

MAGISTRATES' COURTS LAW, 2014

NO. 5 OF 2014

EKITI STATE OF NIGERIA

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SCHEDULE.

**A LAW TO ESTABLISH MAGISTRATES' COURTS AND FOR THE
APPOINTMENT OF MAGISTRATES, JUSTICES OF THE PEACE AND
OTHER RELATED MATTERS.**

NO. 5 OF 2014.

EKITI STATE OF NIGERIA.

Commencement []

ENACTED by the Ekiti State House of Assembly as follows:

1. Division of the State into Magisterial Districts.

The Ekiti State Judicial Service Commission (referred to in this Law “the Commission”) may by notice in the gazette:

- a. divide the State, or any portion of it into magisterial districts for the purpose of this Law;
- b. constitute in any part of the State a magisterial district (s);
- c. distinguish any district by such name or number as it may think proper and
- d. vary the limits of any of such districts as contained in schedule to this Law.

2. Establishment of Magistrates' Courts.

The Commission shall establish such Magistrate Court(s) as it consider appropriate, necessary and expedient to accommodate the needs of the State.

3. Seal of the Magistrates' Courts

- (1) A Magistrate shall have and may use any official seal bearing the device and impression by the Commission with the inscription “The Magistrate Court of Ekiti State.
- (2) The seal shall be kept by the Chief Magistrate Administration and a copy of it may be kept by each Magisterial District in the State.
- (3) The Chief Magistrate may entrust the seal or its copy in such Officers of the Court as he thinks fit.
- (4) The seal referred to in this Section shall be the seal of the Magistrate Court for all purposes for which it may be required under the provisions of this or any other Law.

4. Appointment of Magistrates.

- (1) There shall be appointed by the Commission, such number of Magistrates as may be specified from time to time by notice in the Gazette.
- (2) No person shall be appointed as Chief Magistrate, Senior Magistrate: Grade I or II or Magistrate: Grade I or II unless he is qualified as a barrister or as a barrister and solicitor in Nigeria and has been so qualified for a period of not less than –
 - (a) seven years in the case of a Chief Magistrate or Senior Magistrate, Grade I.
 - (b) four years in the case of a Senior Magistrate, Grade II.
 - (c) three years in the case of a Magistrate Grade II and
 - (d) two year in the case of a Magistrate Grade I.

Provided that in computing the period during which a person has been qualified to practice as a barrister and solicitor any period during which he has held the office of Magistrate or law officer in any part of the Federation of Nigeria, shall be included.

- (3) All Magistrates appointed to the Magistracy of the State shall serve as judicial officers to the exclusion of any other functions except as may be provided for under this law.

5. Oath of Office.

A Magistrate, upon appointment shall before proceeding to discharge the duties of his office take an oath or affirmation of Office to be administered by the Chief Judge of the State.

6. Powers of Magistrates.

- (1) Provided that powers, authority and jurisdiction of each Magistrate shall be as specified in this Law.
- (2) The Commission shall name one of the Chief Magistrates referred to in Section 16 of the Law as the Chief Magistrate Administration for the purpose referred to in subsection (4) of this Section.
- (3) In naming the Chief Magistrate Administration, the Commission shall have regard to seniority.
- (4) The duty of the Chief Magistrate Administration shall be to represent the Magistracy at official functions and to assign cases to other Magistrates under him.

7. Magistrates shall not exceed Powers conferred on him.

Subject to the special provisions contained in this Law, each Magistrate presiding as the officer of the Court to which such Magistrate is assigned shall

have and exercise jurisdiction and powers only as conferred on him by his appointment.

8. Mode of address, Dress code and Discipline of Magistrates.

- (1) As from the commencement of this Law, notwithstanding any Law or custom to the contrary, all Magistrates in the State shall be addressed as “your Honour”.
- (2) A Magistrate when presiding in Court shall be robed in a black Magistrate’s gown in a proper and dignified manner, observe the customs and code of conduct of a judicial officer and the practice of the Bar with respect to appearance and courtesy.
- (3) The Commission shall be responsible for ensuring good conduct and discipline of Magistrate.

9. Right of appearance in the Magistrate Courts.

Notwithstanding any custom or practice, all Legal Practitioners called to Bar in Nigeria are entitled, regardless of conferment, title or rank, to appear in any Magistrate Court in the State in criminal matters.

10. Cessation of office of a Magistrate.

- (1) A Magistrate shall cease to act as a Magistrate where-
 - (a) he attains the age of 60 years.
 - (b) in the opinion of the Commission, the Magistrate is mentally impaired or otherwise unable to discharge the functions of Magistrate and
 - (c) for reason of indiscipline and misconduct, the Commission determines that the Magistrate be removed from office.
- (2) Names of Magistrates who ceased to be in office shall be published in the official Gazette.

11. General Jurisdiction

Each Magistrate shall have jurisdiction throughout the State but may be assigned to any specified district or transferred from one district to another by the Chief Judge.

12. Exercise of Magistrate’s jurisdiction in chambers and in camera.

- (1) The Court shall have power to hear any proceedings or any part of it in camera if the court is satisfied that it is in the interest of justice or if it has sufficient reason to do so.
- (2) The Magistrate Court shall have powers to adjourn into chambers certain proceedings as are applicable under the Rules.

13. Magistrates as Justices of the Peace.

Each Magistrate shall by virtue of his office be a Justice of the Peace for the State.

14. Appointment and removal of Justices of the Peace.

The Attorney General may by notice in the Gazette, appoint any respectable person to be a Justice of the Peace in and for the State and may in like manner remove persons so appointed from the office of Justice of the Peace.

15. Powers and functions of Justices of the Peace.

Subject to the provisions of this and any other Law, every Justice of the Peace shall subject to any exceptions which may be contained in the notice of his appointment have -

- (a) power to preserve peace, to suppress riots and public disorder, and to disperse all disorderly and tumultuous assemblies, and for any of these purpose to call in the aid and assistance of police officers and other law enforcement agencies, who shall severally be bound to obey all such lawful commands.
- (b) all the powers, right and duties of a magistrate under this law or any other law to –
 - i. issue summonses and other process in civil causes and matters;
 - ii. issue search warrants;
 - iii. take solemn affirmation and statutory declarations;
 - iv. administer any oath which may be required to be taken before him in the exercise of any of the jurisdiction and power conferred on him by law; and
- (c) such other power and rights and perform such duties of Magistrates as may be conferred or imposed on him by rules of court made under the provisions of this law, not involving the trial of causes or in criminal cases the holding of preliminary inquiries.

16. Chief Magistrate.

- (1) There shall be appointed by the Commission for each district a Chief Magistrate.
- (2) In addition to any other duty conferred by this Law, it shall be the duty of a Chief Magistrate appointed by the Commission in each Magistrate Court to ensure as far as is practicable.
 - a) the even distribution of work among the Magistrates in the district;
 - b) the expeditious disposal of all pending legal matters and actions; and

- c) to take such steps as may be necessary to relieve congestion in the Courts under the district.

17. Conflict of interest.

- (1) Where a Magistrate, Senior Magistrate or Chief Magistrate is a party to any cause or matter or is unable, for personal interest or for any other sufficient reason to adjudicate on any cause or matter, the Magistrate, Senior Magistrate or Chief Magistrate shall direct some other Magistrate, Senior Magistrate or Chief Magistrate to act instead of such Magistrate, Senior Magistrate or Chief Magistrate for the hearing and determination of such particular cause or matter.
- (2) Where the Chief Magistrate is affected by the provisions of subsection (1) of this Section. The Chief Magistrate shall refer the case to the Chief Registrar if he is the only Magistrate competent to adjudicate on the matter regarding jurisdiction.

18. Appointment and control of Registrars and other officers.

There may be appointed from time to time Registrars, Court Clerks and other officers as the Commission thinks necessary, who shall be subject to the general supervision and control of the Commission and who shall be under the immediate direction and control of the Court Administrator for the purpose of the general support of the Judicial functions of Magistrates.

19. Appointment of Registrar.

- (1) A fit and proper person shall be appointed to be the Registrar of each Court.
- (2) The Registrar shall, subject to the general supervision and control of the Chief Judge, be under the immediate direction and control of the Magistrate.
- (3) The duties of the Registrar shall be -
 - a) to attend such sittings of the Court as the Magistrate shall direct;
 - b) to fill up or cause to be filled up summonses, warrants, orders, convictions, recognizances, writs of execution and other documents and submit the same for the signature of the Magistrate.
 - c) to make or cause to be made copies of proceedings when required to do so by the Magistrate, and to record the judgments, convictions and order of the Court.
 - d) to receive or cause to be received all fees, fines and penalties, and all other monies paid or deposited in respect of proceedings in the Court, and to keep or cause to be kept accounts of the same; and

- e) to perform or cause to be performed such other duties connected with the Court as may be assigned to him by the Magistrate.

20. Appointment of Court Administrator.

- (1) The Commission shall appoint any person with a degree or relevant professional qualification of not less than (10) years cognate experience as Court Administrator whose employment shall be defined by a service contract.
- (2) The Court Administrator appointed under this Law shall -
 - a) be responsible for the day to day administration and efficient operation of the Magistracy.
 - b) support, assist and ensure the operational and efficiency of the magistrate in the execution and performance of its judicial functions;
 - c) be the chief administrative and the accounting officer of the Magistracy.
- (3) The duties and function of the Court Administrator shall be the -
 - a) management of the budget of the Magistracy and among other things, undertake the financial administration including budget preparation, fiscal management of appropriate and other funds, purchasing, cash collection, accounting and auditing through various departments in the Magistracy;
 - b) management and overseeing the administrative staff attached to the Magistracy.
 - c) establishment and management of procedures for the acquisition and maintenance of furniture, equipment and other things which are incidental to the smooth running of the Magistracy;
 - d) carrying out the directives of the Commission as may be prescribed from time to time; and
 - e) delegation of any of his duties to the Registrars in each Magistrate Court.
 - f) The Court Administrator or the Registrars shall not at any time exercise any judicial function.

21. Appointment of Court Recorders.

- (1) There shall be appointed as many Court Recorders as the Commission deems sufficient and who shall be subject to the general supervision and control of the Commission.
- (2) The duties of the Court Recorders shall be to –
 - a) attend to all sittings of Court as the Magistrate shall direct;
 - b) make verbatim record of court trials, proceedings and other matters, noting essential events during proceedings and certify records of the Court;
 - c) provide typed written transcripts as required by the Magistrate, to parties to the proceedings or any member of the public within seventy two (72)

- hours signed by the recorder of the proceeding and the Magistrate in whose Court the proceeding took place; and
- d) receive or cause to be received all fees in respect of such copies of proceedings in the Court.

22. Appointment of Commissioner for Oaths.

- (1) The Commission shall appoint Commissioner for oath for each Magisterial District to administer Oaths and affirmations.
- (2) Such persons appointed by the Commission shall be duly sworn-in by the Chief Judge of the State as Commissioner for Oaths.

23. General Powers of Magistrates.

Every Magistrate shall have power to:

- (a) administer and take solemn affirmations and declarations;
- (b) accept production of books and documents;
- (c) make such decrees and orders; and
- (d) issue such process and exercise such powers, judicial and administrative, in relation to the administration of justice, as shall from time to time be prescribed by any law or subject to any special order of the Commission.

