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HIGH COURT ACT

An Act for the establishment of a High Court for the Federal Capital Territory, Abuja and for other purposes relating to the administration of justice.

Commencement

[1st May, 1957]

PART 1. – PRELIMINARY

1. This Act may be cited as the High Court Act.

Short Title

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

Interpretation

“action” means a civil proceeding commenced by a writ or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding;

“Area Court” means a court established under the Area Courts Act;

“Attorney-General” means the Attorney-General of the Federation;

“cause” includes any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding;

“Chief Judge” means the Chief Judge of the Territory;

“Court” includes the High Court, and the Chief Judge and all the Judges of the High Court, sitting together or separately;

“Criminal Procedure Code” means the Criminal Procedure Code established under the Criminal Procedure Code Act;

“customary law” includes Islamic law;

“civil proceedings” means all civil actions triable by a District Court Judge and all proceedings in relation to the making of an order for the payment of a sum of money, or for the doing

or abstaining from doing of any act or thing not enforceable by fine or imprisonment in the first instance;

“court” means a District Court established under the provisions of this Act;

“customary law” includes Islamic law;

“decision” includes judgment, decree, order, conviction, sentence or recommendation;

“defendant” includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil cause, and also every person charged under any process of the court with any crime or offence;

“District Court” means a District Court established under the District Courts Act;

“division” means a a judicial division of the High Court;

“execution creditor” includes every person having title to enforce a judgment or order by process of execution;

“existing” shall mean existing at the date appointed for the commencement of this Act;

“Federation” means the Federation of Nigeria;

“first class chief” means a head chief duly graded as first class under the provisions of the relevant enactment;

“former Supreme Court” means the Supreme Court of Justice for Nigeria established by section 3 of the Supreme Court Act;

“Judge” includes the Chief Judge and a Judge of the High Court, and for the purposes of Part V includes a Judge of the Sharia

Court of Appeal sitting as a member of the High Court and a person lawfully acting as one of them;

“judgment” includes a decree;

“judgment debtor” includes every person ordered by a judgment or order in a civil cause or matter to pay money or to do or abstain from doing an act;

“High Court” means the High Court of the Federal Capital Territory, Abuja;

“mandamus” –

(a) for the purposes of section 19 means the order of mandamus made in an action as defined in subsection (4) of that section;

(b) for the purposes of sections 23 and 26, means the order of mandamus by which the prerogative order of mandamus has been replaced;

“matter” includes every proceeding in court not in a cause;

“oath” shall include solemn affirmation and statutory declaration;

“office copy” means a copy either made under direction of the court or produced to the proper officer of the court for examination with the original, and examined by him therewith, and in either case certified by him as correct;

“order” includes a rule.

“party” includes every person served with notice of or attending a proceeding, although not named on the record;

“person aggrieved” may include the State and a public officer;

“petitioner” includes every person making an application to the court, either by petition, motion or summons, otherwise than as against any defendant;

“plaintiff” includes every person asking for a relief (otherwise than by way of counter-claim as a defendant) against any other person by a form of proceeding, whether the proceeding is by action, suit, petition or summons or otherwise;

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

“prescribed” means prescribed by the rules of court;

“reference” means a reference under an order made by the court under the provisions of Part VII of this Act;

“registrar” includes the Chief Registrar and all other registrars and deputy registrars of the court;

“second class chief” means a head chief duly graded as second class under the provisions of the relevant enactment;

“Sharia Court of Appeal” means the Sharia Court of Appeal established under the Sharia Court of Appeal Act;

“Suit” includes action;

“Supreme Court” means the Supreme Court of Nigeria established by section 210 of the Constitution of the Federal Republic of Nigeria 1979;

“Territory” means the Federal Capital Territory, Abuja;

“Upper Area Court” means an upper area court established or deemed to have been established under the Area Court Act;

PART II – THE CONSTITUTION OF THE HIGH COURT

*Establishment
of the
High Court*

3. There is hereby established a High for the Federal Capital Territory, Abuja which shall be known as the High for the Federal Capital Territory, Abuja (in this Act referred to as “the Court”).

*Constitution
of the Court*

4. (1) in addition to the Chief Judge, the Court shall, subject to the provisions of Part V of this Act, consist of such number of other Judges as may be prescribed by an Act of the National Assembly.

(2) The Court shall be deemed to be duly constituted notwithstanding a vacancy in the office of the Chief Judge or of a Judge of the Court.

*Qualifications
of Judges.
Cap. 62.*

5. The qualifications for appointment to the office of a Judge of the Court shall be such as are prescribed by the Constitution of the Federal Republic of Nigeria 1979.

*Powers of
Judges.*

6. (1) All the Judges of the Court shall have in all respects, except as is herein expressly otherwise provided, equal power, authority and jurisdiction under this Act.

(2) A Judge of the Court may, subject to the other provisions of this Act, exercise all and a part of the original jurisdiction, civil and criminal, vested by this Act in the Court, and for that purpose shall be and form a Court.

*Precedence
of Judges*

7. The Chief Judge shall for the time being shall take precedence over the other Judges and the Judges shall take precedence after the Chief Judge in order according to the date of their respective appointments and, in the case of two or more appointments having been made on the same day, in such

order as the President may by notice in the Federal Gazette direct.

Seal of the Court

Seal 8.(1) The Court shall have and use, as occasion may require, a seal, bearing the inscription “The High of the Federal Capital Territory, Abuja”.

(2) The seal of the Court shall be kept by the Chief Judge and a duplicate thereof shall be kept by each Judge and the Chief Judge and Judges may from time to time entrust the seal or duplicates to such officers of the Court as they respectively think fit.

(3) The seal shall be the seal of the Court for all purposes for which it may be required under the provisions of the rules of court.

PART III – JURISDICTION AND LAW

9. The Court shall be a superior court of record, and in addition to any other jurisdiction conferred by any other written law, shall possess and exercise the jurisdiction, power and authorities vested in the High Court of a State under Constitution of the Federal Republic of Nigeria.

*General
Jurisdiction
of the Court*

10. Subject to the provisions of the Constitution of the Federal Republic of Nigeria, the jurisdiction vested in the Court shall include–

*Specific subjects
included in
jurisdiction*

(a) the judicial hearing and determination of matters in difference;

(b) the review of cases reported to it under the Area Courts Act;

(c) the administration or control of property and persons; and

(d) all criminal jurisdiction which at the commencement of this Act was, or at any time afterwards may be exercisable within the Territory for the repression or punishment of crimes or offences or for the maintenance of order.

