an order permitting any person to proceed as a poor person.
- (6) The Court below or the Court may, on account of the poverty of any party (although such party may not have been formally permitted to proceed as a poor person under this Rule) or for other sufficient reason, dispense, if it sees fit, with payment of any fees, if the circumstances of the case so require:

Provided that if such party succeeds in any appeal which results in an order for payment to him of any costs, the Court may order that such fees shall be a first charge on any moneys recovered or to be recovered under such order.

- (7) No fee shall be payable by an appellant in capital cases or where an appellant is granted legal aid.

15. (1) Except when otherwise expressly provided, all documents and processes shall be filed in the Registry of the Court in Lagos:

Provided that whilst the Court is sitting in any place other than Lagos, any documents or processes in connection with any matter to be dealt with at such sessions may be filed with the Registrar of the Court at such place.

- (2) A document may be filed in the Registry of the Court either by being delivered by the party or the legal practitioner representing him or his agent in person or by being sent there by registered post.

16. The Registry of the Court shall, subject to the directions of the Chief Justice, be open every day in the year from eight O'clock in the forenoon to one o'clock in the afternoon except :

- (a) **on Sundays or on any day declared in Lagos as a public holiday by virtue of the Public Holidays Act; or**
- (b) on Saturdays when the Registry shall be open to the public from eight O'clock to eleven O'clock in the forenoon.

17. Sessions of the Court shall be convened and constituted and the time, venue and forum for all sessions and for hearing interlocutory applications shall be settled in accordance with directions to be given by the Chief justice.
18. The sitting of the Court and the matters to be disposed of at such sittings shall be advertised and notified in the **Federal Gazette** before the date set down for hearing of the appeal:

Provided that the Court may in its discretion hear any appeal and deal with any other matter whether or not the same has been so advertised.

19. The Court may at any time on application or of its own accord adjourn any proceedings pending before it from time to time and from place to place.
20. The Chief Registrar shall have the custody of the records of the Court and shall exercise such other functions as are assigned to him by these Rules.
21. The Chief Registrar may assign, and the Chief Registrar may, with the approval of the Chief Justice, delegate to any Registrar of the Court any functions required by these Rules to be exercised by the Chief Registrar.
22. (1) Subject to the provisions of this Rule, the Seal of the Court and any duplicate thereof shall be kept in the custody of the Chief Registrar, and except as the Chief Justice may otherwise direct shall not be affixed to any writ, rule, order or other process or to any document without the express authority of the Chief Registrar.

(2) If at any time a session of the Court is held outside Lagos, a duplicate of the Seal of the Court may, on the instructions of the Chief Justice, be entrusted and kept in the custody of a Registrar of the Court for the purpose of that session and may be used for such purposes in accordance with any directions given by the Chief Justice or by the **Justice** presiding at that session.

23. Except as may be otherwise provided in the Constitution or in any other enactment, the Chief Registrar shall have such powers and duties as are given him by these Rules or such further powers and duties as the Chief Justice may direct.

24. (1) The Registrar shall keep -

- (a) a Criminal Appeal Book;
- (b) a Civil Appeal Book; and
- (c) a Civil Record Book,

each of which shall contain an index in alphabetical order.

(2) The following particulars shall be entered in the Criminal appeal Book, and the Civil Appeal Book -

- (a) the number of the appeal;
- (b) the names of the appellant and respondent;
- (c) the court from which the appeal is brought;
- (d) the date and place of hearing of the appeal;
- (e) the names of counsel;
- (f) the subject matter of the appeal;
- (g) the judgment of the Court;
- (h) any subsequent proceedings and remarks.

(3) The following particulars shall be entered in the Civil Record Book -

- (a) the number of the application;
- (b) the names of the parties;

- (c) the date and place of hearing of the case;
- (d) the names of counsel;
- (e) the subject matter of the application;
- (f) the judgment of the Court;
- (g) any subsequent proceedings and remarks.

25. As soon as the notice of appeal is filed or an application for the exercise by the Court of its original jurisdiction is made to the Court, the Registrar shall prepare a file in which pleadings or documents relating to the appeal or case shall be filed and on the front page thereof shall be recorded particulars of such pleadings or documents and the dates on which they are received.

26. Any person aggrieved by anything done or directed to be done by the Registrar other than anything ordered or done by the direction of the Chief Justice may apply to the Chief Justice to have the act, or direction complained of cancelled or varied and the Chief Justice may give such directions as he thinks fit.

27. The forms set out in these Rules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable.

28. (1) Every application to the Court shall be by notice of motion supported by affidavit. It shall state the rule under which it is brought and the ground for the relief sought.

(2) Any application to the Court for leave to appeal (other than an application made after the expiration of time for appealing) shall be by notice of motion which shall be served on the party or parties affected.

(3) Where an application has been refused by the Court below, an application for a similar purpose may be made to the Court within fifteen days after the date of the refusal.

- (4) Wherever under these Rules an application may be made either to the Court it shall not be made in the first instance to the Court except where there are exceptional circumstances which make it impossible or impracticable to apply to the court below.
 - (5) If leave to appeal is granted by the Court under these Rules or by the court below the appellant shall file a notice of appeal.
- 29.** (1) An application to strike out or set aside for non-compliance with these Rules, or for any other irregularity arising from the rules of practice and procedure in this Court, any proceedings or any step taken in any proceedings or any document, judgment or order therein shall only be entertained by the Court if it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.
- (2) An application under this rule may be made by motion and the grounds of objection must be stated therein.
- 30.** An appeal shall be deemed to have been brought when the notice of appeal has been filed in the Registry of the court below.
- 31.** (1) The Court may enlarge the time provided by these Rules for the doing of anything to which these Rules apply, or may direct a departure from these Rules in any other way when this is required in the interest of justice.
- (2) Every application for an enlargement of time in which to appeal or in which to apply for leave to appeal shall be supported by an affidavit setting forth good and substantial reasons for the failure to appeal or to apply for leave to appeal within the prescribed period. There shall be exhibited or annexed to such affidavit
- (a) a copy of the judgment from which it is intended to appeal;
 - (b) a copy of other proceedings necessary to support the complaints against the judgment; and

- (c) grounds of appeal which *prima facie* show good cause why the appeal should be heard.
- (3) When time is so enlarged a copy of the order granting such enlargement of time shall be annexed to the Notice of Appeal.

32. Where, in an appeal to the Court from the court below, the court below has affirmed the findings of fact of the court of first instance, any application to the Court in pursuance of its jurisdiction under section 213 (3) of the Constitution for leave to appeal shall be granted only in exceptional circumstances.