24. Civil Jurisdiction of Magistrates.

- (1) Subject to the provisions of the Constitution and any other enactment, a Chief Magistrate shall have and exercise jurisdiction in civil causes or matters-
- a) in all personal actions, whether arising from contract, tort, or both, where the debt or damage claimed, whether as a balance of account or otherwise, is not more than one million naira (₦1,000,000.00);
- b) in all actions between landlord and tenant for possession of any land or houses claimed under an agreement or refused to be delivered up, where the annual value or rent does not exceed one million naira (₦1,000,000.00);
- c) in all actions for the recovery of any penalty, rates, expenses, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force, if –
- (i) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other court; and
- (ii) the amount claimed in the action does not exceed five hundred thousand naira;
- d) to appoint guardians *ad litem* and to make orders and issue and give directions relating thereto; and

- e) to grant in any action instituted in the court injunction or order to stay waste or alienation or for the detention and preservation of any property the subject of such action or restrain breaches of contracts or torts.
- (2) Senior Magistrates, Grade I and II, and Magistrates, Grade I, II and III, shall have and exercise jurisdiction in civil causes or matters similar in all respect to that set out in subsection (1), save that subsection (1) shall have effect as if for the references therein to two hundred and fifty thousand naira there were substituted –
- (a) in relation to a Senior Magistrate, Grade I, references to four hundred thousand naira;
 - (b) in relation to a Senior Magistrate, Grade II, references to three hundred thousand naira;
 - (c) in relation to Magistrate Grade I, references to Two Hundred thousand naira;
 - (d) in relation to Magistrate Grade II, references to One hundred thousand naira; and
- (3) The applicable Rules for the enforcement of regulatory legislation under subsection (2) of this Section shall be set out in Schedule 3 to this Law in addition to any other rules or regulations as may be made by the Chief Judge on the recommendation of the Attorney- General.
- (4) The amount claimed in action brought under subsection (2) of this Section shall not exceed one million Naira (₦1,000,000.00) at the time of filing.
- (5) Magistrates shall have concurrent powers to handle offences under other legislations as specified in Section 25(7) of this Law.
- (6) The Attorney- General shall have powers to make Regulations under this Law to amend the list of offences contain in Section 25(7) of this Law, subject to the approval of the Ekiti State House of Assembly.
- (7) Subject to the provisions of any other Law, a Magistrate shall not exercise original jurisdiction in any cause or matter which raises any issues as to-
- a) the title to land or any interest in land; or
 - b) the validity of any device, bequest or limitation under any will or settlement.

25. Criminal Jurisdiction of Magistrates.

- (1) Subject to any restriction or conditions prescribed by the constitution or by any other law or enactment, Magistrates shall have jurisdiction and

powers in respect of the summary trial and determination of criminal cases as set out in this Section.

- (2) Every Magistrate shall have jurisdiction for the summary trial of offences other than indictable offences and for the conviction of any person accused of any such offences, may, subject to the other provisions of this Section, impose the punishment provided by Law for such offences.
- (3) Every Magistrate shall have jurisdiction to deal summarily with any indictable offence, other than a capital offence, in accordance with the provisions of Part XXXV of the Criminal Procedure Law, and on the conviction of any person accused of any such offences may, subject to the other provisions of this Section and the provisions of Section 304 of the Criminal Procedure Code, impose the punishment provided by Law for that offence.
- (4) The fine which a Magistrate may impose in respect of any offence shall not exceed -
 - a) in the case of a Chief Magistrate, One hundred thousand Naira
 - b) in the case of a Senior Magistrate, Grade 1, Seventy-Five Thousand Naira;
 - c) in the case of a Senior Magistrate, Grade II, Fifty thousand Naira;
 - d) in the case of a Magistrate, Grade I, Twenty-Five Thousand Naira;
 - e) in the case of a Magistrate Grade II, Twenty Thousand Naira.

But shall not in any event exceed a maximum fine provided by Law for that offence, and in no cause shall the aggregate of fines imposed by any magistrate exceed the sum specified above or such sum as may be substituted therefore, in respect of that Magistrate.

- (5) The term of imprisonment which a magistrate may impose in respect of any offence shall not exceed –
 - a) in the case of a Chief Magistrate, ten years;
 - b) in the case of a Senior Magistrate, Grade I, eight years;
 - c) in the case of a Senior Magistrate, Grade II, eight years;
 - d) in the case of a Magistrate, Grade I, six years;
 - e) in the case of a Magistrate, Grade II, six years.

But shall not in any event exceed a maximum term of imprisonment provided by law for the offence, and in no cause shall the aggregate term of imprisonment in respect of two or more consecutive terms of imprisonment imposed in that cause by any magistrate exceed the term

specified above or such term as may be substituted therefore, in respect of that Magistrate.

- (6) Where any enactment provides that an order for the payment of money, other than a fine, made on summary conviction or summarily or in a summary manner in respect of any offence, every Chief Magistrate, Senior Magistrate or Magistrate shall have power to make such order, save that the sum ordered to be paid shall not –
 - i) in the case of a Chief Magistrate, exceed One hundred thousand Naira;
 - ii) in the case of a Senior Magistrate, Grade I, exceed Seventy-Five Thousand Naira;
 - iii) in the case of a Senior Magistrate, Grade II, Fifty thousand Naira;
 - iv) in the case of a Magistrate, Grade I, exceed Twenty-Five thousand Naira;
 - v) in the case of a Magistrate, Grade II, exceed Twenty Thousand Naira.
- (7) Notwithstanding any provision contained in this or any other Law, the criminal jurisdiction of Magistrates' Courts shall extend to the trial of offences contained in any of the following Laws:
 - (i) Offences created under the Environmental Health and Sanitation Law, Cap E38 Laws of Ekiti State 2012
 - (ii) Offences created under the Entertainment Tax Laws, Cap E37 Laws of Ekiti State 2012
 - (iii) Offences created under the Environmental Protection Agency Law Cap E12, Laws of Ekiti State 2012
 - (iv) Offences created under the Road Traffic Law, Cap R8 Laws of Ekiti State 2012
 - (v) Offences created under the Torts Law Cap T1, Laws of Ekiti State 2012
 - (vi) Towns and Country Planning Law Cap T2 Laws of Ekiti State 2012
 - (vii) Trade Cattle Tax Law Cap, T3 Laws of Ekiti State 2012
 - (viii) Solid Minerals Haulage Levy Law Cap S4 Laws of Ekiti State 2012
 - (ix) Offences created under the Survey Law Cap S15 Laws of Ekiti State 2012
 - (x) Offences created under the Lotteries (Government) Law Cap L15 Laws of Ekiti State 2012
 - (xi) Offences created under the Federal Road Safety Commission (Establishment) Act Cap F1G Laws of Ekiti State 2012

26. Definition of fine.

For the purpose of Section 25 of this Law, the expression “**fine**” shall include any monetary penalty or monetary forfeiture.

27. Execution of High Court processes.

Every Magistrate, when so required by the High Court, shall -

- a) cause to be executed, any writ, order or process issued from the High Court of the State;
- b) take security from any person named in writ or order for his appearance in the High Court; and
- c) in default of security being given or when the High Court so orders, send the person to the place named in the writ.

28. Administration of Oaths.

- (1) Every Magistrate and Justice of the peace is authorized to administer all oaths, which may be taken before him in the exercise of any of the jurisdiction and powers conferred on him by this or any other law.
- (2) Oaths may also be administered during trial by a Court clerk or other officer of the Court under the direction of the Magistrate.

29. Concurrent Administration of Law and Equity.

- (1) In every civil cause or matter in the Court, law and equity shall be administered concurrently.
- (2) A Magistrate in the exercise of the jurisdiction vested in him by this Law, shall in every cause or matter, have power to grant, and shall grant, either absolutely or on such terms and conditions as shall seem fit, all such remedies as any of the parties may appear to be entitled to, in respect of any legal or equitable claim properly brought forward by them in the cause or matter, to ensure that all matters in controversy between the parties be completely and finally determined, and avoid multiplicity of legal proceedings concerning any of such matters.
- (3) In all causes or matters in which there is any conflict or variance between the rules of equity and rules of common law with reference to the same subject, the rules of equity shall prevail.

30. Application of Customary Law.

- (1) A Magistrate shall observe and enforce the Customary Law which is applicable and is not repugnant to natural justice, equity, and good conscience or incompatible either directly or by implication Customary

Law with any Law for the time being in force, and nothing in this Law shall deprive any person of the benefit of Customary Law.

- (2) Customary Law shall be deemed applicable in cause and matters between persons where it may appear to the Court that substantial injustice would be done to their party by a strict adherence to any rules of the law which would otherwise be applicable.
- (3) No party shall be entitled to claim the benefit of a Customary Law, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen that such party agreed that his obligations in connection with such transactions should be exclusively regulated otherwise than by Customary Law or that such transactions are transactions unknown to Customary Law.

31. Reconciliation and Mediation in Civil Cases.

- (1) In civil cases a Magistrate shall, so far as there is proper opportunity, promote reconciliation among persons over whom he has jurisdiction, also encourage and facilitate settlement in an amicable way of matters in difference between them.
- (2) The Magistrate may refer proceedings in relation to any action, part of or any matter arising out of it, for mediation to the Citizens' Rights Center established under the Ekiti State Citizens' Rights Law, 2012
- (3) Reference to mediation under the provision of subsection (2) of this Section shall be made with the consent of the parties to the proceedings.

32. Power of Magistrate to refer to Mediation, Conciliation and Arbitration.

- (1) A Magistrate may, with the consent of the parties refer all or part of the proceedings to mediation and arbitration, the Court shall determine the mediator and arbitrator and also the manner and terms of proceeding as the Court thinks just.
- (2) No such reference shall be revocable by any party except with the consent of the Magistrate.
- (3) On any such reference, the award of the mediators or arbitrators shall be entered as the judgment in the proceedings and shall be binding and effectual to all intents as if given by the Magistrate.
- (4) In this Section, the expression "**award**" includes an interim award.

33. Reconciliation in criminal cases.

In criminal cases, a Magistrate may encourage the settlement in an amicable way of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by him.

34. Duties of Legal Practitioner in instituting proceedings in a Magistrate Court.

A Legal Practitioner acting for parties in any proceedings in the Magistrates' Court shall advise the parties to the proceedings on the process of Alternative Dispute Resolution (ADR) that may be used to resolve any matter in dispute.

35. Places of sitting of Courts.

The Commission may, by notice in the gazette, appoint the places where Magistrate shall sit for the dispatch of the business of the Court and may in like manner change such places.

36. Court sitting times.

- (1) The Court shall be opened throughout the year except on Saturdays, Sundays and public holidays for the transaction of business, and shall sit at such times as may be determined by the Magistrate subject to the direct of the Commission.
- (2) Notwithstanding subsection (1) above at least one Court in every Magisterial District shall be opened and available for business or any given Saturday for the hearing of matters relating to environment and traffic offences.

37. Business at any sitting.

At any sitting of the Court, a Magistrate may hear, determine and deal with either civil or criminal causes and matters or with both.

38. Adjournments.

- (1) A Magistrate may adjourn from the date of commencement of trial and during the proceedings for a period not exceeding, fourteen (14) working days.
- (2) A Magistrate may, after the matter has been set down for trial at his discretion, grant in -
 - a) uncontested civil cases, not more than two (2) adjustments;
 - b) contested civil cases, not more than four (4) adjournments.
- (3) The period of adjournment to attend mediation proceedings are excluded from the operation of this Section.
- (4) The Magistrate shall endeavour to conclude all criminal matters within ninety (90) days from date of arraignment.
- (5) Subject to the provision of this Section, in the event that any of the parties to the action fails to, is unable to or refuses to attend Court or

proceed with the cause or matter, the Magistrate shall strike the matter off the cause list and out of the Court or enter judgment in default against the defendant.