11. the Court shall not have jurisdiction in a dispute or matter or in respect of a question in relation to which its jurisdiction is excluded by the provisions of Constitution of the Federal Republic of Nigeria.

Jurisdiction excluded in certain respects

12. If a question as to the interpretation of the Constitution of the Federal Republic of Nigeria arises in a proceeding in the Court or in any other court established for the Territory, the question shall be determined in the manner or manners respectively prescribed by the Constitution of the Federal Republic of Nigeria 1979.

Provision for interpretation of Constitution in the Court Cases

Jurisdiction not to be exercised in certain matters. Cap. 202

13. (1) Subject to the provisions of the Land Use Act and of any other written law, the Court shall not exercise original jurisdiction in a suit or matter which –

(a) raises an issue as to the title to land or as to the title to an interest in land which is subject to the jurisdiction of an Area Court;

(b) is subject to the jurisdiction of an Area Court relating to marriage, family status, guardianship of children, inheritance or the disposition of property on death.

(2) The provisions of subsection (1) of this section shall have effect except –

(a) in so far as the President may by Order otherwise direct;

(b) in suits transferred to the High Court under the provisions of the Area Court Act.

*Power to
appoint
guardians
and
committee*

14. The Court shall have power and authority in relation to the appointment and control of guardians of infants and their estates, and committee and also keepers of the persons and estates of idiots, lunatics, and those of unsound mind who are unable to govern themselves and their estates.

*Mandamus
in an
action,
injunctions*

15. (1) The Court may grant a mandamus, as defined in subsection (4) of this section, or an injunction, or 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.

(2) An order may be made either unconditionally or on such terms and conditions as the Court thinks just.

(3) If, whether before, or at, or after the hearing of a cause or matter, an application is made for an injunction to prevent a threatened or an apprehended waste or trespass, the injunction may be granted, if the Court thinks fit –

(a) whether the person against whom the injunction is sought

–

(i) is or is not in possession under a claim of title or otherwise, or

(ii) if out of possession, does or does not claim a right to do the act sought to be restrained under any colour of title; and

(b) whether the estates claimed by both or by either of the parties are legal or equitable.

(4) For the purposes of this section, “mandamus” means the order of mandamus made in an action, commanding the fulfilment by a person of a quasi-public duty in which another person has a personal and private interest.

16. In the case of an action for a forfeiture brought for nonpayment of rent, the Court shall have power to give relief in a nonpayment summary manner, and if the lessee, his executors, administrators or assigns are so relieved they shall hold the demised premises according to the terms of the lease and without the necessity of a new lease.

Relief against forfeiture for nonpayment of rent

17.(1) Where a person neglects or refuses to comply with a judgment or order directing him to execute a conveyance, contract or other document, or to endorse a negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose.

Execution of instruments by order of Court

(2) A conveyance, contract document or instrument executed or endorsed shall operate and be for all purposes as valid as if it had been executed or endorsed by the person originally directed to execute or endorse it.

18. Where an action is pending, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

Reconciliation in civil cases

Prerogative Writs and certain other State Proceedings

19.(1) The prerogative writs of mandamus, prohibition and Orders of *Certiorari* shall not be issued by the Court.

Orders of mandamus, prohibition and certiorari

(2) Subject to the provisions of sections 11 and 22 of this Act, the Court shall have the jurisdiction to make an order of mandamus requiring an act to be done or an order of prohibition prohibiting a proceeding or matter, or an order of

certiorari removing a proceeding, cause or matter into the Court for a purpose.

Injunction in lieu of quo warranto

20.(1) Injunctions in the nature of quo warranto are hereby abolished.

(2) In a case where a person acts in an office in which he is not entitled to act and an information in the nature of quo warranto would immediately before the commencement of this Act have lain against him, the Court may grant an injunction restraining him from so acting and may (if the case so requires) declare the office to be vacant.

(3) No proceedings for an injunction under this section shall be taken by a person who would not immediately before the commencement of this Act have been entitled to apply for an information in the nature of quo warranto to the former Supreme Court.

(4) Proceedings under this section shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

Application of law and practice in force in England to proceedings under sections 19 and 20. Jurisdiction of Court limited in issue of prerogative orders. Cap. 62.

21. The jurisdiction conferred on the Court by sections 19 and 20 of this Act shall, subject to the provisions of this Act and to Rules of Court, be exercised by the Court in conformity with the law and practice for the time being in force in England.

22. No order of mandamus, of prohibition or of *certiorari* and no injunction under the provisions of section 20 shall be made or granted by the Court in respect of a proceeding in an Area Court or in the Sharia Court of Appeal except as may be necessary in the exercise of its powers under the Constitution of the Federal Republic of Nigeria.

Law to be applied

Extent of application of law of England.

23. Subject to the provisions of any written law and in particular of this section and of sections 27, 28 and 30 of this Act –

- (a) the common law;
- (b) the doctrines of equity; and
- (c) the statutes of general application which were in force in England on the 1st day of January, 1900, shall, in so far as they relate to a matter with respect to which the National Assembly is for the time being competent to make laws, be in force within the jurisdiction of the Court.

24.(1) All Imperial laws declared to extend or apply to the jurisdiction of the Court shall, in so far as they relate to a matter with respect to which the National Assembly is for the time being competent to make laws, be in force so far only as the limits of the local jurisdiction and local circumstances permit, and

Rules as to the application of Imperial laws.

(2) For the purpose of facilitating the application of the Imperial laws they shall be read with such formal verbal alterations, not affecting the substance, as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to the circumstances.

(3) A Judge or an officer of the Court having or exercising functions of the like kind, or analogous to the function of a judge or officer referred to in that law, shall be deemed to be within the meaning of the enactments thereof relating to the last-mentioned judge or officer.

(4) Wherever the great seal or any other seal is mentioned in that law it shall be read as if the seal of the Court were substituted therefor.

(5) In matters of practice all documents may be written on ordinary paper, notwithstanding any practice or directions as to printing or engrossing on vellum, parchment or otherwise.

25. Subject to the express provisions of a written law, in a civil cause or matter commenced in the Court, law and equity shall be administered by the Court concurrently.

Law and equity to be concurrently administered

26. Subject to the express provisions of a written law, in all matters not particularly mentioned in this Act in which there was formerly or in which there is a conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail in the Court so far as the matters to which those rules relate are cognizable by the Court.

Rules of equity to prevail

27. The Court in the exercise of the jurisdiction vested in it by this Act shall, in every cause or matter pending before the Court, grant, either absolutely or on such terms and conditions as the Court thinks just, all the remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of a legal or an equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Determination of matter completely and finally.