33. Where in any proceedings or at any stage of the hearing of any cause or matter, a question arises concerning the validity or constitutionality of any enactment or other law, the Court may, if it considers that it is necessary and expedient so to do, invite the Attorney-General of the Federation, the Attorney-General of the appropriate State or any other legal practitioner to attend the hearing of such cause or matter for the purpose of presenting arguments on such issues of validity or constitutionality.

34. Except as otherwise stated in this Order, or the context so implies, this Order shall apply to all matters whether civil or criminal.

35. (1) There shall be constituted a body to be known as the Rules of Court Advisory Committee comprising -

- (a) four justices, one of whom shall be Chairman of the Committee;

- (b) ***Two members each of the inner and outer Bar;*** whom the Chief Justice may in his discretion ***appoint.***

- (2) It shall be the duty of the Committee to advise the Chief Justice from time to time, in the exercise of the powers conferred upon him by the Constitution or by or under any law to make rules for regulating or making provision with respect to practice and procedure in the Court.

- (3) Every member of the Committee shall remain a member thereof for such period as the Chief Justice may in his discretion prescribe, either at the time of the appointment of the member or at any time thereafter.

Original Jurisdiction

Order 3

Proceedings in the Original Jurisdiction of the Court

- 1.. (1) Except where otherwise expressly provided, all proceedings for the exercise by the Court of its original jurisdiction shall be commenced by application to the Court, filed in accordance with Rule 15 of Order 2 of these Rules.
 - (2) Subject to the provisions of any enactment and of these Rules, civil proceedings in the original jurisdiction may be begun by filing a statement of claim, originating summons or originating motion as the case may require.
3. The following proceedings must be begun by filing a statement of claim
 - (a) proceedings in which facts in issue are disputed or are likely to be disputed; and
 - (b) proceedings in which a claims made by the plaintiff is based on an allegation of fraud.
4. When a statement of claim has been filed a summons shall be issued to the defendant to appear and answer the claim.
5. Every summons shall be signed by the Registrar and sealed with the Seal of the Court and shall be accompanied by a copy of the statement of claim.
6. (1) In any proceedings where the Court has original jurisdiction, any party claiming any legal or equitable right and the determination of the question whether **he** is entitled to the right **depending** on the

construction of the Constitution or of any other enactment may apply for the issue of an originating summons for the determination of such question of construction and for a declaration as to the right claimed and for any further or other relief.

- (2) Any part claiming to be interested in any proceedings specified in sub-rule (1) of this Rule under a deed or other written instrument, may apply for the issue of an originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the person interested and for any further or other relief.
 - (3) The application shall be made in Form 2 in the First Schedule to these Rules and shall be supported by such evidence as the Court may require.
7. Rule 8 of this Order shall not affect the right of any party seeking a declaratory judgment to institute proceedings by filing a statement of claim under this Order and on an application by originating summons the Court shall not be bound to determine any such question of construction if in the opinion of the Court it ought not to be determined on originating summons; **and** in the latter event the Court may on the application of either party or its own motion direct the parties to file pleadings.
 8. Where in any enactment provisions is made for obtaining any relief whatsoever by application to the Court and no procedure is prescribed for obtaining such relief in the enactment or under these Rules, the plaintiff may initiate proceedings for such relief by originating motion.
 9. (1) A defendant shall, within a period of 21 days after service of a summons on **him** enter appearance by filing in the Registry -
 - (a) a memorandum in writing dated on the day of its delivery, containing the name and address of the defendant, the Attorney-General of the Federation or the State as the case may be, or the defendant's legal practitioner; and
 - (b) two duplicates of the memorandum of appearance.

- (2) The Registrar shall seal the duplicate copies of the memorandum of appearance with a seal bearing the words 'Appearance entered' and showing the date on which they were sealed, and then return them to the person entering the appearance.
- (3) The duplicate copies of the memorandum of appearance so sealed shall be evidence that the appearance was entered on the day indicated by the seal.
- 10.** A defendant shall, on the day on which it entered appearance, give or send written notice of **his** having entered appearance to the plaintiff's legal practitioner, and a duplicate of the memorandum of appearance so sealed and delivered to the plaintiff or his legal practitioner shall be sufficient notice for the purpose of his **rule**.
- 11.** Every application for the exercise by the Court of its original jurisdiction, and every memorandum of appearance shall contain a proper address for service to the satisfaction of the Registrar and shall not be received unless it conforms to this **rule**.
- 12.** Except the Court otherwise directs, the defendant shall within forty-two days after service on **him** of a statement of claim, file **his** statement of defence.
- 13.** The plaintiff may, if it thinks fit file a Reply to the statement of defence within fourteen days after **the** service on it of the statement of defence.
- 14.** An application for an interlocutory order shall be by motion entitled in the proceeding in which it is made and shall be supported by an affidavits of the facts on which the applicant will rely.
- 15.** No motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable mischief or destroy the subject matter of the proceedings or otherwise render any final order in favour of the applicant nugatory, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just; and

any party affected by such order may move within fifteen days of the service of the order upon him to set it aside.

16. Unless the Court gives special leave to the contrary, there must be at least three clear days between the service of a notice of motion and the day named in the notice for hearing the motion.
17. If on the hearing of a motion the Court shall be of the opinion that any person to whom notice has not been given, ought to have or to have had such notice, the Court may dismiss the motion or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court may think fit to impose.
18. No action or proceedings shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.
19. Rule 8 of this Order not affect the right of any party seeking a declaratory judgment to institute proceedings by filing a statement of claim under this order and on an application by originating summons the Court shall not be bound to determine any such question of construction if in the opinion of the Court it ought not to be determined on originating summons.
20. (1) The plaintiff shall within fourteen days after the defendant has entered appearance take out a summons for directions by the Court.

(2) The Court may determine all matters pertaining to the summons in chambers or in open court and shall, on the hearing of the summons, give such directions with respect to proceedings interrogatories, the admission of documents and facts, the discovery, inspection and production of documents and such other interlocutory matters as the Court may consider expedient for the just and expeditious determination of the case.