- (6) For the purpose of this Section, the date of commencement of trial shall be the date set down by the Magistrate for the trial of the action and shall not be later than twenty (20) working days after the date of assignment of the action by the Chief Magistrate.

Provided that where the Magistrate does not set down the action for trial within the stated period, the date of commencement shall be twenty (20) working days from the date of assignment of the action by the designating Magistrate.

Provided that no cause or matter which has been specifically transferred by the High Court for inquiry or trial by a particular Magistrate, shall again be transferred without the consent of the Chief Judge.

39. Report of cause for transfer.

A Magistrate may, of his own motion, or on the application of any person concerned, report to the Chief Magistrate in charge of the District of the pendency to any cause or matter, civil or criminal, which in the opinion of such Magistrate ought for any reason to be transferred from him to another Magistrate or to the High Court and the Chief Magistrate shall direct in what mode and where or by whom the cause or matter shall be heard and determined.

40. Effect of transfer.

Every transfer of cause or matter shall operate as stay of proceedings before the Magistrate from whom the proceedings are ordered to be transferred, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of the Court relative to it, shall be transmitted to the high Court or the Magistrate specified in the order, as the case may require and all proceedings in the cause or matter shall be taken in that Court or before that Magistrate as if the cause or matter had been commenced in that Court or before that magistrate.

41. No appeal from transfer.

No transfer made under the provisions of Sections 38 and 39 shall be subjected to appeal.

42. Practice and procedure.

- (1) in any proceedings before it, the Magistrate Court shall proceed without undue formality and must endeavor to ensure that the proceedings are not protracted.
- (2) Subject to the provision of this Law and any other Law, the practice and procedure of the Court shall in its civil jurisdiction be regulated by rules of Court, and in its criminal jurisdiction be regulated by the provision of the Administration of Criminal Justice Law.

43. Proceedings to be heard and disposed of by a single Magistrate.

Subject to the provision of Section 42 of this Law and the Child's Rights Law, all civil and criminal causes or matters and all proceedings in the Court and matters arising from it shall be tried, heard and disposed of by a single Magistrate, and all proceedings in all 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 Magistrate before whom the trial or hearing took place.

44. Completion by Magistrate of process begun by predecessor.

- (1) Where a Magistrate has issued any summons or warrants, or otherwise taken or commenced any proceedings or matter, whether civil or criminal, under any authority however conferred, and subsequently ceases to have or to exercise jurisdiction in respect of such proceeding or matter, it shall be Lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the same manner as if the Magistrate who issued the summons or warrant had not ceased to have or to exercise such jurisdiction, and any person who is the successor of or is acting for such Magistrate may hear, determine, execute, enforce and carry to completion, any proceeding or matter so commenced , except that in the case of such trials, the Magistrate shall commence the hearing afresh.
- (2) In any civil action in subsection (1) above, provided that the parties to an action agree, the court may rely on the records without the need to hear fresh evidence.

45. Pleading judgments of other Courts in defence.

- (1) A Judgment of any Court of competent jurisdiction (not being a Court Martial) superior to every Magistrate Court under this Law, in favour of any party to any cause or matter before such Court may, in respect of the same subject matter, be pleaded as a defence to any proceedings

commencement by the unsuccessful party to such cause or matter in the Magistrate Court.

- (2) Nothing in this Section shall be taken to prevent any judgment, other than a judgment referred to in subsection (1), above being treated as a defence if such judgment could have been so pleaded in the Magistrate Courts established under this Law.

46. Service of process.

- (1) All summonses, warrants, orders, judgments, writs of execution or other processed or proceedings, whether civil or criminal, issued or taken by the authority of any Magistrate in respect of any cause or matter may be served or executed anywhere within the State by bailiff or a Special Bailiff including a Legal Practitioner or any person delegated by the Magistrate Court Sheriff or a delivery service registered with and approved by the Court Administrator.
- (2) All Bailiffs or special Bailiffs including a legal practitioner or any person delegated by the Magistrate Courts' Sheriff shall receive and exercise their power with respect to subsection (1) of this Section, under warrant to act as Bailiffs of the Court issued by the Magistrates' Court Sheriff upon the approval of the Court Administrator.
- (3) All warrants to act as Bailiff of the Court shall be renewable every twelve (12) months.

47. Failure to report service.

- (1) Where a Bailiff or special Bailiff without reasonable cause fails to report service within two (2) days of the date of effecting service, the Magistrate's Courts Sheriff shall suspend the powers contained in the warrant to acts as Bailiff of the Court.
- (2) Where the Magistrates' Courts Sheriff has occasion to suspend such warrants to act as a Bailiff on more than two (2) occasions in respect of the same Bailiff or special Bailiff, the Magistrates' Court Sheriff shall withdraw the warrant to act as Bailiff of the Court without an option to renew.

48. Issuance of process.

- (1) All summonses, warrants, orders, convictions, recognizance and other process in criminal proceedings shall subject to the provisions of this Law, be signed by a Magistrate or such other officer as may be prescribed by Rules of Court.
- (2) Every summons or other process in a civil proceeding shall be signed either by a Magistrate or, if the Magistrate directs, by a Registrar.

49. Inspection by the Court.

In any cause a Magistrate may on the application of either party, or in exercise of his discretion, make such order for the inspection by the Court, the parties or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute, and give such direction regarding such inspection, as the Magistrate may think fit.

50. Contempt of Court.

The Magistrate Court shall have power to punish for contempt of Court where the contempt is committed in the face of the Court or in connection with any proceedings in the Court.

51. Duty of the Police and other Law Enforcement officers to obey Magistrate

- (1) All police officers and other Law enforcement Officers are authorized and require to obey the warrants, orders and directions of a Magistrate in the exercise of his criminal jurisdiction, and, so far such obedience may be authorized and require by any Law in that behalf, of his civil jurisdiction.
- (2) Where any police Officer or other Law enforcement Officers fails to comply with or obey any warrant, order or direction of a Magistrate, the Magistrate, shall cause to be issued a notice to the inspector- General of police, State commissioner of police, or any other appropriate authority or Agency, informing them formally of such disobedience and require compliance by the said Officer and the Magistrate may take any other additional action that is deemed fit against such Police Officer, or other Law enforcement Officer.

52. Powers of Magistrate to appoint special witnesses.

- (1) A Magistrate shall have power to appoint a special witness in circumstances where the opinion of such person is either relevant or is in issue to determine the real issues in controversy where –
 - a) any civil proceeding which require any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the magistrate, conveniently be made before him;
 - b) in any civil proceedings, where the question in dispute consist wholly or in part of accounts; or
 - c) with the consent of the parties, any other matter arising out of the civil proceeding before him which, for reason to be recorded by him, he is satisfied that it is proper to so appoint.

- (2) Where any civil proceedings or any question require the appointment of a special witness as in subsection (1) of this Section, the Magistrate shall direct how the appointment shall be done, and may remit any report for further inquiry and report or further report and may give such judgment or make such order in the proceedings as may be just.
- (3) The Magistrate may require the special witness to give a written opinion under oath on any matter of accounts which is in dispute between the parties in civil proceedings and, in delivering judgment, the Magistrate may use the report presented to him by the by the special witness as if such report were facts found by him in the course of the trial.

53. Evidence of prisoners.

- (1) In any proceeding pending before the Court, a Magistrate may, if he thinks fits, on application either orally or in writing by any party, issue a warrant or order under his hand for bringing up before the Court any person (referred to in this Section as “a prisoner”) confined in any place under sentence or under commitment for trials or otherwise, to be examined as a witness in the proceedings.
- (2) The prisoner mentioned in any such warrant or order shall be brought before the Court under the same custody, and shall be dealt with in the same manner in all respects, as a prisoner require by warrant to be brought before the High Court and examined as a witness:

Provided that in civil proceedings, the person having the custody of the prisoner shall not be bound to obey the warrant or order unless there is tendered to him a reasonable sum for transporting and maintaining both the Officer and the prisoner for that purpose.

54. Power to arrest defendant leaving Nigeria.

- (1) Where the claimant in any action proves, at anytime before final judgment, by evidence on oath to the satisfaction of a Magistrate that-
 - a) he has good cause of action within the limits of the jurisdiction of such magistrate as prescribed by Section 24 of this Law against the defendant to an amount not lesser than two hundred and fifty thousand naira (N250,000.00)
 - b) there is probable cause for believing that the defendant is about to leave Nigeria unless he is apprehended; and
 - c) the absence of the defendant from Nigeria will materially prejudice the claimant in the prosecution of his action, the magistrate may, in

the manner prescribed by the rules of court, order that the defendant be arrested.

- (2) The defendant shall, upon his arrest, be brought as soon as practicable before the Magistrate and the action shall be heard and determined and all proceedings consequent upon it shall immediately be taken, or the Magistrate may if he thinks fit adjourn the hearing to a reasonable time, and he may release the defendant in either of the following cases, but not otherwise-
 - a) if the defendant deposits to the office of the Chief Registrar by way of security, an amount equivalent to the sum claimed, and the cost of the action; or
 - b) if the defendant gives security to the claimant by bond and one sufficient surety, to be approved by a magistrate, in an amount double the sum claimed and cost for the defendants' appearance at the hearing, the bond to remain in the custody of the Registrar.
- (3) If an adjournment is made and the defendant fails to make the deposit or to give the security as prescribed Section (2) of this Section, the Magistrate may commit him to prison until the action is finally heard and determined:

Provided that-

- a) no such commitment shall be for a term exceeding seven (7) days, but without prejudice to the power of the magistrate to remand the defendant from time, save that no such imprisonment shall exceed fourteen (14) days; and
 - b) upon the final adjudication of the action, the magistrate shall order the release of the defendant if he is at the time in custody.
- (4) If judgment is given for the claimant at the hearing, the Magistrate may order payment to the claimant out of the sum, if any, deposited as security by the defendant, the amount of the debt and costs and shall repay the surplus, if any, to the defendant.
 - (5) If a bond is given and the defendant does not appear at the hearing and judgment is given for the claimant, execution may be levied on the bond to recover the amount of the judgment and cost awarded by the Magistrate; but if the defendant appears at the hearing, the Magistrate shall where judgment has been given, cancel the bond and deliver it up to the defendant.

55. Judgment.

- (1) A Magistrate shall deliver judgment in every action or matter not later than twenty- one (21) working days after close of trial.

- (2) In appropriate cases, the Magistrate may deliver judgment and reserve reasons to a later date not exceeding twenty- one (21) working days.
- (3) In any case where judgment has been prepared by a Magistrate and such Magistrate is unavailable for any reason to deliver same, another Magistrate may read such judgment.

56. Evidence of record of proceedings.

Any record required to be kept by the provisions of this Law or by the rules of Court relating to the proceedings of the Court, or a copy of an extract purporting to be signed and certified a true copy by a Magistrate and the Court Recorder, shall at all times without further proof be received in any Court as evidence of the record of proceeding copied (as the case may be) and of the proceeding referred to and of the regularity of that proceedings.

57. Executor may sue and be sued.

- (1) An Executor or Administrator may sue and be sued in the Court as a party.
- (2) Judgments and execution involving an Executor or Administrator should be as would be given in like cases in the High Court.

58. Procedure where persons are jointly liable.

- (1) Where a claimant has a demand recoverable under this Law against two or more persons who are jointly liable, it shall be sufficient to serve any of those persons with the process, and judgment may be obtained and execution issued against any of the persons so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court.
- (2) Where judgment is obtained against any of the persons mentioned in subsection (1) above and the person is satisfied by the judgment, he shall be entitled to recover contribution from any other person jointly liable with him.