Probate

Law and practice in force in Nigeria to apply in probate cases.

28. The jurisdiction of the Court in probate cases and proceedings may, subject to the provisions of this Act and especially of section 23, and to the rules of Court, be exercised by the Court in conformity with the law and practice for the time being in force in Nigeria.

Customary Law

*Application
of customary
laws and*

29.(1) The Court shall observe, and enforce the observance of, every customary law which is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with a law for the time being in force, and nothing in this Act shall deprive a person of the benefit of the customary law.

(2) The customary law shall be deemed applicable in causes and matters where the parties thereto are citizens and also in causes and matters between citizens and non-citizens where it may appear to the Court that substantial injustice would be done to either party by a strict adherence to the rules of any other law.

(3) No party shall be entitled to claim the benefit of a customary law, if it appears either from express contract or from the nature of the transactions out of which a suit or question may have arisen, that the party agreed that his obligations in connection with the transactions should be regulated exclusively by any other law or that the transactions are transactions unknown to customary law.

(4) In cases where no express rule is applicable to a matter in controversy, the Court shall be governed by the principles of justice, equity and good conscience.

Practice and Procedure

*Practice and
procedure
generally.
Cap. 491.*

30. Subject to the other provisions of this Act, the jurisdiction vested in the Court shall be exercised, so far as and regards practice and procedure, in the manner provided by this Act, by the Criminal Procedure Code or by any other written law including such rules and orders of Court as may be made

pursuant to this Act or any other written law and, in civil causes and matters, in so far as the provisions do not extend, in conformity mutatis mutandis with the practice and procedure for the time being of the High Court of Justice in England.

PART IV. – SPECIAL PROVISIONS RELATING TO APPELLATE JURISDICTION

31. The provisions of this Part of this Act shall have effect
Constitutions only subject to the provisions of the Constitution
of the Federal Republic of Nigeria 1979. *Constitutions
to prevail.
Cap. 62.*
32. The Court shall have appellate jurisdiction to hear and
determine all appeals from the decisions of district courts and
magistrates' courts given in the exercise of the original
jurisdiction of those courts as well as cases stated or questions
of law referred by the courts in accordance with the provisions
of a written law. *Jurisdiction of
the Court in
Appeals and
cases stated
from lower
Courts*
33. The Court shall have powers of revision in respect of
proceedings in district courts or magistrates courts in
accordance with the provisions of a written law. *Power of
revision of
decisions of
district courts
or magistrates'
courts.*
34. (1) The Court in the exercise of its appellate jurisdiction shall,
subject to the provisions of Part V to this Act, be constituted
of not less than two Judges, and the Chief Judge shall where
practicable preside at each sitting of a Court so constituted. *Constitution
of the Court in
its appellate
jurisdiction.*
- (2) The determination of a question before a Court constituted
under this section shall be according to the opinion of the
majority of the members of the Court hearing the appeal.
- (3) Where, in an appeal heard by a Court constituted of two
Judges only, the members of the Court fail to agree on a matter

for decision on the appeal then if one of the members agrees with the judgment of the Court of authority from which the appeal is brought that judgment shall be deemed to be the judgment of the Court and in any other event and subject to the provisions of Subsection (4) of this section the appeal shall be reserved for hearing before a Court constituted of an uneven number of Judges not being less than three.

(4) Where a Court is constituted of two Judges only and at any stage of the hearing of an appeal before judgment is delivered either or both of the Judges are of the opinion that the appeal should be reserved for hearing before a Court consisting of an uneven number of Judges not being less than three, it shall be so reserved.

(5) The provisions of this section shall be in addition to and not in derogation of the provisions of any other written Jaw prescribing the constitution of the Court in its appellate jurisdiction in any particular class of case.

*Judgment
of the
Court in
criminal
appeal
cases.*

35. Unless the Court directs to the contrary in cases, where, in the opinion of the Court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, the judgment of the Court in criminal appeal cases shall be pronounced by the presiding Judge or such other member of the Court hearing the case as the presiding Judge may direct, and no judgment with respect to the determination of a question shall be separately pronounced by any other member of the Court.

Appeals from District Courts

Power of the Court in appeals from District Courts.

36. On the hearing of an appeal from a District Court, the Court may draw an inference of fact and either –

- (a) order a new trial on such terms as the Court thinks just; or
- (b) order judgment to be entered for a party; or
- (c) make a final or other order on such terms as the Court thinks proper to ensure the determination on the merits of the real question in controversy between the parties.

Procedure on appeal.

37. Subject to the provisions of this Act and any other written law, the procedure, practice and manner of appeals from District Courts shall be in accordance with rules made under this Act and any other written law authorising the making of the rules.

Appearance of appellant.

38. In appeals from a District Court, the appellant shall be entitled to be present at the hearing of the appeal and may appear either in person or by a legal practitioner.

Appeals from Magistrates' Courts

39. (1) When the Court has received the requisite notice of appeal and memorandum of the grounds of appeal in a criminal appeal from a magistrate, a Judge shall peruse the same, and if he considers that there is no sufficient ground for interfering may dismiss the appeal summarily.

Summary dismissal of criminal appeal.

(2) No appeal shall be dismissed summarily unless the appellant or the legal practitioner appearing for him has had a reasonable opportunity of being heard in support of the appeal.

(3) Whenever an appeal is summarily dismissed notice of the dismissal shall forthwith be given to the Attorney-General and to the appellant or to the legal practitioner appearing before him.

40. If the Judge does not dismiss the appeal summarily, he shall –

(a) cause notice to be given to the appellant and to the respondent or to their respective legal practitioners, if any, on the record and if one of the parties is a public officer, to the Attorney-General of the time and place at which the appeal will be heard; and

*Notice of
time, place
and
hearing*

(b) furnish the Attorney-General with a copy of the proceedings and of the notice and grounds of appeal and the provisions of the Criminal Procedure Code shall apply to such service.

41.(1) On the hearing of an appeal against a conviction by a magistrate in a criminal case, the Court shall allow the appeal if it thinks that the judgment of the magistrate should be set aside on the grounds that –

*Determination
of criminal
appeals from
magistrates.*

(a) it is unreasonable or cannot be supported having regard to the evidence; or

(b) the magistrate has made a wrong decision on a question of law; or

(c) there was a miscarriage of justice
and in any other case shall dismiss the appeal.