Order 4
Case Stated

1. The parties to a proceeding commenced by statement of claim, originating summons or originating motion may at any stage concur in stating the question of law arising in the proceeding in the form of a case stated for the opinion of the Court.
2. The case stated shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as are necessary to enable the Court to decide the questions raised by the case stated.
3. Upon the arguments of the case the Court and the parties may refer to the whole contents of the documents stated.
4. The Court may draw from the facts and documents stated any inference, whether of fact or law, which might have been drawn from them if proved at a trial.
5. No facts or documents other than those stated in the case shall be referred to upon the arguments save with the consent of all parties.
6. A case state concurred in by the parties to a proceeding shall be signed by the several parties or their legal practitioners and filed with the Registrar.
7. The parties to a case stated may, if they think fit, enter into an agreement in writing that upon the determination by the court of the question or questions of law raised in the case, stated judgment shall be entered by the Court to any effect within its jurisdiction and with or without costs, and such agreement shall be filed with the Registrar.
8. Likewise the parties may, in the presence of the Court, either themselves or by legal practitioners representing them verbally make an agreement, as to the judgment to be entered, upon the determination by the Court of the question of law raised in the case stated.
9. Where no such agreement is made, the proceedings in the cause shall be resumed, but the questions of law decided in the case stated shall not be re-opened in the Court and the application shall proceed to its final

determination upon the decision upon the law recorded after the hearing of the case stated.

Order 5

References as to the Constitution and Reserved Points of Law

- (a) in the case of an appeal in civil proceedings -
 - (i) the Writ of Summons or other documents by which the proceedings were commenced in the court of trial,
 - (ii) the pleadings or amended pleadings as the case may be (if any),
 - (iii) any other document or proceedings relevant to the question on which the decision of the Court is sought,
 - (iv) the judgment or decision or order of the court or tribunal from which the appeal came to the Court of Appeal, and
 - (v) the *opinion* of the Court of Appeal delivered in accordance with Rule 3 of this Order; and
 - (b) in the case of an appeal in criminal proceedings -
 - (i) the charge in the Court of trial in so far as the same is relevant to the subject matter of the proceedings on appeal;
 - (ii) the documents containing the matters mentioned under subparagraphs (iii), (iv) and (v) of sub-rule (a) of this Rule.
- 3.** (1) A case stated under this Order (hereafter referred to in this rule as 'the case') shall be divided into paragraphs, which, as near as may be, shall be divided into paragraphs, which as near as may be, shall be confined to distinct portions of the subject and every paragraphs shall be numbered consecutively.
- (2) The case shall state -
- (i) the question or questions of interpretation or application of the Constitution on which the decision of the Court is sought,

- (ii) the findings of fact, as determined by the Court of Appeal, which are necessary and relevant to explain the questions referred for the decision of the Court;
 - (iii) the contentions of each of the parties on such question or questions; and
 - (iv) the opinion of the members of the Court of Appeal on such question or questions.
4. (1) Subject to the provisions of this rule, the following persons shall be entitled as of right to appear in person by a legal practitioner at the hearing of the case -
- (a) the parties to the proceedings in which the question referred arose;
 - (b) Where the case involves the validity or constitutionality of a law within the competence of the **Federal Government**, the Attorney-General of the Federation;
 - (c) Where the case involves the validity or constitutionality of a law within the competence of a State, the Attorney-General of the particular State where the law is or purports to be in force.
- (2) Where the Attorney-General of the Federation or the Attorney-General of a State is not entitled to appear as of right under sub-rule (1) of this Rule, the Court may of its own motion or otherwise, grant leave to either of them to appear personally or by a legal practitioner for the purpose of presenting arguments to the Court on the case.
- (3) Any person who is entitled to appear as of right or by leave of the Court may obtain a copy of the case stated from the Registrar and shall be entitled to present arguments to the Court on the issue of the validity or constitutionality of the law in question.
5. (1) The provisions of Order 6 relating to the filing of briefs in civil and criminal appeals shall apply to proceedings relating to a case stated under this Order so however that each of the parties shall be deemed to be an appellant and the bound record of the case shall be

deemed to be the Record of Appeal and each party shall file the Brief in support of his argument accordingly.

- (2) A person granted leave to appear pursuant to subrule (2) of Rule 4 of these Rules shall not be required to file a Brief unless the Court otherwise directs, and the Registrar of the Court shall supply such a person with copies of the Record of Appeal together with the Briefs.
6. Where a party disputes the determination of the Court of Appeal on any material issue of fact contained in the case stated for the opinion of the Court and has duly appealed against such determination, the Court shall adjourn the consideration of the case stated until after the hearing and decision in the appeal.
7. The order of address on case stated shall be determined by the Court in respect of every such case and unless the Courts calls upon any counsel to address it a second time, every counsel shall be limited to one address only.

Order 6

Filing of Briefs in Civil And Criminal Proceedings

- (1) An application for leave to appeal or for enlargement of time within which to appeal or seek leave to appeal, shall be supported by a Brief and shall include the following -
 - (a) the motion paper for the application;
 - (b) the relevant affidavit in support thereof;
 - (c) the relevant documents referred to in, and exhibited with, the said *affidavit* which must include true copies of the judgments with which the application is concerned that is, both of the court below and the court of first instance verified by affidavit;
 - (d) the proposed grounds of appeal from the said judgments;
 - (e) a statement of questions which the applicant would like the Court to consider, expressed in the terms and circumstances of the case but without unnecessary details, **which** statement will be deemed to include every subsidiary question comprised therein.

Only the questions set forth in the application or comprised therein will be considered by the Court;

- (f) the Constitutional provisions, enactments, or subsidiary legislation, if any, which are relevant to the application;
 - (g) a concise statement of the case containing the facts material to the consideration of the questions presented; and
 - (h) a direct and concise argument amplifying the reasons relied upon.
- (2) All arguments in support of the application shall be set out of the application as provided for in paragraph (h) of sub-rule (1) of this Rule.
- (3) Failure on the part of an application for leave to present with accuracy, brevity, and precision whatever is essential to the clear and adequate understanding of the questions which require consideration shall be a sufficient reason for refusing the application.
- (4) *The respondent may, if he so desires, file in reply a counter affidavit not later than two days before the hearing date.*
- (5) *On being served with the applicant's brief of arguments the respondent may file a reply brief within seven days, if the application for leave to appeal is in respect of an interlocutory appeal; and within twenty-one days in the case of an application for leave to appeal against a final judgment.*
3. (1) Without prejudice to the powers of the Court to hear oral argument, an application under rule 2 **of this order** may be considered and determined by the Court in chambers, only on the written argument and documents, as required by the rule, submitted by the application in support without hearing oral argument either in open court or in chambers. The Court may, under this Rule, refuse such application, only if in its opinion the application is completely devoid of merit.
- (2) Where the appellant has filed to file a Brief within the period prescribed by this Order and there is no application for extension of

time within which to file **the** Brief, the Court may, subject to the provision to Rule 9 of this Order, proceed to dismiss the appeal in chambers without hearing argument.