59. Prosecution in criminal cases.

Prosecution in criminal cases in Magistrate Courts in the State shall be undertaken by -

- (a) Law officers; and
- (b) Police officers and other law enforcement agents.

60. Appointment and duties of Magistrate Court Sheriff.

Notwithstanding the provisions of any other Law to the contrary, there is appointed the Magistrate Court Sheriff, who shall be responsible for the

service of processes, enforcement of judgments, orders and other ancillary matters of the Magistrate Courts.

61. Appeal by prosecutor.

The Prosecutor may appeal as of right to the High Court where:-

- (a) an accused person has been acquitted or an order of dismissal has been made by a Magistrate from the acquittal or dismissal on the ground that it is erroneous in law or that the proceedings or any part of it were in excess of the jurisdiction of the Magistrate; or
- (b) a person has been convicted by a Magistrate of an offence in respect of which the Magistrate is required by any Law to impose a minimum sentence or make any order prescribed by that or any other law on the ground that the Magistrate has failed to impose such sentence or make such order.

62. Appeal by a convicted person.

Any person convicted of a criminal offence by a Magistrate having jurisdiction to try the offence may appeal to the High Court before the expiration of thirty (30) days after the Judgment was delivered.

63. Criminal Appeal Procedure.

- (1) An appeal from a decision of a Magistrate in criminal proceeding under the relevant provision of the Constitution or under the provisions of this Law, shall be commenced by the appellant giving to the Registrar of the Magistrate Court, notice of appeal setting out the particular grounds on which he relies or of which he complains before the expiration of thirty (30) days after the judgment of the Magistrate was given.
- (2) Where an appellant has been sentenced to imprisonment or other remedial detention, the Magistrate shall release him from custody on his entering into a recognizance, with or without sureties, and in such reasonable sum as the Magistrate thinks fit at the hearing of the appeal, or with the consent of the Magistrate, other security for his appearance.
- (3) The Magistrate shall have a discretion whether to release the appellant from custody or not if –
 - (a) the appellant has previously served a sentence of not less than six (6) months imprisonment; or
 - (b) there is evidence upon which the Magistrate, having regard among other things to the offence which the appellant has been convicted and to any previous convictions which may have been recorded against the appellant, may reasonably presume that the appellant, if release from custody is likely to –

- (i) commit some further offence; or
 - (ii) evade or attempt to evade justice by absconding or otherwise disappearing.
- (4) If the Magistrate refuses to grant an application for the release of the appellant from custody, the appellant may apply to the High Court for such release, and the High Court may either refuse to grant the application or make an order for the release of the appellant on such conditions as it thinks fit.
- (5) Where an appellant who has been released from custody upon entering into a recognizance under the provision of this Section commits a breach of the recognizance, the High Court may –
 - (a) issue a warrant for his arrest;
 - (b) either dismiss the appeal under the High Court Law or order that it shall be heard on a subsequent date, and for such purpose may either require a further recognizance or order the appellant to be kept in custody pending the determination of the appeal; and
 - (c) order the first mentioned recognizance of the appellant and his surety or sureties to be forfeited in whole or in part.
- (6) Notwithstanding the provisions of the Administration of Criminal Justice Law, where a sentence of imprisonment imposed by a Magistrate is confirmed on appeal by the High Court, or another sentence of imprisonment is substituted, any period during which the appellant was released from custody under the provisions of this subsection and, subject to any directions which the High Court may give when determining the appeal, any period during which he was kept in custody under the provisions of this Section shall be excluded in computing the time for which he was or is sentenced.
- (7) Subject to the provisions of the High Court Law and this Law, the practice and procedure in criminal appeals from the Magistrate Courts shall be in accordance with Rules of Court made under the High Court Law and subject to the Rules of Court made under this Law.

64. Power of Chief Judge to require returns of criminal cases.

The Chief Judge may require specified Magistrates to forward at the expiration of every calendar month to the Chief Judge or to such other Judge, as the Chief Judge may designate in such form as rules of court may direct, a list containing all criminal cases or specified criminal cases decided by or brought before such magistrates.

65. Civil Appeal procedure.

Subject to the provisions of this Law, the practice, procedure and manner of appeals in civil proceedings shall be in accordance with Rules of Court made under the High Court Law, and subject to the Rules of Court made under this Law.

66. Additional Evidence.

The Appeal Court may, in any case where it may consider it necessary that evidence should be adduced, either –

- (a) order such evidence to be adduced before the Court on some day to be fixed in that behalf; or
- (b) refer the case back to the Magistrate to decide the case afresh after taking such evidence, and subject to such directions in Law, if any, as the Court may think fit to give, or direct him, after taking such 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.

67. Mode of taking additional evidence.

- (1) When additional evidence is to be taken by a Magistrate and specific findings of fact reported he shall certify such evidence to the Appeal Court which thereupon proceed to dispose of the appeal.
- (2) Unless the Appeal Court otherwise directs, the appellant or the Legal Practitioner representing him shall be present when the additional evidence is taken.
- (3) Evidence taken in pursuance of Section 66 shall be taken as if it were evidence taken at the trial before the Magistrate's Court.
- (4) When forwarding to the Appeal Court any additional evidence taken by a Magistrate in pursuance of Section 66, the Magistrate may express his opinion on the demeanour of the witnesses and of the value of their evidence and may also, if he is the Magistrate against whose decision the appeal has been made, state whether or not he would have come to a different decision had the additional evidence been brought forward at the trial.

68. Enforcement of Judgment by Court of trial.

- (1) Upon the receipt of a certificate of the judgment or order of the High Court on an appeal, and subject to the provision contained in this Section, a Magistrate Courts' Sheriff shall have the power to enforce, and shall enforce, any decision which may have been affirmed,

modified, amended or substituted by the High Court, or any judgment which may have been pronounced by the high court in the same manner in all respects as if such decision or judgment had been pronounced by the Magistrate.

- (2) Any judgment or order of the Magistrates' Courts shall be enforced by the Magistrate Courts' Sheriff or by persons delegated to act on his behalf.

69. Appeal not to operate as stay of execution.

Subject to the provisions of Section 63 of this Law, an appeal shall not operate as a stay of execution but a Magistrate or the High Court may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed in accordance with Rules of Court.

70. Abatement of appeals.

Every criminal appeal, other than an appeal from a sentence of fine, shall abate on the death of the appellant.

71. Attorney – General may require a case to be stated.

Where, in any criminal case in which no public officer is a party and the Attorney – General is of the opinion that any decision of a Magistrate is erroneous in law, he may, at any time within six (6) months from the date of the decision, require the Magistrate to state a case on it for the opinion of the High Court.

72. Contents of case stated.

A case stated by a Magistrate shall set out the –

- (a) charge, summons, information or complaint;
- (b) facts found by the Magistrate to be admitted or proved;
- (c) submission of law made by or on behalf of the complainant during the trial or inquiry;
- (d) submission of law made by or on behalf of the accused during the trial or inquiry;
- (e) the finding of, and in case of conviction, the sentence imposed by the Magistrate; and
- (f) question of law which the Attorney – General requires to be submitted for the opinion of the High Court.

73. Reservation of question of Law for opinion of High Court.

In addition to and without prejudice to the right of appeal conferred by this or any other law, a Magistrate may reserve for consideration by the High Court

on a case to be stated by him any question of law which may arise in any cause or matter before him and may give judgment or decision subject to the opinion of the High Court.

74. Payment and recovery of fees prescribed by Rules of Court.

- (1) Subject to the other provisions of this Section, fees and other amounts payable under the Rules of Court in respect to any proceeding specified in this Law, shall be paid to the Chief Registrar or other person appointed to receive same and if payable in respect of any proceeding in a cause, shall in the first instance be paid by the party on whose behalf the proceeding is to be taken but may in the discretion of the Magistrate Court, if the decision in the cause be given against the other party, be recovered against the other party.
- (2) Subject to the provisions of this Law, fee chargeable in any proceedings in a Magistrate Court shall be as prescribed by the Chief Judge.
- (3) No fees or other sums shall be paid by the State or any public Officer in respect of a matter in which the State or a Public Officer is a party in his official capacity to the action.
- (4) Except as otherwise provided under this Section, there shall be no exemption from the payment of fees or other sums payable under this Law.

75. Application of Section 74 to other fees.

Except as otherwise provided by any Law, the provisions of Section 74 shall apply in relation to fees or other sums required to be paid under any law in respect of any proceeding in the Magistrate Court as they apply in relation to fees or other sums required to be paid under the Rules of Court.

76. Fines to be paid to Office of the Chief Registrar.

All fines, penalties, forfeitures or other moneys payable under the provisions of any law in respect of any proceeding in the Magistrate Court shall be paid to the Office of the Chief Registrar or other persons appointed by the Rules of Court to receive same.

77. Budget.

The Court Administrator shall in consultation with the Chief Magistrate Administration be responsible for preparing and presenting the budget of the Magistracy to the Commission.

78. Accounts and Reports.

- (1) The Magistracy shall keep accounts of its transactions and conform to the best commercial accounting standards.
- (2) The accounts shall be audited annually by an auditor appointed by the Commission.
- (3) The Governor may subject to any Appropriation Law, make payment to the Magistracy in accordance with this Law by way of grant, subsidy, charges or fee.
- (4) There shall be established by this Law, a Magistrate Salary Scale (MSS) which structure shall be determined by the State House of Assembly.
- (5) The salaries and allowances of magistrates shall be fixed from time to time by the House of Assembly.
- (6) In addition to the benefits accruable to Law officers under the Legal Officers (Harmonization with Judicial officers) Law, Cap L6, Laws of Ekiti State 2012, all the benefits, emoluments salaries and conditions of service pertaining and or applicable to the Magistrates under this Law shall also apply to Legal Officers in the Ministry of Justice, Ekiti State.

79. Annual Report.

The Commission shall, not later than three (3) months after the close of each financial year furnish the Governor with a copy of the audited accounts, state of affairs and activities of the Magistracy.

80. Trainings.

The Commission shall arrange, administer and fund training programmes and seminars for the Magistrates from time to time.

81. Refusal by Magistrate to do an act relating to his office.

In all cases where a Magistrate or Justice of the Peace refuses to do any act relating to the duties of his office; it shall be lawful for the party enquiring the act to be done to apply to the High Court for an Order of Mandamus and, if the High Court makes the order, no action or proceeding whatsoever shall be commenced or prosecuted against the Magistrate or Justice of the Peace for having obeyed the order.

82. Protection of Judicial Officers.

- (1) No Magistrate or Justice of the Peace shall be liable for any act done by him or ordered by him to be done in the discharged of his judicial 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 person required or bound to execute any warrant or order issued by a Justice of the Peace shall, solely on the ground that the Magistrate or Justice of the Peace who issued it was not acting within the limits of his jurisdiction in so doing, be liable in any action for damages in respect of the execution of such warrant or order.

83. Representation of the State and Government Departments.

- (1) In the case of a prosecution by or on behalf of the State or by any public officer in his official capacity, the State or that officer may be represented by a Law Officer, State Counsel or Police Officer as defined in Section 59 of this Law, or by any Legal Practitioner or other person duly authorized in that behalf by or on behalf of the Attorney – General.
- (2) In any civil cause or matter to 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 State, the State or that officer may be represented by a Law Officer or State Counsel or by any legal Practitioner or other person duly authorized in that behalf by or on behalf of the Attorney – General.