(2) The Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

*Power of the
Court in
criminal
appeals from
magistrates.*

42. On the conclusion of the hearing of an appeal from a magistrate in a criminal case, the Court shall at the same or a subsequent sitting pronounce judgment on the appeal and in giving the judgment the Court may –

(a) on an appeal from a conviction –

- (i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a court of competent jurisdiction, or commit him for trial:
or
 - (ii) (ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or increase the sentence; or
 - (iii) with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence; or
 - (iv) annul the conviction and substitute a special finding to the effect that the accused was guilty of the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission and order the accused to be confined as a criminal lunatic in a lunatic asylum, prison or other suitable place of safe custody;
- (b) on an appeal from an order of discharge or acquittal, affirm the order or, if the Court is of opinion that the order should not have been made, remit the case together with the judgment of the Court thereon to the court of trial for the determination whether or not by way of rehearing, with such direction as the Court may think necessary;
- (c) on an appeal from any other order, affirm., alter or reverse the order,
- and in each case may make an amendment or a consequential or incidental order that may appear just and proper.

43.No finding, sentence or order of a magistrate's court sitting in its criminal jurisdiction shall be set aside merely on the ground that the inquiry, trial or other proceeding, in the course of

*Effect of
Wrong
venue*

which it was arrived at or passed, took place in a wrong division or district unless it appears that the error has in fact occasioned a failure of justice.

44.(1) In a criminal appeal from a magistrate an appellant who is not in custody shall be entitled to be present at the hearing of the appeal and may appear either in person or by a legal practitioner.

Appearance of appellant in criminal

(2) In a criminal appeal from a magistrate, an appellant who is in custody shall not be entitled as of right to be present at the hearing of the appeal and his attendance or otherwise shall be in the discretion of the Court, but every appellant shall be entitled to be represented at the hearing of the appeal and for this purpose may either appear in person or by a legal practitioner.

General Provisions relating to Appeals from District Courts and Magistrates' Courts

45.No objection shall be taken or allowed on an appeal from a District Court or a magistrate's court to a notice of appeal which is in writing or to a recognizance entered into under this Act for the due prosecution of the appeal for an alleged error or defect therein; but if the error or defect appears to the Court to be such that the respondent on the appeal has been thereby deceived or misled, the Court may amend the same and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and adjournment, if any, being made on such terms as the Court may deem just.

Defects in notice of appeal and recognizance.

46.(1) No objection on account of a defect in the form of setting forth a ground for appeal shall be allowed in an appeal from a District Court or a magistrate's court, unless the Court is of

Objections to form of grounds for appeal.

opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to inquire into the subject matter thereof or to prepare for the hearing.

(2) In a case where the Court is of opinion that an objection to a reason for appeal ought to prevail, the Court may if it thinks fit, cause the reason for appeal forthwith to be amended by the registrar on such terms and conditions, if any, as the Court may think just.

47. If, on the hearing of an appeal from a District Court or a magistrate's court, it appears that there is a defect in form in the charge, complaint or plaint, or an omission or a mistake in drawing up of the decision or order and if it is shown, to the satisfaction of the Court, that there was sufficient evidence before the District Court Judge or the magistrate who made the decision or order to have authorised the drawing up thereof free from the omission or mistake, the Court shall amend the information, complaint or plaint or the decision or order and proceed thereafter as if no defect, omission or mistake had existed.

*Objections to
complaint,
charge,
conviction or
order.*

*Defects in
proceedings
under appeal*

48.(1) On an appeal from a decision of a District Court or a magistrate's court, no objection shall be taken or allowed to a proceeding in that court for a defect or an error which might have been amended by the court, or to a complaint, summons, warrant, or other process to or of that court for an alleged defect therein in substance or in form, or for a variance between a complaint or summons and the evidence adduced in support thereof in the court.

(2) However, if an error, a defect, or variance mentioned in this section appears to the Court at the hearing of an appeal to be such that the appellant has been thereby deceived or misled, the Court may either refer the case back to the District Court Judge or the magistrate, as the case may be, with directions to rehear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

*Additional
evidence*

49. On an appeal from a decision of a District Court or a magistrate's court, the Court may, where it considers it necessary that evidence should be adduced, either –

(a) order the evidence to be adduced before the Court on some day to be fixed in that behalf: or

(b) refer the case back to the District Court Judge or the magistrate, as the case may be, to take the evidence, and may in that case either direct the District Court Judge or the magistrate, as the case may be, to –

(i) adjudicate afresh after taking the evidence and subject to such directions in law, if any, as the Court may think fit to give, or

(ii) (ii) direct him, after taking the evidence, to report specific findings of fact for the information of the Court, and on any such reference the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

50. The Court shall not review a judgment or order once made and delivered by it in an appeal from a District Court Judge or a magistrate.

*Restriction on
review*

51. Subject to the express provisions of this Act, the Court may in an appeal from a District Court Judge or a magistrate make such order as to the costs of the proceedings in the District Court or the magistrate's court, as the case may be, and in the Court as it may think just.

Costs in appeals from District Judges and magistrates.

52.(1) An appeal from a magistrate's court shall be commenced by the appellant giving to the registrar of the magistrate's court notice of the appeal, which shall be verbal or in writing, and if verbal shall forthwith be reduced to writing by the registrar and signed by the appellant, or by a legal practitioner if a legal practitioner is representing him.

Notice of appeal and limitation of time

(2) Subject to the provisions of subsection (3) of this section, a notice of appeal under subsection (1) of this section shall be given in every case before the expiration of the thirtieth day after the day on which the court has made the decision appealed against.

(3) A notice of appeal under subsection (1) of this section in respect of a sentence of caning shall be given in every case before the expiration of the fifteenth day after the day on which the court has made the decision appealed against.

53. The Court may, if it deems fit, enlarge a period of time prescribed by this Act (other than the period of time prescribed in subsection (3) of section 52 of this Act) or the District Courts Act or the Criminal Procedure Code Act (except where that Act prescribes a period of time within which notice of appeal must be given against a sentence of caning) or rules made under any of those Acts.

Enlargement of time

54. Every judgment of the Court in an appeal from a District Court or a magistrate's court shall, subject to the provisions of the

Finality of judgment. Cap. 62.

Constitution of the Federal Republic of Nigeria or any written law relating to further appeal, be final and conclusive.

Provisions pending Appeal

*Provisions
pending
appeal*

55.(1) Where an appeal to the Court of Appeal is entered, or leave to appeal is granted, against a conviction in respect of which the appellant has been sentenced to imprisonment, the Court may, in its discretion, admit the appellant to bail pending the determination of the appeal; and a time during which the appellant is so admitted to bail, shall not count as part of the term of imprisonment to which he was sentenced.