- (3) Where the appellant has filed a notice of withdrawal of his appeal, the Court may proceed to dismiss the appeal in chambers without hearing argument notwithstanding that Briefs have been filed in the appeal.
4. Where leave has been granted, the appellant shall file his notice of appeal and the record shall be compiled in accordance with the provisions of Order 7.
5.
 - (1)
 - (a) ***The appellant shall within ten weeks of the receipt of the Record of Appeal referred to in Order 7 file in the Court and serve on the respondent a written brief being a succinct statement of his argument in the appeal.***
 - (b) ***The Brief which may be settled by counsel, shall contain what are, in the appellant's view, the issues arising in the appeal. If the appellant is abandoning any point taken in the Court below, this shall be so stated in the Brief. Equally, if the appellant intends to apply in the course of the hearing for leave to introduce a new point not taken in the court below, this shall be indicated in the Brief.***
 - (c) ***If leave to file and argue additional grounds of appeal is to be sought at the hearing of the appeal it may be so indicated in the Brief and the proposed additional grounds shall be stated and argued in the Brief under the appropriate issue or issues arising in the appeal. Provided that any fees payable under Order 2 Rule 13 shall be paid to the Registrar of this Court at the time of filing the Brief.***
 - (2) The respondent shall file in the Court and serve on the appellant his own Brief within eight weeks after service on him of the Brief of the appellant.
 - (3) The appellant may also file in the Court and serve on the respondent a Reply Brief within four weeks after service of the Brief

of the respondent on him but, except for good and sufficient cause shown, a Reply Briefs shall be filed and served at least three days before the date set down for the hearing of the appeal.

- (4) If the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the Brief, to which special attention shall be drawn, and the intention shall also be restated as one of the reasons.
- (5) *Deleted*
- (6) (a) Ten copies of each Brief must be filed in the Court.
 - (b) All Briefs shall be concluded with a numbered summary of the reasons upon which the argument is founded.
 - (c) Wherever possible or necessary, the reasons should also be supported by particulars of the titles, dates, and pages of cases reported in the Law Reports or elsewhere including the summary of the decisions in such cases, which the parties propose to rely upon. If necessary, reference should also be made to relevant statutory provisions, including the provisions of statutory instruments.
 - (d) Thee parties shall assume that Briefs will be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the court below, and wherever necessary, reference should also be made to all relevant documents or exhibits on which they propose to rely in the argument.
- (7) *Notwithstanding the provisions of Rule 9 here of any party who failed to file its brief within the time prescribed herein before shall be liable to pay penalty for non-compliance as provided in the Second Schedule to these Rules.*

Practice Direction

In giving effect to the provisions of Order 6 Rule 5 of the Supreme Court Rules, 1985, the period of the vacatin which is declared

between July and September each year shall not be taken into account for the computation of the period of filing briefs by either the appellant or the respondent in an appeal before the Court.

6. (1) Parties whose interest in the appeal are passive (**for example** stakeholders, trustees, executors, etc.) are not required to file a separate Brief if they are satisfied that their position is explained in one of the Briefs filed.
 - (2) Argument in respect of a cross-appeal or in respect of a respondent's notice may be included by any party in his Brief for the original appeal without special application. Such as inclusive Brief shall clearly state that it is filed in respect of both the original appeal and cross-appeal or respondent's notice.
 - (3) Where there are more than one appellant and they file more than one Brief, it shall not be necessary for the respondent to file more than one Brief in respect of his own case and time does not begin to run against him for the purpose of filing his Brief until the service of all the Briefs filed by the appellants unless the time within which the appellants may file their briefs has expired.
7. (1) As early as possible before the date set down for the hearing of the appeal, and in any event, not later than one week before such date, the party who has filed a Brief or the legal practitioner representing him shall forward to the Registrar in charge of Litigation a list of the law reports, text books and other authorities which counsel intend to cite at the hearing of the appeal.
 - (2) The provisions of sub-rule (1) **of this rule** shall not apply to a party who has included in his brief the list mentioned in the sub-rule, but such a party may, if he so desires, submit a supplementary list within the prescribed time.
8. (1) Subject to the provisions of rule 3 **of these Rules**, oral argument will be allowed at the hearing of the appeal to emphasize and clarify the written arguments appearing in the Briefs already filed in Court.
 - (2) The appellant shall be entitled to open and conclude the argument. But when there is a cross-appeal or a respondent's notice, the appeal

and such cross-appeal of respondent's notice shall be argued together with the appeal as one case and within the time allotted for one case, and the Court may, having regard to the nature of the appeal, inform the parties which one is to open and close the argument.

- (3) Unless otherwise directed, one hour on each side will be allowed for argument. Any request for additional time shall be made to the Court in writing not later than one month after service of the appellant's Brief on the respondent. The request, a copy of which shall be served on the respondent, shall state clearly and in precise terms the reasons why the argument cannot be presented within the time limit.
 - (4) Unless additional time has been granted, only one legal practitioner will be heard for each side. By the special permission of the Court, more than one legal practitioner may be heard for each side when there are several parties on the same side. The Court will look on divided argument with favour.
 - (5) Save with leave of the Court, no oral argument will be heard in support of any argument not raised in the Brief or on behalf of any party for whom no Brief has been filed.
 - (6) When an appeal is called and no party for any legal practitioner appearing for him appears to present oral argument, but Briefs have been filed by all the parties concerned in the appeal, the appeal will be treated as having been argued and will be considered as such.
 - (7) When an appeal is called, and it is discovered that a Brief has been filed for only one of the parties and neither of the parties concerned nor their legal practitioners appear to present oral argument, the appeal shall be regarded as having been argued on that Brief.
9. If an appellant fails to file and serve his Brief within the time provided for in rule 5 of these Rules, or within the time as extended by the Court, the respondent may apply to the Court for the appeal to be struck out for want of prosecution. If the respondent fails to file his Brief, he will not be heard in oral argument except by leave of the Court.
- (2) *Deleted*

10. The Court may, where it considers the circumstances of an appeal to be exceptional, or that the hearing of an appeal must be accelerated in the interest of justice, waive compliance with the provisions of this Order in so far as they relate to the preparation and filing of Briefs of Argument, either wholly or in part, or reduce the time limits specified in the Order, to such extent as the Court may deem reasonable in the circumstances of the case.