84. Rules of Court.

- (1) The Rules applicable to the Magistrate Courts are as set out in the Magistrate Court (Civil Procedure) Rules and any other relevant Rules as may be prescribed from time to time.
- (2) Subject to the provisions of this Law, the Chief Judge may make any subsequent Rules of Court for all or any of the following purposes and matters –
 - (a) regulating the practice and procedure of the Magistrate Courts in civil proceedings in respect of which no specific provision is made in this or any other law, including all matters connected with the forms to be used;
 - (b) regulating the practice and procedure in civil appeals and in criminal appeals from the Magistrate Courts and the fees and costs on such appeals, where no provision has been made by the High Court Law or by this Law; and
 - (c) The reference of civil proceedings to mediation and arbitration and all matters relating and incidental the remuneration and fees of arbitrators.
- (3) Rules of Court made under this Section shall apply to all proceedings by or against the State.

- (4) The jurisdiction and powers conferred on a Magistrate by virtue of any existing law (or administrative functions) shall continue to apply after the commencement of this Law.
- (5) Nothing in this Law shall be construed to affect the appointment, tenure of office or powers or status of any Justice of the Peace holding office as such within the State on the coming into operation of this Law.

85. Savings.

Nothing in this Law shall be construed to affect the appointment, tenure of office, powers or status of any Justice of the Peace holding office as such within the State on the coming into operation of this Law.

86. Repeal.

The Magistrates' Courts Law Cap. MI Laws of Ekiti State, 2012 is hereby repealed.

87. Interpretation.

In this Law, unless the context otherwise requires –

“**Action**” includes a civil proceeding commenced in such manner as may be prescribed by rules of court, but does not include a criminal proceeding;

“**Attorney – General**” means the Attorney – General of Ekiti State;

“**Bailiff**” means a person authorized by a Sheriff to carry out the service of Court processes or the enforcement of Court orders and judgments under a warrant to act as a Bailiff;

“**Cause**” includes an action, suit or other original proceeding between a claimant and a defendant, and any criminal proceeding;

“**Chief Judge**” means the Chief Judge of Ekiti State;

“**Civil proceedings**” means all actions including appeals triable by a Magistrate 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 including appeals from Customary courts;

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

“**Commission**” means the Judicial Service Commission of Ekiti State;

“**Constitution**” means the constitution of the Federal Republic of Nigeria;

“**Court**” means a Magistrate’s Court established by this Law;

“**Court Administrator**” means a Court Administrator of Ekiti State appointed under this Law;

“**Court Recorder**” means any person appointed as a Court Recorder under this Law;

“**Criminal proceedings**” includes quasi-criminal matters with reference to matters of jurisdiction and comprises all proceedings which are not civil proceedings;

“**Defendant**” includes every person entitled to defend any civil proceedings or charged under any process of the court with any crime or offence, and also every person served with any summons or process other than a witness summons or a subpoena;

“**Chief Magistrate Administration**” means the Magistrate who shall be responsible for assigning cases in each Court house;

“**Gazette**” means official Gazette of Ekiti State;

“**Guardian**” includes guardian ad litem, committee and next friend;

“**High Court**” means the High Court of Ekiti State;

“**Interpreter**” includes but not limited to an interpreter of language, Braille or of sign language;

“**Judge**” means a judge of the High Court of Ekiti State and includes the Chief Judge;

“**Justice of Peace**” means a Justice of the Peace appointed under the provisions of this Law;

“**Law officer**” means any state counsel, legal officer or person appointed to act as state counsel by the Attorney – General and includes the Attorney – General and the Solicitor – General;

“**Magistracy**” means Magistrate as a group and the institution;

“**Magistrate**” means any Magistrate appointed under this Law;

“**Magistrate Court**” means a Court established by this Law;

“**Magistrate Courts Sheriff**” means an officer of the Magistracy responsible for the regulation of the service of all court processes, orders and enforcement of all judgments and orders of the Magistracy;

“**Matter**” includes every proceeding in the court not in an action;

“**Prisoner**” means any person against whom a remand or custodian order has been made;

“**Registrar**” means a registrar appointed under the provisions of this Law;

“Rules of Court” means rules made under this Law;

“Solicitor-General” means the Solicitor-General of Ekiti State

“Special Bailiff” means any legal practitioner or delivery service authorized by the Magistrates’ Courts Sheriff to carry out the service of court processes or the enforcement of court orders and judgment under a warrant;

“State” means Ekiti State of Nigeria;

“Summary trial” means any trial before a Magistrate’s Court;

“Uncontested action” means a trial in a civil action in which the defendant does not oppose the claim.

88. Citation.

This Law may be cited as the Magistrates’ Courts Law, 2014.

SCHEDULE.
Magisterial Districts In Ekiti State

1. Ado – Ekiti Magisterial District.
2. Aramoko – Ekiti Magisterial District.
3. Okemesi Magistrate Court.
4. Efon – Ekiti Magisterial District.
5. Emure – Ekiti Magisterial District.
6. Erinjiyan - Ekiti Magisterial District.
7. Ido – Ekiti Magisterial District.
8. Ayetoro Magistrate Court.
9. Igede – Ekiti Magisterial District.
10. Iyin – Ekiti Magistrate Court.
11. Igbemo – Ekiti Magistrate Court.
12. Ijero – Ekiti Magisterial District.
13. Iloro – Ekiti Magistrate Court.
14. Ikere – Ekiti Magisterial District.
15. Ikole – Ekiti Magisterial District.
16. Ilawe – Ekiti Magisterial District.
17. Ise – Ekiti Magisterial District.
18. Iye – Ekiti Magisterial District.
19. Ode – Ekiti Magisterial District.
20. Omuo – Ekiti Magisterial District.
21. Otun – Ekiti Magisterial District.
22. Oye – Ekiti Magisterial District.
23. Ilupeju Magistrate Court.

THE MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

ARRANGEMENT OF ORDER/RULES

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2. Originating application that may be commenced in Ekiti State.
3. Instance where Court may appoint a guardian.
4. Civil proceedings to be commenced by claim.
5. Where claim discloses no cause of action.
6. Entry of claims.
7. Causes of action may be joined.
8. Originating applications.

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6. Counter-claim against person other than claimant.
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7. Power to strikeout.
8. Exchange of summary summons for ordinary summons.
9. Provisions common to ordinary and summary actions.

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1. Joinder of claimants.
2. Joinder of defendants.
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4. Persons jointly liable.
5. Partners.
6. Representative proceedings.
7. Representative capacity to be stated.
8. Mis-joinder and non-joinder .

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THE MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

ORDER 1

Commencement of Proceedings.

Action that may be commenced in Ekiti State

1. – (1) Except where any Law or Rule is otherwise provided, an action may be commenced by claim in a Magistrates' Court if -
 - (a) the defendant or one of the defendants resides or carries on business in Ekiti State; Or
 - (b) the cause of action arose wholly or in part in Ekiti State.
- (2) Where the claimant sues as assignee of a debt or other thing in action, the action may be commenced in Ekiti State if the assignor might have commenced it in Ekiti State but for the assignment.

Originating application that may be commenced in Ekiti State

2. Subject to any Law or Rule, an originating application may be commenced in the Magistrates' Courts-
 - (a) if the claimant or one of the claimants resides or carries on business in Ekiti State;
 - (b) the subject matter of the application is situated in Ekiti State; or
 - (c) where no claimants is named in the application, if the claimant or one of the claimants resides or carries on business in Ekiti State.

Instances where Court may appoint a Guardian

3. Where proceedings in which a guardian is required are commenced without a guardian, the Court may-
 - (a) appoint as a guardian, any person who consent to act and gives an undertaking.
 - (b) order the proceeding to be struck out.
 - (c) on giving the undertaking the guardian shall be liable for cost in the same manner and to the same extent as if he were himself a claimant, and
 - (d) if the proceeding fail or are discontinued, an order for payment of cost may be made against the guardian whether or not an order for cost is or is not for the recovery of the cost as for the recovery any amount payable under a judgment.

Civil proceedings to be commenced by claim.

- 4-(1) Any person (referred to as "the claimant") desirous of instituting civil proceeding by action commenced by claim shall deliver to the Registrar for filing, a claim with particular of his claim.

- (2) The particular shall be signed by the claimant or his legal practitioner where he sues on his behalf, and the legal practitioner shall provide an address at which he will accept service of document on behalf of the claimant as well as a telephone number or in addition, an e-mail address at which the court and the other party may direct communications.

Where claim discloses no cause of action.

- 5.-(1) The Magistrate shall strike out any action which on the face of it discloses no cause of action, or is in respect of a matter not within the jurisdiction of the Court, or the claimant fails to supply any one or more of the statements required by the Court.
- (2) The claimant shall be at liberty to file a fresh action.

Entry of claims.

6. On the filing of the document prescribed by this Rule and on payment of the required fees, the Registrar shall, subject to the provision of these Rules as to giving security when required -
 - (a) enter a claim in the Court book kept for that purpose in his office stating the name and places of residence or of business of the parties and the substance of the action intended to be brought;
 - (b) number the action every year in the order in which it is entered;
 - (c) direct service on the opposing parties: and
 - (d) deliver such claim on the day of filing to the office of the designating Magistrate.

Causes of action may be joined.

- 7-(1) A claimant may unite in the same claim several causes of action, but the Court, if it thinks that such cause of action or some of them cannot be conveniently tried together, may order separate trials.
- (2) Where a claimant seeks to obtain payment or relief upon more than one cause of action, he shall in his particulars, state the grounds of each cause of action separately, and shall also state separately the payment or relief which he claims in respect of each.

Originating applications.

- 8 (1) Any proceedings authorized to be commenced in Court and not required by any Law or Rule to be commenced otherwise, may be commenced by originating application and shall be referred to as an "action".
- (2) An originating application shall be in writing and shall state the-

- (a) order applied for and sufficient particulars to show the grounds on which the applicant claims to be entitled to the order;
 - (b) names and addresses of the person intended to be served, referred to in this Rule as “the respondents” and
 - (c) applicants address for service where no person is intended to be served;
 - (d) The applicant shall deliver the applications to the Registry for filing together with as many copies as there are respondents,
 - (e) on the filing of the application -
 - i. the Registry shall enter the application in the records kept for that purpose and fix a day for the hearing of the application, and deliver to the applicant a claim; and
 - ii. a copy of the application shall be served on each respondent in the manner prescribed by the Rules for service of an ordinary summons.
- (3) The application shall be heard in chambers.

ORDER 2

Ordinary summons, particulars, defence, counter- claims and admission Summons to issue

- 1-(1) After a claim has been entered, the Magistrate or the Registrar, on the directives of the Magistrate, shall issue an ordinary summons directed to the defendant unless a summary summons has been applied for.
- (2) A copy of the particulars shall also be annexed to every summons for service.

Court to fix time for appearance of Defendant.

2. Subject to the provision of the Magistrates Court Law, and of Order 5 Rule 3(5) of this Rules, the Registrar shall, where an ordinary summons is issued, fix the date for the defendant to appear in Court to answer the claim:

Provided that such date shall not be less than five (5) days after ensuring services of claims has been effected on the defendant.

Service to be effected within time.

3. In case an ordinary summon issued for the commencement of a cause is not served within three (3) months from the date of issue, it shall become void with liberty to file fresh action subject to any statute of limitation.

Further particulars.