(2) The operation of an order made on conviction by the Court for the payment of compensation or of the expenses of the prosecution or of the imprisonment or of other punishment imposed on the person convicted or for the restoration of property to a person, and the revesting in case of a conviction, in the original owner or his personal representative of the property in stolen goods, shall (unless the Judge before whom the conviction takes place directs to the contrary in a case in which, in his opinion, the title to the property is not in dispute) be suspended until the expiration of fifteen days after the date of the conviction.

(3) Subject to the provisions of subsections (1) and (2) of this section, an appeal to the Court of Appeal shall not operate as a stay of execution but the Court may order a stay of execution either unconditionally or on the performance of such conditions as may be imposed in accordance with rules of court.

PART V. – APPEALS FROM AREA COURTS

Court to hear appeals from Upper Area Courts.

56. The Court shall have jurisdiction to hear appeals (other than appeals in respect of matters which are the subject of the jurisdictions of the Sharia Court of Appeal) from Upper Area Courts.

Composition of High Court on appeal.

57.(1) In the exercise of its jurisdiction under section 56 of this Act, the Court shall be constituted of three members, two of whom shall be Judges of the Court and one of whom shall be a Kadi of the Sharia Court of Appeal.

(2) The member of a Court constituted in accordance with subsection (1) of this section who is considered by a majority of the members of the Court to have the greatest knowledge of the law to be administered in a particular appeal shall preside at the hearing of the appeal.

58.(1) On the hearing of an appeal in the exercise of its jurisdiction under section 56 of this Act, the Court may, if it thinks fit to do so, require the aid of one or more assessors and may hear the appeal wholly or partially with their assistance.

Assessors in Area Court appeals.

(2) The Court may require the aid of such persons as it shall think fit in the capacity of assessors and it shall not be necessary for those persons to be specially qualified within the meaning of Subsection (1) of section 80 of this Act.

59. Where the jurisdiction conferred on an Area Court established under the Area Court Act is, as regards law, practice or procedure, regulated in any particular by customary law, no objection to a proceeding in that court shall be taken or allowed customary on the hearing of an appeal from a decision of the court on the ground only that, in that particular, there has been a failure to observe a principle of any other law or rule

English law not to be applied in cases governed by customary law. Cap. 477.

of evidence or procedure, if such proceeding or decision is not in fact contrary to natural justice, morality, equity or good conscience nor incompatible with the provisions of any written law.

PART VI. – DIVISIONS, DISTRIBUTION OF BUSINESS, SESSIONS, ETC.

60. The Court shall be open throughout the year except on Sundays and Public Holidays for the transaction of the general legal business pending therein. *Court open throughout the year*
- 61.(1) For the more convenient dispatch of business, the Court may sit in two or more divisions. *Divisions and distribution of business*
- (2) Subject to the other provisions of this Act and in particular to sections 62 and 63 of this Act the Chief Judge –
- (a) shall direct one or more Judges to sit in one or more judicial divisions;
 - (b) may determine the distribution of the business before the Court among the Judges thereof; and
 - (c) may assign any judicial duty to any Judge or Judges.
- 62.(1) The Chief Judge may, from time to time, by Order provide in such manner and subject to such conditions as to the Chief Judge may seem fit for all or any of the following matters – *Regulation of Sessions*
- (a) for the dividing of the Territory into areas to be known as judicial divisions, for the assignment of any portion of the Territory to a judicial division and for the designation of judicial division by name;
 - (b) for the appointment of the place or places within the Territory at which Sessions of the Court are to be held;

- (c) for the appointment of the dates for holding the Sessions at any place within the Territory and for the alteration of the dates by such authority and in such manner as may be specified in an Order made under this section where by reason of the pressure of business or other unforeseen cause it is expedient to alter the date so appointed;
- (d) for carrying into effect as may seem necessary to the Chief Judge an Order made under this section and without prejudice to the generality of the foregoing power for the attendance, jurisdiction, authority and duty of sheriffs, gaolers, officers, interpreters and persons, the use of a prison which is under the control of the Government, the removal of prisoners, the transmission of documents or exhibits, the costs of the prosecution and defence and of maintaining and removing prisoners;
- (e) for the regulation, so far as may be necessary for carrying into effect an Order made under this section, of the venue in all cases, civil and criminal, triable at any Session;
- (f) for any matters which appear to the Chief Judge to be necessary or proper for carrying into effect an Order made under this section.

(2) Every Order made under this section shall be published in the Federal Gazette and while in force shall have effect as if enacted in this Act.

Power to dispense with holding of Sessions in places where unnecessary

63.(1) If at any time it appears to the Chief Judge that there is no business or no substantial amount of business to be transacted at a Session then about to be held at a place and that having regard to all the circumstances of the case it is desirable that an Order should be made under this section, he may by Order

direct that Sessions shall not on that particular occasion be held at that place.

(2) Where an Order is made then, notwithstanding under subsection (1) of this section an Order made under section 62 of this Act, Sessions shall not on that occasion be held at the place specified in the Order.

(3) There may be included in an Order made under subsection (1) of this section provision for a matter (including a matter mentioned in paragraph (d) of subsection (1) of section 62 of this Act) for which it appears to the Chief Judge to be necessary or proper to make provision with a view to giving full effect to the Order.

(4) Notice of every Order made under subsection (1) of this section shall be published in the Federal Gazette.

64.(1) If the Judge who should preside over the sitting of the Court is from a cause unable or fails to attend the same on the day appointed, and no other Judge attends in his stead, the Judge shall make a report of the facts to the Chief Judge in the most expeditious manner available to him and the Chief Judge shall thereupon give such directions in the matter as he shall think fit.

*Effect of
Judge's
absence
from a
sitting*

(2) If the Judge is unable by reason of illness or any other cause to make a report in pursuance of subsection (1) of this section, the registrar of the Court concerned shall make the report.

Power of Transfer

65.(1) A Judge may at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, transfer a cause or matter before

*Transfer of
cause to
District
Court or
magistrate's
court*

him to a District Court, in the case of a civil cause or matter or a magistrate's court in the case of a criminal cause.

(2) No cause or matter shall be transferred to a District Court or a magistrate's court unless the District Court Judge or the magistrate thereof, as the case may be, has jurisdiction to hear and determine the cause or matter.

(3) The power of transfer under this section shall be exercised by means of an order under the hand of the Judge and the seal of the Court.

Transfer of cause from one Judge to another.