Order 7
Records of Appeal in Civil And Criminal Proceedings

1. (1) The provisions of Rules 2, 3, and 4 of this Order shall apply to appeals to the Court from final decisions of the Court of Appeal in civil and criminal cases other than decisions of a High Court.
- (2) The provisions of Rules 6 and 7 of this Order shall apply to any decision of the Court of Appeal in respect of -
- (a) an interlocutory decision made by it;
 - (b) a decision made by it on appeal from an interlocutory decision of a High Court;
 - (c) a decision made by it affirming or reversing an order for summary judgment; or
 - (d) a decision made by it in cases -
 - (i) where the liberty of a person or the custody of an infant is concurred,
 - (ii) where an injunction or the appointment of a receiver is granted or refused,
 - (iii) relating to or connected with the winding up of companies,
 - (iv) of a decree *nisi* in a matrimonial cause,
 - (v) affecting the Revenue of the Government of the Federation or of a State;
 - (e) such other cases as the Court in its discretion may direct.
2. (1) As soon as an appellant has filed his Notice of Appeal in the court below, the Registrar of that court or (in the case to which Rules 6 and 7 of this Order apply) the appellant, shall, with all due

expedition, start to prepare the Record in accordance with the provisions of this order.

- (2) The Record shall contain the following documents in the order set out -
 - (a) the index;
 - (b) a statement by the Registrar of the Court of Appeal giving brief particulars of the case and including a schedule of the fees paid in the Court of Appeal;
 - (c) copies of the documents and proceedings constituting the Record of Appeal before the Court of Appeal;
 - (d) copies of all documents and proceedings before the Court of Appeal;
 - (e) a copy of the order for leave to appeal whether made by the Court or by the Court of Appeal;
 - (f) a copy of the Notice of Appeal;
 - (g) a certificate by the Registrar of the Court of Appeal certifying that the notice of Appeal was duly served upon the respondent;
 - (h) a certificate by the Registrar of the Court of Appeal certifying that the appellant has duly and punctually complied with the conditions of appeal imposed upon him; and
 - (i) a certificate by the Registrar of the Court of Appeal certifying that the appellant and the respondent have either collected their copies of the record respectively or that they have been duly notified that such record is ready for collection.
- (3) In respect of the documents and proceedings referred to in paragraphs (c) and (d) of sub-rule (2) of this Rule, it shall not be necessary to copy any documents which the appellant with the consent of the respondent considers should be excluded:

Provided that whenever such document has been included on the insistence of the respondent, the Registrar of the court below shall make a note to that effect.

(4) It shall not be necessary to copy the notes or minutes of the proceedings taken by every member of the Court of Appeal and the notes of minutes signed by the Presiding Justice shall be deemed to be the proceedings of the court below.

(5) It shall not be necessary for copies of individual documents to be separately certified by the Registrar of the court below shall certify as correct each copy of the Record transmitted by him in accordance with these Rules.

3. (1) When the appellant or his agent files his Notice of appeal, he shall be informed of the amount assessed by the Registrar of the Court of Appeal as the cost of the preparation and transmission of the Record to the Court and (in the case of civil appeals) as the amount of security and the due prosecution of the appeal.

(2) The appellant shall within a period of not more than 14 days pay the amount so assessed and deposit the amount prescribed as security for costs and the due prosecution of the appeal or in lieu thereof give security by bond with one or more sureties to the satisfaction of the Registrar: Provided that -

(a) the amount of such security shall not exceed twice the costs awarded in favour of the successful party before the Court of Appeal; and

(b) no deposit or security shall be required where the deposit would be payable by the Government of the Federation or of a State, by any Government department, by a local government, or by a corporation directly established by a law enacted by the legislature of the Federation of a State.

(3) The appellant shall within such time as the Registrar of the court below directs deposit with him a sum fixed to cover the estimated expense of making up and forwarding the record of appeal calculated at the full cost of one copy for the appellant and one-tenth cost for each of the ten copies for the use of the Court.

- (4) The Court may, where necessary, require security for costs or for performance of the orders to be made on appeal, in addition to the sum determined under this Rule.
4. (1) The Registrar of the court below shall within a period of not more than six months from the date of the filing of the notice of appeal transmit the record when ready together with -
- (a) a certificate of service of the notice of appeal;
 - (b) a certificate that the conditions imposed under this Order have been fulfilled;
 - (c) ten copies of the record for the use of the **Justices**;
 - (d) the docket or file of the case in the court below and the court of first instance containing all papers or **documents** filed by the parties in connection therewith, to the Registrar of the Court; and
 - (e) a certificate indicating date of service of records on the parties.
- (2) The Registrar of the court below shall also cause to be served on all parties mentioned in the notice of appeal who have filed an address for service a notice that the record has been forwarded to the Registrar of the Court who shall in due course, enter the appeal in the cause list.
5. (1) The Court may in any case in which it considers it necessary or expedient so to do in the interest of justice, or in any case in which it makes an order for accelerated hearing of the appeal, direct a departure from Rules, 2, 3 and 4 of this Order.
- (2) Where a direction for such departure is made by the Court, the provisions of Rules 6 and 7 of this Order shall apply to the appeal notwithstanding the fact that it is an appeal of the type mentioned in sub-rule (1) of Rule 1 of this Order:

Provided that the Court may give further or other directions for the purpose of procuring a Record for the hearing and determination of the appeal.

6. It shall not be necessary for the Registrar of the Court of Appeal to prepare a Record in respect of an appeal of the type mentioned in Sub-

Rule (2) of Rule 1 of this Order unless the Court otherwise directs, **and accordingly**, the Record for the purpose of such appeals shall be prepared in the manner set forth in Rule 7 of this Order.

7. (1) The appellant shall, in appeals to which this Rule applies either simultaneously with filing his Notice of Appeal or within 14 days thereafter, prepare for the use of the **Justices** a Record comprising -
 - (a) the index;
 - (b) office copies of documents and proceedings which the appellant considers relevant to the appeal; and
 - (c) a copy of the notice of appeal.
 - (2) If the respondent considers that the documents and proceedings filed by the appellant are inaccurate or are not sufficient for the purposes of the appeal, he shall, within a period of 7 days after service on him of the Record filed by the appellant, file any further or other documents that he wished to file.
 - (3) All documents filed by either party shall be verified by the affidavit of a person who has read them compared them with authentic or certified true copies.
 - (4) In the case of the documents and proceedings mentioned in Rule 7 (1)(b) and (c) of this Order, the party filing them shall lodge certified true copies thereof with the Registrar of the Court.
8. (1) When the Registrar of the court below has complied with the requirements of Rule 4 of this Order, he shall deliver a copy of the Record to the parties after receiving any fees that may be due or payable under the Second Schedule to these Rules.
 - (2) In respect of criminal appeals, the Registrar of the court below shall forward a copy of the Record to the Attorney-General or the Solicitor-General of the State from which the appeal emanates or (as the case may require) to the Attorney-General or the Federation.