4. - (1) If the defendant required further particulars, he or his legal practitioner may within six(6) days of the service of the summons on him, file a notice and a copy of the notice, specifying what further particulars he requires and request the Magistrate in chambers to cause such copy to be served on the claimant or practitioner's address for service in Ekiti State.
- (2) The claimant or his legal practitioner shall, within two (2) day of the services of the notice for further particular together to be served on the defendant or his legal practitioner as the case may be at the address for service given in accordance with the provisions of the preceding paragraph.
- (3) If the choice is not complied with, the Court before or at the trial, if satisfied that the defendant is prejudiced in his defence, may-
- (a) Order further particulars to filed and served; and
 - (b) Stay all proceedings until the order has been obeyed within such further time as the court may allow.
- (4) This Rule shall apply to a counterclaim as it applies to an action, with the necessary modification.

Counter-claims or defence.

- 5.-(1) Where a defendant on whom an ordinary summons has been served intends to set up a counter- claim or set- off or a defence, he shall within six (6) days of the service of the summons on him file with the Registry for service on the claimant the counter- claim or defence.
- (2) Such counter – claim or defence shall be accompanied by a copy of the summon and the Registry shall cause the copy to be served on the claimant.
- (3) Where a defendant has set up a counter-claim or set-off or a defence after the period of six (6) days prescribed above, the Court may, if satisfied that the claimant has been prejudiced, adjourn the trial and order the defendant to pay the costs properly incurred as a result of his delay.

Counter-claim against person other than claimant.

6. Where the defendant desires to set up a counter-claim against a claimant and some other person, he may apply to the Court for an order that the other person be added as a defendant to the counter-claim, and the Court may make an order accordingly, and may give all such directions as may be necessary to enable the questions at issue between all the parties be determined at the trial

Admission and request for time.

7. (1) A defendant who has been served with an ordinary summons and who admits his liability for the whole or part of any claim but desires time for

payment, shall, within six(6) days of the service of the summons on him, deliver to the Registry, an admission.

- (2) The Registrar shall upon the receipt by him of the admission send notice to the claimant.
- (3) If the claimant elects to accept the amount admitted in satisfaction of his claim and the proposal as to time of payment, he shall send notice of acceptance to the Registrar within three (3) days of the receipt of the notice of admission, and judgment shall be entered as soon as practicable and the Magistrate shall make an order accordingly.
- (4) If the claimant does not accept the amount admitted and the proposal as to time of payment, he shall within three (3) days of the receipt of the notice of admission send notice of non-acceptance to the Magistrate in chambers.
- (5) If a defendant or claimant fails to deliver an admission or a notice of acceptance within the prescribed time by this Rule, the action may be set down for trial and the Court may order him to pay any costs properly incurred as a result of his delay.
- (6) The delivery by a defendant of an admission containing a proposal as to time of payment shall relieve him from the obligation imposed by the summons to appear in Court on the return day.

ORDER 3

Summary summons.

Conditions for summary summons.

1. In any action in a Magistrates' Court for a debt or liquidated money demand, with or without a claim for interest, the claimant may file a claim and request by letter to the registrar for the endorsement of the claim as a summary summons:

Provided that no summary summons shall be issued-

- (a) against an infant or a person of unsound mind or a person adjudged as a lunatic;
- (b) to recover money lent by a moneylender within the meaning of the Money Lenders Law, or interest on money so lent, or to enforce any agreement made or security taken in respect of money so lent;
- (c) on behalf of an assignee of a debt or other thing in action;
- (d) to recover money secured by a mortgage or charge; or
- (e) against a defendant who has to be served outside the jurisdiction

Issue of summary summons.

2. The Registry shall endorse the claim to issue a summary summons.

Judgment in default.

- 3.-(1) If the defendant does not within five (5) days of the service of the summons on him, inclusive of the day of service, pay into Court the total amount of the claim and costs or deliver at the registry of the Court, a defence or an admission or a counter-claim, the service being duly proved, the claimant may have judgment entered against the defendant for the amount of the claim and costs, and the order shall be for payment immediately, or at such time or times as the claimant may request:

Provided that if the defendant delivers at the Court office a defence or an admission or a counter-claim after the said period of five (5) days has expired and before judgment had been entered, judgment shall not be entered under this paragraph but the procedure prescribed by Rule 5 or Rule 6 of this Order shall be followed.

- (2) A judgment in default under this Rule for payment need not be drawn up or served, unless the judgment is for payment to the claimant or his legal practitioner, or unless the claimant has abandoned part of his claim and such shall be forwarded to the Chief Magistrate for assignment.

Defence or Counter-claim.

4. If within the period of five (5) days prescribed by Rule 3 of this Order, or before judgment has been entered, the defendant delivers at the registry a defence or a counter-claim, the Registry shall fix a day for the trial of the action and shall give not less than five (5) clear days notice to the claimant and defendant annexing to the notice given to the claimant a copy of the defence or counter-claim.

Admission.

- 5.-(1) If within the period of five (5) days prescribed by Rule 3 of the Order, or before judgment has been entered, the defendant delivers at the Registry of the Court an admission of the whole or part of the claimant's claim, not accompanied by a counter-claim, the registry shall upon the receipt of the admission, send notice of it to the claimant annexing a copy of the defence, if any, as to part of the claim.
- (2) If the claimant elects to accept the amount admitted in satisfaction of his claim and the proposal as to mode of payment, he shall, within five (5) days of the receipt of the notice of admission, send notice of acceptance to the Registry, and judgment shall be entered accordingly as soon as practicable if the Magistrate is satisfied that the admission bears the defendant's signature.

- (3) If the claimant does not elect to accept the amount admitted or the proposal as to mode of payment, he shall, within five (5) days of the receipt of the notice of admission, send notice of non-acceptance to the registry who shall-
- (a) if the whole claim is admitted, fix a day (in these Rules called the day fixed for the disposal of the action) on which the action will be given as to the date of payment or the installments by which payment is to be made, and not less than five (5) clear days' notice of the day so fixed shall be given to the claimant and to the defendant; or
 - (b) if part only of the claim is admitted, fix a day for the trial of the action and give not less than five (5) clear days' notice to the claimant and the defendant.

Power to let defendant defend.

6. If the Magistrate is satisfied that the defendant when he delivered his admission intended to dispute the whole or any part of the claim or to set up a counter-claim, he may give the defendant permission to defend the action or to set up a counter-claim on such terms as to costs or otherwise as he thinks fit, and if he gives such permission, he shall fix a day for the trial of the action and give notice of it to the claimant and defendant

Power to Strike Out.

7. Where three (3) months have expired from the date of a summary summons, and
- (a) no defence or admission or counter-claim has been delivered and judgment has been entered against the defendant; or
 - (b) an admission has been delivered but no notice of acceptance or non acceptance has been received from the claimant by the Registrar who shall forward same to the Magistrate in chambers, the action shall be struck out and no extension of time shall be granted beyond the three (3) months

Exchange of summary summons for ordinary summons.

8. A summary summons which has not been served may at the request of the claimant, be exchanged after the payment of the prescribed fees for an ordinary summons within three (3) months of the issue of the summons

Provisions common to ordinary and summary actions.

9. Rule 6 of Order 2 shall apply to an action in which a summary summons has been issued as they apply to an action in which an ordinary summons has been issued.

ORDER 4
Parties.
PART 1 – GENERAL.

Joinder of claimant.

- 1.-(1) All persons may be joined as claimants in an action where right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if they brought separate actions, common question of law or fact would arise:

Provided that if on the application of any defendant it appears that any joinder may embarrass or delay the trial, the Court may order separate trials, or make such other order as it thinks fit.

- (2) Judgment may be given to any claimant for the relief to which he is entitled, but any defendant, though unsuccessful, may be awarded any extra costs caused by joining any person who is not found entitled to relief.

Joinder of defendants.

- 2.-(1) All persons may be joined as defendants in an action where the right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate actions were brought any common question of law or fact would arise, the claimant may at his option join as parties to the same action all or anyone of the persons severally or jointly and severally liable on any contract.
- (2) Judgment may be given against one or more of the defendants as may be found to be liable according to their respective liabilities.
- (3) Where two or more persons are made defendants, whether jointly or severally liable, the claimant may have judgment against anyone or more of the defendants and may issue execution, without prejudice to proceed with the action.
- (4) It shall not be necessary that every defendant to an action shall be interested as to all relief claimed, or as to every cause of action, but the Court may make an order that may prevent any defendant from being embarrassed or put to any unnecessary expense by being required to attend any proceedings in which he has no interest'

Contribution.

- 3.-(1) Where judgment is given against two or more defendants jointly and severally, they shall be entitled to contribution among themselves and any

defendant who satisfies the judgment may apply to the Court for an order of contribution against any other defendant.

- (2) The provisions of this Rule shall not affect the rights and liabilities between joint tortfeasors.

Persons jointly liable.

- 4.-(1) Where claimant has a demand recoverable against two or more persons jointly liable, it shall be sufficient to serve any of these persons with process, and judgment may be obtained, and execution issued, against any person so served, notwithstanding that other jointly liable may not have been served or sued or may not be within jurisdiction of the Court.
 - (2) Where judgment is obtained against one person, he shall be entitled to recover in the Court contribution from any other person jointly liable with him.
 - (3) Where a claimant does not proceed against all or several persons jointly liable, every defendant sued may set up any defence or counter-claim which he would have been entitled to set up if all the persons liable had been made defendants.
5. Where partners sue or are sued in the name of their firm, the partners may be ordered by the Court, on application by any other party, to furnish a statement verified by affidavit of the names and addresses of the persons who were partners in the firm when the cause of action arose and, in default of compliance, the proceedings shall be stayed or the partners shall be barred from defending the action, according to whether they are claimants or defendants.

Representative proceedings.

- 6.-(1) Where there are numerous persons having an interest in one action, one or more of them may sue or be sued, or may be authorized by the Court, before or at the trial, to defend, on behalf of all persons so interested.
 - (2) Where a defendant desires to defend on behalf of numerous persons having an interest, he shall, within five (5) days of the service of the summons on him.
 - (a) file in the Court's registry an affidavit stating the facts on which he relies.
 - (b) give the partners, addresses and occupations or, where appropriate a collective description of the persons on behalf of whom he desires to defend;
 - (c) serve on the claimant a copy of the affidavit together with notice of the defendant's intention to apply to the Court upon a day and at a time to be named in it for permission on defend.
 - (3) If an order is made for a defendant to so defend-

- (a) the names or collective descriptions of the person to whom the order relates shall be added to the name of the defendant in the Court's records;
- (b) notice shall be sent to the claimant and other persons affected by the order and shall be notified in such manner as the court may direct;
- (c) any person whose name has been entered in the Court's records or who is included in the collective description may, at the trial, object to the defendant defending on behalf of all or any persons to whom the order relates, and the Court may, if it thinks fit, direct that the names of all or any of them be struck out from the Court's records or that the collective description be amended.

Representative capacity to be stated.

7. The fact that the claimant sues, or any defendant is sued in a representative capacity, shall be expressed in the title of proceedings.

Mis-joinder and non-joinder.

- 8.-(1) The Court may at any stage strike out the names of any parties improperly or unnecessarily joined, and may, after due notice given to the parties affected, add the names of parties whose presence is necessary in order to dispose finally the matter in dispute, and on proof of such notice, the parties so served, whether they have appeared or not, shall be bound by the proceedings in the action:

Provided that no person shall be added as a claimant without his consent in writing or in the case of a person under disability without the consent in writing of the next friend or committee or other person acting on behalf of the person under disability.

- (2) No action shall be defeated by reason of the mis-joinder or non-joinder of parties.

PART 2 – PERSONS UNDER DISABILITY.

Suits by infants and persons of unsound mind.

- 9.-(1) An infant may sue by his guardian and may defend by his guardian.
(2) A person who has been adjudged a lunatic may sue or may defend by his guardian.

Appointment of Guardian by the Court.