66.(1) The Chief Judge may at any time or any stage of the proceedings before judgment, and either with or without application from any of the parties thereto, transfer a cause or matter before a Judge to any other Judge.

(2) The power of transfer under this section shall be exercised by means of an order under the hand of the Chief Judge and the seal of the Court, and may apply –

(a) to a particular cause or matter in dependence either

(i) in its entirety, or

(ii) in respect of any part thereof, or

(iii) in respect of a procedure to be taken thereon; or

(b) generally to all such causes or matters as may be described in the order whether future or in dependence at the date of the order.

(3) The power conferred on the Chief Judge by this section shall be in addition to and not in derogation from any other power or duty to transfer conferred or imposed on a Judge by this Act or by any other written law.

Power to cancel or vary order of transfer.

67. The Chief Judge or Judge, as the case may be, may, at any time before final judgment has been given by the court to which a

cause or matter has been transferred, cancel, vary or amend an order made by him under section 65 or 66 of this Act respectively.

Telegram to have validity of order.

68. The Chief Judge or Judge, as the case may be, may, if it appears expedient, in the first instance transmit by telegram the contents of an order made by him under section 65, 66 or 67 of this Act and the telegram shall, until receipt of the order, have the same validity and effect as if it were the order.

Effects of order of transfer.

69. (1) Every order of transfer shall operate as a stay of proceedings before the Judge from whom the proceedings are ordered to be transferred.

(2) A certified copy of the record of the proceedings shall be transmitted to the Judge, District Court Judge or magistrate to whom the same has been ordered to be transferred.

70. A judge may at any time or at any stage of the proceedings before final judgment by order under his hand and the seal of the Court transfer a cause or matter before him to an Area Court having jurisdiction in the cause or matter.

Power to transfer cause to Area Court.

71. No appeal shall, subject to the provisions of section 36 of this Act, lie from an order of transfer made under section 65, 66, 67, 68 or 70 of this Act.

Order of transfer not subject to appeal.

72. (1) On or at any time before the hearing of an appeal from an Area Court, the Court, if it is of opinion that the appeal should properly have been brought before the Sharia Court of Appeal, may, at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, and with the consent in writing of the Grand Kadi, transfer the appeal to the Sharia Court of Appeal.

Transfer to Sharia Court of Appeal.

(2) The power of transfer under this section shall be exercised by means of an order under the hand of the presiding Judge of the Court.

73. Notwithstanding anything contained in rules made under section 109 of this Act to the contrary, no appeal transferred to the Court by the Sharia Court of Appeal in accordance with section 14 of the Sharia Court of Appeal Act shall be questioned on the ground that it has not been entered within the time prescribed for entering appeals to the Court.

*Transfer
from Sharia
Court of
Appeal.*

PART VII. – GENERAL PROVISIONS RELATING TO TRIAL PRACTICE AND PROCEDURE

Trial by Judge alone

74.(1) Every proceeding in the Court in the exercise of its original jurisdiction and all business arising thereout shall, so far as is practicable and convenient and subject to the provisions of any written law, be heard and disposed of by a single Judge.

*Mode of trial
in original
jurisdiction*

(2) All proceedings in an action subsequent to the hearing or trial, down to and including the final judgment or order, shall, so far as is practicable and convenient, be taken before the Judge before whom the trial or hearing took place.

*Powers of
single
Judge in
court and in
chambers.*

75. A Judge may, subject to rules of court, exercise in Court or in chambers all or any part of the jurisdiction vested in the Court.

*Discharge
of orders
made in
chambers*

76. Subject to the provisions of this Act with respect to appeals in matters of practice and procedure, every order made by a Judge in chambers, except the orders as to costs only which by law are left to the discretion of the court, may on notice be set aside or be discharged by the Judge sitting in Court.

*Procedure
where
second
action for
same
cause.*

77.(1) If a party sues another in the Court for a cause of action for which he has already sued him and for which judgment other than a judgment of non-suit has been given in the Court or any other court, on proof of the former action having been brought and judgment having been given, the party so suing shall not be entitled to recover in the second action, and may, if the court thinks fit, be adjudged to pay three times the costs of the second action to the opposite party.

(2) A judgment of the Court of Appeal, the Supreme Court or of any court which is or may be established within a State in favour of a party to a cause or matter before that court may in respect of the same subject matter be pleaded as a defence to a proceeding commenced in the Court by the unsuccessful party to the cause or matter.

Keeping of Minutes

*Notes of
evidence
and Minutes
of
proceedings
to be kept by
presiding
Judge*

78.(1) In every cause or matter the presiding Judge shall take down in writing the purport of all oral evidence given before the Court and minutes of the proceedings and shall sign the same at an adjournment of the case and at the conclusion thereof.

(2) No person shall be entitled, as of right, to the inspection of or to a copy of the records kept as aforesaid except as may be expressly provided for by rules of court.

(3) The record kept as aforesaid or a copy purporting to be signed and certified as a true copy by the registrar shall at all times, without further proof, be admitted as evidence of the proceedings and of the statements made by the witnesses.

79. In a cause the court may on the application of either party, or of its own motion, make an order for the inspection by the Court, the parties or witnesses, of any movable or immovable

Inspection

property, the inspection of which may be material to the proper determination of the question in dispute, and give such direction respecting the inspection as to the court may seem fit.

80.(1) In a civil cause or matter before the Court, the Court may, if it thinks it expedient to do so, call in the aid of one or more assessors specially qualified, and may try and hear the cause or matter wholly or partially with their assistance.

Trial with assessors

(2) The remuneration, if any, to be paid to an assessor shall be determined by the Court.

81. Where for the purpose of disposing of an action or other matter which is being tried in the Court by a Judge with assessors it is necessary to ascertain the law of any other country or customary law of Nigeria which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the assessors, be decided by the Judge alone.

Questions of foreign and customary law to be decided by Judge alone.

Inquiries and Trials by Referees

82.(1) Subject to rules of court, a Judge may refer to an official or special referee for inquiry or report a question arising in a cause or matter, other than a criminal proceeding.

Reference for report

(2) The report of an official or special referee may be adopted wholly or partially by the Court or a Judge, and if so adopted may be enforced as a judgment or order to the same effect.

83. In a cause or matter, other than a criminal proceeding –

Reference for trial.

(a) if all the parties interested who are not under disability consent; or

(b) if the cause or matter requires a prolonged examination of documents or a scientific or local investigation which

cannot in the opinion of the Court or a Judge conveniently be conducted by the Court through its ordinary officers; or (c) if the question in dispute consists wholly or in part of accounts, the Court or a Judge may at any time order the whole cause or matter, or a question or an issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court.