Appellate Jurisdiction

Order 8 Civil Appeals

1. This Order shall apply to the Court from the court below in civil cases, and to matters related thereto.

2. (1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called 'the notice of appeal') to be filed in the Registry of the court below which shall set forth the grounds of appeal, state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number of copies for service on all such parties. It shall also have endorsed on it an address for service.

(2) If the grounds of appeal allege misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.

(3) The notice of appeal shall set forth concisely and under distinct heads the ground upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

(4) No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.

(5) The appellant shall not without the leave of the Court urge or be heard in support of any ground of appeal not mentioned in the notice of appeal, but the Court may in its discretion allow the appellant to amend the grounds of appeal upon payment of the fees prescribed for making such amendment and upon such terms as the Court may deem just.

- (6) Notwithstanding the foregoing provisions the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not, if it allows the appeal, rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

- (7) The Court shall have the power to strike out a notice of appeal when an appeals is not competent.

3. Deleted

4. *A notice of appeal may be amended by or with the leave of the Court at any time.*

- 5. (1)** The Court may in any case direct that the notice of appeal be served on any party to the proceedings in the court below on whom it has been served, or on any person not party to those proceedings.

- (2) The Court may in any case where it gives a direction under this rule -

(a) postpone or adjourn the hearing of the appeal for such period and on such terms as may be just; and

(b) give such judgment and make such order on the appeal as might been given or made if the persons served in pursuance of the direction had originally been parties.

- 6. (1)** An appellant may at any time before the appeal is called on for hearing serve on the parties to the appeal and file with the Registrar a notice to the effect that he does not intend further to prosecute the appeal.

- (2) If all parties to the appeal consent to the withdrawal of the appeal without order of the Court, the appellant may file in the Registry the document or documents signifying such consent and signed by the parties or by their legal representatives and the appeal shall be struck out of the list of appeal by the Court, and in such event any sum

lodged in Court as security for the costs of the appeal shall be paid out to the appellant.

(3) **Deleted**

(4) If all the parties do not consent to the withdrawal of the appeal as aforesaid, the appeal shall remain on the list, and shall come on for the hearing of any issue as to costs or otherwise remaining outstanding between the parties, and for the making of an order as to the disposal of any sum lodged in Court as security for the costs of appeal.

(5) An appeal which has been withdrawn under this Rule, shall be deemed to have been dismissed.

(6) *Any application under this Rule may be considered and determined by the Court in chambers without oral argument.*

7. Where an appeal is withdrawn under rule 6 of this Order any respondent who has given a notice under Rule 3 of this Order may give notice of appeal and proceed therewith in the manner prescribed by the foregoing rules, and in such case the times limited for giving notice of appeal, for depositing the sum estimated to cover the cost of the record and for furnishing the security for costs may, on application to the Court, be extended so far as is reasonably necessary in all the circumstances of the case.

8. (1) If the appellant has complied with one of the requirements of rule 3 of Order 7, the Registrar of the court below shall certify such fact to the Court, which shall thereupon order that the appeal be dismissed with or without costs, and shall cause the appellant and the respondent to be notified of the terms *of* its order.

(2) Where an appeal has been dismissed under paragraph (1) of this rule, a respondent who has given notice under rule 3 of this Order may give notice of appeal and the provisions of rule 7 of this Order shall apply as if the appeal were brought under that rule.

(3) If the respondent alleges that the appellant has failed to comply with any part of the requirements of **Rule 2** of this Order and rule 3 of Order 7, the Court, if satisfied that the appellant has so failed, may

dismissed the appeal for want of due prosecution or make such other order as the justice of the case may require.

(4) An Appellant whose appeal has been dismissed under this rule may apply by notice of motion that his appeal be restored. Any such application may be made to the Court and the Court may, where exceptional circumstances have been shown, cause such appeal to be restored upon such terms as it may think fit.

(5) *Any application under this Rule may be considered and determined by the Court in chambers without oral argument.*

9. (1) It shall be the duty of counsel representing a party to an appeal to give immediate notice to the death of that party to the Registrar of the court below or to the Registrar of the Court (as the case may require) and to all other parties affected by the appeal as soon as he becomes aware of the fact.

(2) If it is necessary to add or substitute a new party for the deceased, an application shall, subject to the provisions of Rule 11 of this Order, be made in that behalf of the court below or to the Court either by any existing party to the appeal or by any person who wishes to be added or substituted.

(3) The notice prescribed by sub-rule (1) of this rule shall be given to the Registrar of the court to which the application mentioned in sub-rule (2) ought to be made.

(4) All actions or other things whatsoever taken or done by the Registrar of the court below or by any other person for the purpose of completing the Record and transmitting the same to this Court shall not be open to objection on the ground that it was taken or done after the death of a party to the appeal.

(5) Where an appeal has been down for hearing and the Court is or becomes aware that a necessary party to the appeal is dead the appeal shall be struck off the hearing list.

10. (1) Subject as hereinafter provided each party shall, immediately after an appeal becomes pending before the Court, deliver to the

court below all documents (being exhibits in the case or which were tendered as exhibits and rejected) which are in his custody or were produced or put in by him at the trial.

- (2) Subject as hereinafter provided, each party to an appeal shall be prepared to produce at the hearing of the appeal all exhibits, other than documents, which are in his custody or were produced or put in by him at the trial.
- (3) In case any party finds it difficult to comply with the preceding provisions of this rule owing to the nature of documents or other exhibits or owing to their being in possession of a third party or for any other reason, he may apply to the Registrar of the Court for directions.
- (4) The Registrar of the court below may, either of his own motion or upon application, give any directions he sees fit, whether dispensing with the provisions of the Rule or modifying its application in any way or for securing compliance with it.
- (5) All original documents delivered to the court below under this Rule shall remain in the custody of the court below until the record of appeal has been prepared, and shall then be forwarded with the record to the Registrar and shall remain in the custody of the Court until the determination of the appeal:

Provided that the Court or Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he may impose.

- 11.** After an appeal has been entered and until it has been finally disposed of, the Court shall be seised of the whole of the proceedings as between the parties thereto, and except as may be otherwise provided in this Order, every application therein shall be made to the Court and not to the court below, but any application may be filed in the court below for transmission to the Court.
- 12.** (1) In relation to an appeal the Court shall have all the powers and duties as to amendment and otherwise of the court of first

instance, and, where that court is not the court of trial, the court of trial.

- (2) The Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require, including any order as to costs.
- (3) The Court shall have power to make orders by way of injunctions or the appointment of a receiver or manager and such other necessary orders for the protection of property or persons pending the determination of an appeal to it even though no application for such an order was made in the court below.
- (4) 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.
- (5) The powers of the Court under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal has been given in respect of any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the court may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
- (6) The Court may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.
- (7) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order of the Court:

Provided that where the Attorney-General of the Federation or of a State or the Director of Public Prosecutions of the Federation or of a State or the Director of Public Prosecutions of the Federation or of a State makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(8) 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 of the Court.