- 10.-(1) Where it appears on the face of the proceedings that a defendant is an infant or a person of unsound mind that he is unable to defend the action, the Magistrate may at any time after the service of the summons and not less

than five (5) clear days before the return day, on the application made to him on behalf of the infant or person of unsound mind, appoint by order a fit person to be guardian ad litem; provided that such guardian has consented in writing to act and the application shall be supported by an affidavit.

- (2) Where no application is made on behalf of the infant or person of unsound mind within the time specified in the last preceding paragraph, the Magistrate in chambers shall, on the fifth (5th) day before the return day, notify the claimant that he must apply to the Magistrate for an order that some proper person be appointed as guardian ad litem to the defendant and the claimant must comply with such notice before taking any further steps in the proceedings.
- (3) The Magistrate, on application being made, may appoint the person proposed by the claimant or any other person who is willing to act, or who the Magistrate directs.
- (4) Before such an order is made pursuant to this Rule, the Court shall cause such notice to be served on, or left at the dwelling-house of the person with whom, or under whose care, the defendant is, unless the Court sees good reason to the contrary, in the case of an infant not residing with or not under the care of his parent or guardian, such notice shall be served on or left at the dwelling house of his parent or guardian.

Appointment of Guardian in the course of proceedings.

- 11.-(1) where it is discovered in the course of proceedings that any defendant is an infant or a person of unsound mind not adjudged a lunatic, the following provision shall apply.
- (a) if the infant is in Court and there is a person in Court willing to act as guardian of the infant, that person may be appointed guardian or such person as the Magistrate may direct; and
 - (b) In any other case the claimant shall be ordered to apply for an order that some proper person be appointed guardian ad litem to the infant or person of unsound mind and the provisions of paragraph (2) of the last preceding Rule shall be followed with the necessary modifications.

Entry of appointment.

12. Where a guardian is appointed under either of the two preceding Rules, his appointment shall be entered in the record of the Court and in the title of the action for the purpose of all subsequent proceedings.

Guardian may have recourse to assets or property of infant defendants or persons of unsound mind.

13. A guardian to an infant or a person of unsound mind not adjudged a lunatic shall not be personally liable but may have recourse to any assets or properties standing to the credit of the infant or the person with unsound mind for any costs not occasioned by his personal negligence or misconduct.

Action by infant for wages.

14. Notwithstanding the provisions of this Order, any person under the age of eighteen (18) years may bring an action in the Court for any sum of money which may be due to him for wages or price of work or for work as a servant, in the same manner and in all respects as if he were of full age

Compromise or payment out in case of infants.

- 15-(1) In any action in which money or damages is or are claimed by or on behalf of or for the benefit of an infant or a person of unsound mind-
- (a) no settlement or compromise or acceptance of money paid into Court, whether before or at or after the trial, shall be valid without the sanction of the Magistrate; and
 - (b) no money or damages recovered or awarded in any such action whether by settlement, compromise, payment into Court or otherwise before, at, or after the trial shall be paid to the guardian of any party or to any party's legal practitioner, unless the magistrate so directs.
- (2) Where the sole object of the proceedings is to obtain the sanction of the Magistrate to a settlement or compromise, the particulars of claim shall contain a brief statement of the cause of action together with a request for the approval of the settlement or compromise.
- (3) The sanction of the Magistrate may be given in chambers, whether Court proceedings are held on that day or not.
- (4) All money or damages recovered or awarded shall, unless the Magistrate otherwise directs, be paid into Court to the credit of an account instituted in the action.
- (5) An application to the Court as to the mode of dealing with the money and any interest on it may be made by or on behalf of any person interested.
- (6) Nothing in this Rule shall prejudice the lien of a legal practitioner for costs.
- (7) This Rule shall not apply to any case in which an infant sues as if he were of full age by virtue of Rule 14 of this Order.

Consents for persons under disability.

16. In any proceedings to which-
- (a) an infant; or

- (b) a person of unsound mind, whether adjudged a lunatic or not;
- (c) a person under any order disability as to capacity.

Is a party, any consent as to the mode of taking evidence or as to another procedure given by the guardian or any other person acting on behalf of the person under disability as to capacity shall, with the consent of the Court, have the same force and effect as if the party were under no disability and had given his consent

PART 3 – CHANGE OF PARTIES.

When proceedings are to abate.

- 17.-(1) An action shall not abate by reason of the marriage, death or bankruptcy of any party, if the cause of action survives or continues, and shall not become defective by the assignment, creation, change, transmission or devolution of any interest, estate or title during the proceedings.
- (2) Whether the cause of action survives or not, an action shall not abate by reason of the death of any party between the findings of fact and the judgment, but judgment may be entered notwithstanding the death.

Change of a party's title or interest.

- 18.-(1) Where after the commencement of an action and before judgment there is any change or transmission or devolution of interest, estate or title or liability in relation to any party, any person interested may apply to the Court for an order enabling or compelling the proper parties to carry on the proceedings.
- (2) Where an order is made ex-pâté under paragraph (1) of this Rule, any person served with such order may, within such time not exceeding five (5) days as the Court may direct, apply to the Court to discharge the order.

Where persons entitled to proceed on death of party fails to do so.

- 19. Where a claimant or defendant in an action dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the proceedings may be continued) may apply to the Court for an order directing the claimant to proceed within such time as may be ordered, and in default the action maybe struck out, and in a case where it is the claimant who has died. Execution maybe issued for any cost awarded to the defendant.

Alteration of records on change of parties.

20. Where a Claimant or defendant is substituted or added under any of the Rule of this order, the record of the court shall be altered accordingly and all subsequent proceeding shall be carried on under the altered title.

Claim to money in court where change in parties after judgment.

- 21.-(1) Where any change has taken place after judgment by death, court assignment or otherwise in the parties to any action and there is money standing in court to the credit of the action, any person claiming to be entitled to the money may write to the magistrate of his claim, accompanied by an affidavit of the fact stated in the notice.
- (2) The magistrate in chamber may, if satisfied as to the right of the person so claiming, order payment to be made to such person or may, before deciding, require notice to be given to any other person or persons.

ORDER 5

Service.

Normal mode of service.

- 1-(1) Subject to the provision of any Law or Rule, service of an ordinary summon, a summary or other process shall be affected by delivering the summons or other process together with the particular –
- (a) If on an individual to him personally; or
- (b) If on a partnership-
- (i) to one of the partners personally; or
- (ii) to any employ at the principal place of business of the partnership business;

Provided that, where the partnership has to the knowledge of the claimant shall apply for substituted service; and

- (c) if on a statutory corporation, to the secretary personally or any other person with executive authority.

Substituted service.

- (2) Where a person carrying on a business in a name other than his own, issued in that name as if it were a firm name, summons or other originating process shall be served in accordance with the provision of Rule as if he were a partner used in the name of a firm and his business were a partnership.
- (3) Where the defendant is a person of unsound mind, whether adjudged a lunatic or not, the summon or other originating process shall be deliver to the person with whom he resides or who has him under his care or control.

- (4) Where a defendant is an infant, the summon shall be delivered to any of his parent or guardian, or, if he has no parent or guardian, to the person with whom he resides-

Provided that the Court may order that service personally on the infant shall be good service.

- (5) The provision of each of the Rule regarding mode of service shall apply to any process of whatever description issued by a Magistrate's Court.

2. Where it appears to the court, either with or without an attempt at service in accordance with the provision of Rule 1 of this Order that for any reason service of any process including a judgment summon cannot conveniently be effected, the court, after being satisfied by affidavit that it is necessary so to do, may order that service be effected-

- (a) by delivering the process together with a copy of the order to some person being an agent of the person to be served, or to some other person on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served;
- (b) by delivery of the process through an accredited courier service in accordance to the Law and proof of the satisfaction of the court;
- (c) by advertisement in some newspaper circulating within the jurisdiction;
- (d) By notice affixed in a conspicuous position at the court house or some other place of public resort in that part of Ekiti State where in the proceedings in respect of which the service is made have been instituted;
- (e) By affixing the process together with a copy of the order in a conspicuous position at the entrance or on a door of the usual or last know place of abode or business of the person to be served; or
- (f) In such other manner as the court may direct, and upon compliance with the order, service shall be deemed to be good and sufficient service of the process on the person to be served.

Service outside jurisdiction.

- 3.- (1) No summons for service on a defendant in Nigeria, outside of Ekiti State shall be issued without the permission of the Court in writing.
- (2) Every application for permission to issue shall be made within twenty four (24) hour to the magistrate in chambers and where such permission is granted, an entry to the effect shall be made in the record of the Court.
- (3) Every request shall be accompanied by affidavit or other evidence showing-
- (a) That the claimant has prima face good cause of action
 - (b) That the relief sought is against any person ordinary resident in Ekiti State;

- (c) That the claim against a breach or alleged breach in Ekiti State ought to be performed in Ekiti State;
 - (d) That the claim is founded on a tort committed in Ekiti State;
 - (e) That any injunction is sought as to anything done, or to be done, in Ekiti State, or any nuisance in Ekiti State sought to be prevented or removed;
 - (f) That any person out of Ekiti State, is a necessary or proper party to any proceedings properly against some person duly served in Ekiti State, or
 - (g) That the cause of action arose, wholly or in part, at Ekiti State or that the thing that subject matter of the proceedings is in Ekiti State.
- (4) No such permission shall be granted one for service unless it shall be made sufficiently to appear to the court that the case is proper one for service out of the jurisdiction under this Order and the court may make it condition that deposit or costs in a manner directed by a magistrate shall be produced by the claimant before the permission is granted.
- (5) If it shall appear to the court that there is a concurrent remedy in the part of Nigeria where service is sought to be made, the court shall have regard place of residence of the person to be served.
- (6) The date specified in a summons served out of the jurisdiction shall not be less than under this Order for the appearance of the defendant in Court shall not be less than thirty (30) days after the service of the summons.

Mode of service outside of the Jurisdiction.

- 4.- (1) When an application for service out of Ekiti State has been granted, the Court granting such application shall direct the mode for the service of the process outside Ekiti State.
- (2) An order for service out of Ekiti State may be varied from time to time with respect to the mode of service directed by the order.

Record and evidence of service.

5. Evidence of service shall be kept in the record of proceedings in which the order for service was made.

Who may effect service.

6. Service of process shall be affected by a bailiff of the Court or a member of the Police as provided by Section 46 of the Law but a Magistrate may order service to be effected by any person designated by him.

Provided that service of any notice determination of tenancy or of intention to recover possession under the Recovery of Premises Law may be served by the landlord or his agent as if he were a bailiff.

Proof of service.

7. – (1) Where any process issued by the Court is served in accordance with the provisions of Section 46 of the Law, service or such other proof of the person effecting the service setting out the fact, place, mode and date of service shall be prima facie evidence of the matters stated in the affidavit.
- (2) Any proof of service that is not filed within two (2) days of service shall not be accepted by the Magistrate.
- (3) Any bailiff who fails to serve within two (2) days of the receipt, without reasonable cause shall have his warrant to act as bailiff of the Magistrates' Courts suspended or withdrawn by the Sheriff.
- (4) The return shall be handed in at the Registry of the Court of issue within two (2) days of date of service.

Legal Practitioner accepting service.

8. Where a legal practitioner represents that he is authorized to accept service of an ordinary summons on behalf of a defendant, it shall be sufficient to deliver the summons to him, if he endorses upon the copy retained by the person serving the summons a memorandum stating that he accepts service thereof on behalf of the defendant, and giving an address for service in Ekiti State.

Time for service.