Powers and remuneration of referees and arbitrators.

- 84.(1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and subject to rules of court shall have such authority, and conduct the reference in such manner, as the Court or a Judge may direct.
- (2) The report or award of an official or special referee or arbitrator on a reference shall, unless set aside by the Court or a Judge, be equivalent to a finding of the Court.
- (3) The remuneration to be paid to a special referee or arbitrator to whom a matter is referred under an order of the Court or a Judge shall be determined by the Court or a Judge.

Court to have powers as in submissions. Cap. 19.

85. The Court or a Judge shall, in relation to references, have all the powers as are conferred by the Arbitration and Conciliation Act on the Court or a Judge in relation to submissions.

Power to order habeas Corpus ad testificandum to issue.

86. The Court or a Judge may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee or arbitrator.

Statement of case pending arbitration.

87. A referee or arbitrator may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a

Judge, state in the form of a special case for the opinion of the Court a question of law arising in the course of the reference.

Power of Court to impose terms as to costs.

88. An order made under the provisions of this Act relating to inquiries and trials by referees may be made on such terms as to costs or otherwise as the Court or a Judge thinks fit.

Costs in certain cases

Disallowance of costs in certain cases.

89. Costs shall be allowed to a successful plaintiff on the scale prescribed for similar proceedings in a lower court in an action brought by him in the Court which might have been tried in a lower court in its civil jurisdiction unless the Judge is of the opinion that the action was one which it was proper to bring in the Court and certifies accordingly.

Power to arrest Debtor in certain Cases

90.(1) Where the plaintiff in an action in the Court proves at any time before final judgment by evidence on oath to the satisfaction of the Court that he has good cause of action against the defendant to an amount and that there is probable cause for believing that the defendant is about to quit Nigeria unless he is apprehended and that the absence of the defendant from Nigeria will materially prejudice the plaintiff in the prosecution of his action, the Court may, in the manner prescribed by rules of court, order the defendant to be arrested and imprisoned for a period not exceeding six months unless and until he –

Power to arrest debtor quitting the Territory

- (a) has paid into Court the sum claimed and costs; or
- (b) given security as prescribed by rules of court, that he will not go out of Nigeria without the leave of the Court, in a sum not exceeding the amount claimed in the action.

(2) Where the claim is for a penalty or sum in the nature of a penalty other than a penalty in respect of a contract, the provisions of subsection (1) of this section shall apply as if it were an action but it shall not be necessary to prove that the absence of the defendant from Nigeria will materially prejudice the plaintiff in the prosecution of his action and the security given shall, instead of being that the defendant will not go out of Nigeria, be to the effect that any sum recovered against the defendant in the action shall be paid or that the defendant shall be rendered to prison.

Witnesses

91.(1) The presiding Judge may in a cause or matter order and allow to all persons required to attend, or be examined as witnesses, such sums or sums of money as may be specified by rules of court as well, for defraying the reasonable expenses of the witnesses, as for allowing them a reasonable compensation for their trouble and loss of time.

Allowances to witnesses and method of payment.

(2) All sums of money so allowed shall be paid in civil proceedings by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit if the Court shall so order, and in criminal proceedings they shall, unless by the Court ordered to be paid by the party convicted or the prosecutor, be paid out of the general revenue.

Forfeiture for neglecting Witness summons. Cap. 112.

92.(1) Subject to the provisions of the Evidence Act, a person summoned as a witness in the Court who –

(a) refuses or neglects, without sufficient cause, to appear or to produce documents required by the summons to be produced; or

(b) refuses to be sworn or make an affirmation or give evidence,

shall forfeit a sum not exceeding two hundred naira as the Judge may direct.

(2) No person so summoned shall forfeit a sum unless there has been paid or tendered to him at the time of the service of the summons such amount in respect of his expenses as may be prescribed including, in such cases as may also be prescribed, compensation for loss of time.

Persons in Court may be required to give evidence through not summoned

93. A person present in Court, whether a party or not in a cause, may be compelled by the Court to give evidence, and produce a document in his possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce the document, and may be punished for a refusal to obey the order of the Court.

Evidence of prisoners.

94.(1) A Judge may issue a warrant under his hand for bringing up a person confined as a prisoner under a sentence or order of commitment for trial or otherwise, or under civil process, to be examined as a witness in a cause depending, or to be inquired of, in the Court.

(2) A warrant shall not be granted as of course, or unless Judge has probable grounds for believing that the evidence of the prisoner is likely to prove material.

Production of prisoner.

95. The Superintendent of Prisons or Person in whose custody a prisoner is, shall forthwith obey the warrant by bringing the prisoner to court in his custody, or by delivering him to an officer of the Court, as the warrant may order, and if the prisoner is under the terms of the warrant delivered to an officer of the Court, the Superintendent of Prisons or other person shall not be liable for the escape of the prisoner.

Saving of Rules of Evidence

96. Nothing in this Act and nothing in rules of court made or to be made under this Act shall affect the mode of giving evidence by the oral examination of witnesses, or the rule of evidence, but nothing in this section shall –

Act not to affect rules of evidence.

(a) prejudice the operation of a rule of court made in pursuance of the express power conferred by this Act to make rules of court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given; or

(b) affect the power of the Court for special reasons to allow depositions or affidavits to be read.

Representation of Parties

97. Subject to the provisions of this or any other written law, all persons enrolled to practice as legal practitioners in the Supreme Court shall have the right to practise as such in the Court.

Right of appearance of legal practitioners.

98. (1) In the case of a prosecution by or on behalf of the State or by a public officer in his official capacity, the State or that officer may be represented by a law officer, Director of Public Prosecutions, State Counsel, administrative officer, police officer or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.

Representation of the State and Government departments.

(2) Subject to the provisions of the Land Use Act in any civil cause or matter in which the state or any public officer in his official capacity is a party or in any civil cause or matter affecting the revenues of the Federation, the state or that officer

may be represented by a law officer, State Counsel, administrative officer or by a legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.

(3) Nothing contained in this section shall be construed as so to restrict the right of the Attorney-General, Solicitor-General, Director of Public Prosecutions, or State Counsel of a part of the Federation to appear in a case in which he has been instructed to appear in a court in the Territory in which counsel may appear, and no objection to his appearance may be taken or entertained in a court on a ground based solely on the provisions of this section.

Award of costs where public officer represented by law officer. etc.