13. (1) On the hearing of any appeal the Court may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) The Court shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court some substantial wrong or miscarriage of Justice has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question and if it appears to the Court that any such wrong or miscarriage of justice as is mentioned in paragraph (2) **of this rule** affects part only of the matter in controversy, or one or some only of the **part**, the Court may order a new trial as to that **part** only, or as to that **part** or those **parts** only and give final judgment as to the remainder.

(4) In any case where the Court has power to order a new trial on the ground that damages awarded by the court below are excessive or inadequate, the Court may, in lieu of ordering a new trial -

(a) substitute for the sum awarded by the court below such sum as appears to the Court to be proper;

(b) reduce or increase the sum awarded by the court below by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded; but except as aforesaid, the Court shall not have power to reduce or increase the damages awarded by the court below.

(5) A new trial shall not be ordered by reason of the ruling of any judge of the court below that a document is insufficiently stamped or does not require to be stamped.

14. (1) The judgment of the Court shall be pronounced in open Court, either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.
- (2) Wherever a reserved judgment is to be given and the counsel concerned are duly notified in that behalf, the presence of such counsel or of their juniors is required in Court when judgment is being delivered. Failure to observe this will be regarded as an act of disrespect to the Court.
- (3) A certified copy of the judgment shall be sent by the Registrar to the court below.
15. (1) Every judgment of the Court shall be embodied in an order.
- (2) A seal or certified copy of the order shall be sent by the Registrar to the court below.
- (3) Interlocutory orders shall be prepared in like manner.
16. The Court shall review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different form substituted.
17. Any judgment given by the Court may be enforced by the Court or by the court below or by any other court which has been seised of the matter, as the court may direct.
18. When the Court directs any judgment to be enforced by another court, a certificate under the seal of the Court and the hand of the presiding **Justice** setting forth the judgment shall be transmitted by the Registrar to such other court, and the latter shall enforce such judgment in terms of the certificate.

19. Where the costs of an appeal are allowed they may either be fixed by the Court at the time when the judgment is given or may be ordered to be taxed.

Practice Direction

With effect from 1st day of October, 1991, the costs to be awarded by the Supreme Court in a civil appeal and an application in a civil appeal have been increased to N1,000.00 (one thousand naira) and N100.00 (one hundred naira) respectively.

20. (1) Leave to proceed as a poor person granted pursuant to the provisions of Order 2 Rule 14 of these Rules shall not exempt such person from liability to an order for costs in favour of his opponent.
- (2) If a poor person is not awarded costs in the proceedings, no fees shall be taken from him by a legal practitioner assigned to him.
- (3) If a poor person is awarded costs against his opponent he shall be entitled to include and receive in such costs fees of any legal practitioner assigned to him and all other fees and costs remitted by his admission to proceed as a poor person.

**Order 9
Criminal Appeals**

1. This Order shall apply to appeals from the Court of Appeal in criminal cases and no matters related thereto.
2. (1) Except where otherwise provided in these Rules any application to the Court may be made by the appellant or respondent orally or in writing, but in regard to such applications if the appellant is unrepresented and in custody and is not entitled or has not obtained leave to be present before the Court, he shall make any such application by forwarding the same in writing to the Registrar who

shall take the appropriate steps to obtain the decision of the Court thereon.

(2) *Any application under this Rule, which is deemed by the Court to be insignificant may be considered and determined by the Court in chambers without oral argument.*

3. (1) Subject to the provisions of sub-rule (3) of this rule, appeals shall be brought by notice (hereinafter called 'the notice of appeal') to be filed in the Registry of the court below which shall set forth the grounds of appeal and shall state clearly whether the appeal is against some decision of the court below other than conviction or sentence. A notice of appeal shall be in the form prescribed in the First Schedule to these Rules and shall be signed by the appellant:

Provided that, notwithstanding that the provisions herein have not been strictly complied with, the Court may, in the interest of justice and for good and sufficient cause shown, entertain an appeal if satisfied that the intending appellant has exhibited a clear intention to appeal to the Court against the decision of the court below.

(2) Where the Court or the court below has on an application for leave to appeal given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal but the notice of motion for leave to appeal shall in such case be deemed to be a notice of appeal.

(3) Where an application for leave to appeal has been made to the court below, and if the application has been granted by that court, the Registrar of that court shall send to the Registrar of the Court notification of the result of the application in Form 25 in the First Schedule to these Rules together with the original of the application for leave to appeal and the case shall thereafter be dealt with as if leave to appeal had been granted by the Court.

4. (1) Where the Court or the court admits an appellant to bail pending the determination of his appeal on an application by him duly made, such court shall specify the amounts in which the appellants and his surety or sureties (unless such court directs that no surety is required)

shall be bound by recognisances of the appellant and his surety to sureties (if any) may be taken.

- (2) In the event of such court not making any special order or giving any special directions under this Rule, the recognisances of the appellant and of his surety or sureties (if any) may be taken before the Registrar.
- (3) The recognisances provided for in this Rule shall be in the Forms prescribed in the First Schedule to these Rules.
- (4) The Registrar of the court below shall where the court below admits the appellant to bail, forward the recognisances of the appellant and his surety or sureties to the Registrar.
- (5) An appellant who has been admitted to bail shall be personally present at each and every hearing of his appeal and at the final determination thereof, and the Court may, in the event of such appellant not being present at any hearing of his appeal, if it thinks right so to do, decline to consider the appeal, and may proceed summarily to dismiss the same and may issue a warrant for the apprehension of the appellant in the Form prescribed in the First Schedule of these Rules:

Provided that the Court may consider the appeal in his absence, or make other order as it thinks fit.

- (6) When an appellant is present before the Court, the Court may, on an application made by him or any other person or, if it thinks right so to do, without any application make an order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time the recognisances of the appellant or of his sureties or substitute any other surety for a surety previously bound as it thinks right.
- (7) At any time after an appellant has been released on bail, the Court or where the appellant was released on bail by the court below, that court may, if satisfied that it is in the interest of justice so to do, revoke the order admitting to bail, and issue a warrant in the Form prescribed in the First Schedule of these Rules.

5. (1) Where a person has, on his conviction, been sentenced to payment of a fine, in default of payment to imprisonment, and such person remains in custody in default of payment of the fine, he shall be deemed, for purposes of appeal, to be a person sentenced to imprisonment.
- (2) An appellant who has been sentenced to the payment of a fine, and has paid the same or part thereof in accordance with such sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the Court, to the return of the sum or any part thereof so paid by him.
6. Where the Court below has dismissed an appeal and confirmed the order for conviction, or has made or confirmed an order for restitution of any property to any person, the person in whose favour or against whom the order of restitution has been made, and, with the leave of the Court, any other person, shall, on the final hearing by the Court of an appeal against his conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying such order of restitution is made.
7. Where the Court below is of opinion that the title to any property the subject of an order of restitution made on a conviction of a person before it is not in dispute, that court, if it shall be of opinion that such property or a sample or portion or facsimile representation thereof is reasonably necessary to be produced for use at the hearing of any appeal, shall give such direction to or impose such terms upon the person in whose favour the order of restitution is made, as it shall think right in order to secure the production of such sample, portion or facsimile representation for use at the hearing of any such appeal.
8. The Registrar of the court below or of the court of trial or of any other court shall not issue, under any law authorising him so to do, a certificate of conviction of any person convicted in the court below if notice of appeal or notice of application for leave to appeal is given, until the determination or abandonment thereof.

9. (1) An appellant may at any time before the appeal is called on for hearing serve on the respondent and file the Registrar a notice to the effect that he does not intend further to prosecute the appeal.
- (2) Upon receipt of a notice of withdrawal in accordance with this Rule, the Registrar shall give notice thereof in the Form prescribed in the First Schedule to the respondent, the Prison authority and the Registrar of the court below, and in the case of an appeal against a conviction involving a sentence of death, shall in like manner give notice to the appropriate Federal or State authority responsible for the exercise of the prerogative of mercy, and the Registrar shall also return to the Registrar of the court below any original documents exhibits received from him.
- (3) An appellant (other than one convicted of an offence involving sentence of death) who has withdrawn his appeal may, in special cases, with the leave of the Court, withdraw his notice of withdrawal. Upon such leave being granted the appellant shall be entitled to prosecute his appeal as if the notice of withdrawal, was never filed.
10. (1) Where the Court has ordered any witness to attend and be examined before the Court an order in the Form prescribed in the First Schedule hereto shall be served upon such witness specifying the time and place at which to attend for such purpose.
- (2) Such order may be made on the application at any time of the appellant or respondent, but if the appellant is in custody and not legally represented, the application shall be made by him in the Form prescribed in the First Schedule.
- (3) Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take, and the place of taking, such examination and the witness or witnesses to be examined thereat.
- (4) The Registrar shall furnish to the person appointed to take such examination any documents or exhibits and any other material relating to the said appeal as and when requested to do so. Such documents and exhibits and other material shall after examination

has been concluded be returned by the examiner, together with any deposition taken by him under this Rule to the Registrar.

- (5) When the examiner has appointed the day and time for the examination he shall request the Registrar to give notice thereof to the appellant and the respondent and their legal practitioners, if any, and when the appellant is in prison to the Prison authority. The Registrar shall cause to be served on every witness to be examined a notice in the Form prescribed in the First Schedule.
 - (6) Every witness examined before an examiner under this Rule shall give his evidence upon oath or affirmation to be administered by such examiner, except where any such witness if giving evidence as a witness at a trial or information needs not be sworn.
 - (7) The examination of every witness shall be taken in the form of a deposition and unless otherwise ordered shall be taken in private. The caption in the Form prescribed in the First Schedule shall be attached to any such deposition.
 - (8) Where any witness shall receive an order or notice to attend before the Court or an examiner, the Registrar may, if it appears to him necessary so to do, pay to such witness a reasonable sum for his expenses.
 - (9) The appellant and respondent, or the legal practitioner representing him, shall unless the Court otherwise directs, be entitled to be present at and take part in any examination of any witness to which this rule relates.
- 11.** When an order of reference is made by the Court to a special commissioner, the question to be referred, and the person to whom as special commissioner the same shall be referred, shall be specified in such order. The Court may in such order or by giving directions as and when it from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered, and specify any and what powers of the Court may be delegated to such special commissioner, and may require him from time to time to make interim reports to the Court upon the question

referred to him, and may, if the appellant is in custody, give leave to him to be present at any stage of such examination or investigation and give necessary directions to the Prison authority accordingly, and may give directions to the Registrar that copies of any report made by such special commissioner shall be furnished to the appellant and respondent.

- 12.** (1) On the final determination of any appeal or of any application to the Court, the Registrar shall give to the appellant, if he be in custody and has not been present at such final determination, and to the respondent and the prison authority, notice of such determination in the Form prescribed in the First Schedule.

(2) In any case of an appeal in relation to a conviction involving sentence of death, the Registrar shall on receiving notice of appeal, send copies thereof to the appropriate authority responsible for the exercise of the prerogative of mercy, to the respondent and to the Prison authority.
- 13.** (1) The Registrar at the final determination of an appeal shall notify in such manner as he thinks most convenient to the Registrar of the court below the decision of the Court in relation thereto, and also any orders or direction made or given by the Court in relation to such appeal or any matter connected therewith.

(2) The Registrar of the court below shall on receiving the notification referred to in this Rule, enter the particulars thereof on the records of such court.
- 14.** Upon the final determination of an appeal for the purposes of which the Registrar has obtained from the Registrar of the court below any original depositions, exhibits, information, inquisition, plea or other documents usually kept by the said Registrar, or forming part of the record of the court below, the Registrar shall, where practicable, cause the same to be returned to the Registrar of the court below.
- 15.** Any order given or made by the Court may be enforced by the Court or by the court below as may be most expedient.

Order 10
Miscellaneous

1. (1) The Court may, where it considers it in the interest of justice so to do, waive compliance by the parties with these Rules or any part thereof.
 - (2) Where there is such waiver of compliance with the Rules, the Court may, in such manner as it thinks right, direct the appellant or the respondent, as the case may be, to remedy such non-compliance or not but may, notwithstanding, order the appeal to proceed or give such directions as it considers necessary in the circumstance.
 - (3) The Registrar shall forthwith notify the appellant or the respondent, as the case may be, of such order made or directions given by the Court under this Order where the appellant or the respondent was not present at the time when such order was made or directions were given.
 - (4) *An application under this Rule shall be accompanied by a Brief filed by the applicant and served on the respondent. The respondent may thereafter file a Brief in reply which shall be served by the respondent on the applicant; and*
 - (5) *Any application under this Rule may be considered and determined by the Court in chambers without oral argument.*
 2. The Chief Justice may, at any time, by notice declare a practice of the Court as a Practice Direction, and whenever so declared, such Practice Direction shall be regarded as part of these Rules.
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