99. In a civil cause or matter in which a public officer in his official capacity is a party, and is represented by a law officer, state counsel, administrative officer or other person duly authorised in that behalf by or on behalf of the Attorney-General, the Court may award costs either –
(a) to or against the public officer personally; or
(b) to or against the Federal Government.

Representation of local authority.

100. In a cause, matter or an appeal to which a local authority is a party the local authority may be represented at any stage of the proceedings by a member or officer of the local authority who shall satisfy the Court that he is duly authorised in that behalf.

Representation of first and second class chiefs.

101. In a suit brought by or against a first or second class chief in either his official or personal capacity the chief may be represented in the Court at any stage of the proceedings by

member of his chiefdom who shall satisfy the Court that he has the authority to represent such chief.

*Acting
without
authority
contempt of
Court*

102. (1) A person who does an act or takes a step in a proceeding in the Court at any stage thereof in the name of or on behalf of any other person without being lawfully authorised and who knows himself not to be so authorised is guilty of contempt of court.

(2) Proceedings for contempt of court under this section may be taken against a person by the Court either on its own motion or on the relation of any other person.

PART VIII. – OFFICERS OF THE COURT AND RULES OF COURT

*Chief
Registrar,
Probate
Registrar and
other officers.*

103. (1) The Chief Registrar of the High Court, registrars and deputy registrars shall perform such duties in execution of the powers and authorities of the Court as may, from time to time, be assigned to them by the rules of court, or subject thereto, by any special order of the Chief Judge.

(2) There shall be a Probate Registrar of the High Court and his office shall be filled by the Chief Registrar unless and until some other person or officer shall be appointed.

104. If an officer of the Court, employed to execute an order, wilfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved, and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof, and the order shall be enforced as an order directing payment of money.

*Negligence or
misconduct of
officers*

105. (1) No officer of the Court shall or may directly or indirectly or by the intervention of a trustee or otherwise purchase a

*Restriction on
officers of Court
buying property
sold at
execution*

property sold at execution, and in the event of an officer purchasing or being interested in the purchase of a property at an execution sale, the purchase shall be entirely void.

(2) Nothing in subsection (1) of this section shall prevent an officer from purchasing by leave of the court at an execution sale, a property which it may be necessary for him to purchase in order to protect the interest of himself, his wife or child.

Commissioners for Oaths

106. (1) The Chief Judge may appoint under his hand and the seal of the Court, from time to time, such and so many persons as may be requisite to be commissioners within the Territory for taking affidavits and declarations and receiving production of documents, or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of a proceeding in the Court.

*Appointment of
commissioners
for oaths or for
taking evidence*

(2) An order of the Court for the attendance and examination of witnesses or production of documents before a commissioner shall be enforced in the same manner as an order to attend and be examined or produce documents before the Court.

(3) All persons who were before the commencement of this Act duly appointed commissioners for oaths in Nigeria shall be deemed to be commissioners for oaths duly appointed in pursuance of this section.

*Protection of
commissioners
from actions.*

107. No action shall be brought against a commissioner in respect of an act or order *bona fide* performed or made by him in the execution, or supposed execution, of the powers or jurisdiction vested in him, but every act or order if in excess of the powers

and jurisdiction shall be liable to be revised, altered, amended or set aside upon summary application to the Court.

Protection of Judicial and certain other Officers

*Protection of
Judges and
persons
executing
warrants, etc.*

108. (1) No Judge shall be liable for an act done by him or ordered by him to be done in the discharge of his official duty, whether or not within the limits of his jurisdiction provided that he at the time, in good faith, believed himself to have jurisdiction to do or order to be done the act in question.

(2) No officer of a court or other person bound to execute a warrant or order issued by a Judge or by a person acting as a Judge shall be liable in an action for damages in respect of the execution of the warrant or order unless it be proved that he executed the same in an unlawful manner.

Rules of Court

*Power to
make rules
of court*

109. (1) The Chief Judge, with the approval of the President, may make rules of court for carrying this Act into effect, and in particular for all or any of the following matters –

- (a) regulating the pleading, practice and procedure of the Court, including all matters connected with the forms to be used and the fees to be payable;
- (b) regulating trials by the Court with assessors (subject nevertheless to the provisions of section 96 of this Act);
- (c) prescribing or permitting the use, in or in connection with all or any specified documents, forms or records of court, of a specific abbreviated version or versions of the name of the Court;
- (d) defining, so far as conveniently may be defined by general rules, the duties of the several officers of court;

- (e) regulating the procedure for the grant of probate and letters of administration and for securing the due administration of estates;
- (f) requiring and regulating the filing of accounts by executors and administrators of estate;
- (g) fixing the fees payable on the grant of probate and letters of administration and on all matters incidental to the administration of an estate until the passing of the final accounts and the discharge of the administrator.
- (h) providing that no fees need be paid or that certain fees need not be paid or which fees must be paid on the grant of probate or letters of administration in respect of estate of small value;
- (i) ascertaining the value of estates;
- (j) regulating the administration of estates either generally or in respect of different classes or kinds of estates or of estates of different classes of persons;
- (k) regulating and prescribing the procedure on appeals from any court or person to the Court, and the procedure in connection with the transfer of proceedings from any lower court to the Court or from the Court to a lower court;
- (l) regulating the time within which notice of appeal from the decision of a court to the Court shall be given;
- (m) subject to the provisions of Part VI of this Act, for regulating the sittings of the Court and of the Judges thereof whether sitting in Court or chambers;
- (n) prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by Judges of the Court in chambers may be transacted or exercised by registrars or other officers of the Court, and

for providing that any interlocutory application to be made in connection with or for the purpose of any appeal or proposed appeal to be heard by the court shall be heard and disposed of before a single Judge:

- (o) regulating any matters relating to the costs of proceedings in the Court;
 - (p) regulating and prescribing the duties and procedure of referees and arbitrators;
 - (q) subject to the provisions of section 96 of this Act, regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;
 - (r) the arrest of absconding debtors and for giving security for their release;
 - (s) regulating the payment of allowances and travelling expenses of witnesses;
 - (t) providing for the service or execution of any writ, warrant, order or other process issuing out of or transmitted by an Area Court for service in like manner as similar process issuing out of the Court; the payment of mileage before or after service or execution; the conditions precedent before the process or process of certain classes will be served or executed and the procedure to be followed after the service or execution of the process;
 - (u) imposing penalties on a person who fails to take an action required by a rule of court or who disobeys a rule of court.
- (2) Rules of court made under this section shall apply to all proceedings by or against the State.