9. Service shall be effected between the hours of 6 a.m. and 6 p.m. on any weekday including Saturdays.

How personal service may be affected.

10. Where service is to be effected by delivering a document to the person to be served by personal service any such person refuses to take the document, it is sufficient to inform such person of the nature of the document and to throw it down near him.

Mode of service other than personal service by Court appointed Bailiff.

11. Where in any proceedings in the Court any process is required to be served on any person and no other mode of service is prescribed by any Law or Rule, the following provisions shall apply-
 - (a) Where an address for service has been given by the person to be served, service shall be sufficiently effected by sending the process to such address

- or by delivering the process at the last known address for service to an adult person employed or residing at such address;
- (b) If the person to be served is the proprietor of a business, service shall be sufficiently effected by delivering the process at his place of business or sending it to his last known place of business; and
 - (c) Where the person to be served is acting by a legal practitioner, service shall be sufficiently effected by delivering the process at or sending it to the legal practitioner's address for service.

ORDER 6.

Assignment, Transfer and Case Stated.

Assignment of cases.

- 1.-(1) Upon receipt from the Registry, the Chief Magistrate shall ensure prompt assignment of cases.
- (2) The Case files of all new actions shall be transferred from the Chief Magistrate to the assigned Magistrate after filing but before the expiration of the time prescribed for service.

Application for transfer.

- 2.-(1) An application under Sections 38 and 39 of the Law for the transfer of a civil cause or matter shall be made to the Magistrate in writing and state grounds on which it is based.
- (2) Where a Magistrate, at his discretion or on application made by an interested party, is of opinion that a civil cause or matter ought to be transferred, he shall forward a report together with his remarks to the Chief Magistrate.
- (3) After a report has been forwarded as provided by the last preceding paragraph the trial of the cause or matter affected by the application shall not be proceeded with until the decision of the Chief Magistrate has been communicated to the Magistrate in whose Court the cause or matter is pending.
- (4) The Magistrate shall inform the parties concerned of the report.
- (5) Process shall be completed within five (5) working days of the receipt.

Case to be sent to Chief Registrar of the High Court.

3. Where a case has been stated, it shall be sent to the Chief Registrar of the High Court of Ekiti State and the proceedings before the Magistrate shall be stayed until the opinion of the High Court has been received.

ORDER 7.

Third Party Procedure.

Third-party notice.

- 1.-(1) Where a defendant claims against any person not already a party to the action (in Order called “the third party”) that-
 - (a) he is entitled to contribution or indemnity;
 - (b) he is entitled to any relief or remedy relating to or connected with original subject-matter of the action and substantially the same as some relief or remedy claimed by the claimant; or
 - (c) any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the claimant and the defendant, and should properly be determined not only as between the claimant and the defendant, but as between the claimant and the defendant and the third party, or between and or either of them, the defendant may apply to the Court on notice in chambers for permission to serve a “third – party notice”, and shall file a copy of the third party notice with the application.
- (2) Notice of the application shall be served on the claimant and filed in the Court office within two (2) days of the service of the summons, inclusive of the day of service, and on receipt of the notice by the Court all other proceedings in the action shall be stayed until the day fixed for the hearing of the application.
- (3) On the hearing of the application, the Court may grant or refuse permission, and, if permission is granted, shall give directions as to the time for service of the third-party notice and as to the date of trial, and, if the action is a summary action, judgment shall not be entered pending the trial.
- (4) The notice shall state the nature and grounds of the claim, or the nature of the question or issue sought to be determined, and the nature and extent of any relief or remedy claimed.
- (5) The notice shall be served on the third party personally, and shall be accompanied by a copy of the summons in the action and of the annexed particulars.
- (6) The third party shall, as from the time of the service upon him of the third-party notice, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been sued in the ordinary way by the defendant.

Default by third party.

- 2.-(1) If a third party disputes the claimants claim as against the defendant by whom the notice has been given or his own liability to the defendant, he shall-

- (a) take the necessary steps for his defence and the provisions of Order 2, Rule 6 and Order 3, Rule 4 shall apply with necessary modifications; and
 - (b) appear at the Court on the day fixed for the trial of the action.
- (2) If the third party does not appear at the trial, he shall be deemed to admit the validity of and be bound by any judgment given in the action whether by consent or otherwise and by any decision on any question specified in the notice, and when contribution or indemnity or some other relief or remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy.

At the trial.

- 3.-(1) Subject to any directions which may have been given by the Court before the trial, the Magistrate shall have full power at the trial to direct what part the third party shall take in the trial and generally how the trial shall be conducted.
- (2) As between the defendant by whom, the third-party notice has been given and the third party, the Magistrate may grant to either party any relief or remedy which might properly have been granted if the claim against the third party had been made in a separate action, and may give such judgment for either party against the other as may be just:
Provided that execution against the third party shall not be issued without the permission of the Magistrate until the defendant has satisfied the judgment in the same action given against him.

Fourth and subsequent parties.

- 4.-(1) Where a third party makes a claim against any person not already a party to the action such a claim as is defined in Rule 1 (1) of this Order, the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply as between the third party and such other person, and the expressions "third party notice" and "third party" shall apply to and include every notice issued against a fourth or subsequent party and every fourth or subsequent party served with such a notice respectively.
- (2) Where a person served with a notice under this Rule by a third party in turn makes such a claim as is defined in Rule 1 (1) of this Order against another person not already a party to the action, this Order as applied by the Rule shall have effect as regards such further person and any other further person or persons so served and so on respectively.

Co-Defendants.

5. Where a defendant makes a claim against any other defendant in the same action such a claim as is defined in Rule 1 (1) of this Order, he may without any permission

serve on such other defendant a notice making such claim, and the same procedure shall be adopted for the determination of the claim as would be appropriate under this Order if such other defendant were a third party:

Provided that nothing contained in this Rule shall prejudice the rights of the claimant against any defendant.

Counter-Claim.

6. In this Order the words “claimant” and “defendant” respectively shall include a claimant and a defendant to a counter-claim.
7. Any person against whom a plaint has been entered may, after the summons has been served upon him, file a written statement signed by himself admitting in whole or in part the claim in respect of which such plaint has been entered, and it shall be the duty of the registrar of the court in which the plaint was entered forthwith to send notice thereof to the plaintiff by post, or by causing the same to be delivered at the address furnished in the plaint or at his usual place of abode or business, and thereupon it shall not be necessary for the said plaintiff to prove the claim admitted as aforesaid, but the court, at the next sitting thereof, whether the parties or either of them attend such court or not, shall, if satisfied of the signature of the party filing such statement, enter up judgment for the claim so admitted.
8. If the person against whom a plaint has been entered agrees with the person on whose behalf such plaint has been entered upon the amount of the claim in respect of which such plaint has been entered, and upon the terms and conditions upon which the same shall be paid has been satisfied, such persons respectively may, in the presence of the registrar of the court in which such plaint has been entered, sign a statement of the amount of the claim so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, and such registrar shall receive such statement, and the court shall be its next sitting enter up judgment for the plaintiff for the amount of the claim so agreed on, and upon the terms and conditions mentioned in such statement, and such judgment shall to all intents and purposes be the same and have the same effect, and shall be enforced and enforceable in the same manner as if it had been a judgment of the magistrate of the said Court.

ORDER 8 Amendment. Generally.

1. The Court may, on not more than one occasion-
 - a) amend any defect or error in any proceedings whether the defect or error is that of the party applying to amend or not; and

- b) add, strike out or substitute any person either as claimant or defendant; and all such amendments as may be necessary for the purpose of determining the issues between the parties, and the proceedings shall continue in all respects as if they had been commenced in the form in which they appear after the amendment has been made:

Provided that, no person shall be added as a claimant without his consent in writing or in the case of a person under disability, without the consent in writing of the guardian

Service on added defendant.

2. Where any person is ordered to be added or substituted as defendant, except under Rule 8 of this Order, the amended originating process shall be served on the added or substituted defendant according to the Rule applicable to the service of the originating process, and the proceedings as against him shall be deemed to have begun only on the service of the process on him.

When amendment may be made.

3. The amendment may be made at any stage of the proceedings before judgment by the Court or on the oral application of any party at the trial, or before the trial on notice.

Abandonment of part of claim.

4. A claimant may, at any time before an action is called on for trial, or in part opening his case, abandon any part of his claim, and the abandonment shall be entered in the records of the Court.

Change of defendant.

5. Where a person other than the defendant appears at the trial and admits that he is the person whom the claimant intended to sue, or ought to have sued, he may, if the claimant consents, be substituted for the defendant, and the proceedings shall continue as if he had originally been made defendant and this shall not amount to an amendment.

Effect of misnomer.

6. No misnomer or inaccurate description of any person or place in any claim or summons shall vitiate the same, if the person or place is described so as to be identifiable.

Clerical mistakes and errors.

7. Clerical mistakes in judgments or orders or errors arising from any accidental omission may at any time be corrected by the Court.

Amendment on terms.

8. The Court, when granting an application for the amendment, may impose such terms as it may think just

ORDER 9.

Application and Directions in Civil proceedings.

General procedure.

1. Where by any Law or Rule any application in the course of an action before or after judgment is expressly or by implication authorized to be made to the magistrate or to the Court, then, subject to the provisions of the particular Law or Rule applicable as far as it is not inconsistent, the following provisions shall apply.
- (1) All interlocutory applications or request in writing shall be to the Magistrate in chambers, accompanied by an affidavit and a short statement of the law relied upon.
 - (2) All such interlocutory applications or request in writing shall be served on the other party prior to being delivered to the magistrate in chambers.
 - (3) The party served with such an application may respond in writing attaching a counter affidavit if he so desires and short statement of the Law relied upon (if any) within two (2) days of delivery of the said application at the address provided for service or to his legal practitioner.
 - (4) The Magistrate shall deliver the Court's decision in writing the day following the receipt of the response from the party not applying and where there is no response shall deliver his decision.
 - (5) The decision of the Magistrate shall be available for collection upon payment of the prescribed fees.
 - (6) In exceptional cases the Court may permit the parties to bring interlocutory applications orally or in writing after the commencement of trials.
 - (7) All applications for stay of execution of a judgment or for permission to appeal the decision of a Magistrate shall be considered and determined in open Court.

Power to impose terms.

2. The Court may, as a condition of granting any interlocutory application or request in writing, impose such terms and conditions as it thinks fit, and without prejudice to the generality of the following provisions, may make orders requiring any party to-
- (a) give security;
 - (b) give an undertaking;

- (c) pay money into Court; or
- (d) pay all or any part of the costs of the proceedings.

Directions.

- 3.-(1) In any action the Court may at any time on the application on notice of any party or of its own motion give such directions as it thinks proper.
- (2) Without prejudice to the generally of the last proceeding paragraph, the Court may at any time on the application on notice of any party or at its discretion, order the parties to state more fully their respective cases and may thereupon frame issues before trial and determining the action; and in cases in which, owing to their difficult or complicated nature, pleadings are required, the Court may adjourn the trial and report to the Chief Judge with a view to the action being transferred to the High Court.

Adjournment.

- 4.-(1) A magistrate may adjourn from the date of commencement of trial and during the proceedings for a period not exceeding ten (10) days.
- (2) A Magistrate may, after the matter has been set down for trial at his discretion, grant in-
 - (a) Uncontested civil cases, not more than two (2) adjournments; and
 - (b) Contested civil cases, not more than four (4) adjournments.
- (3) Subject to the provisions of this Rule, in the event that day, the parties to the action fails to, is unable to or refuses to attend Court or proceed with the cause or matter, the Magistrate shall strike the matter off the cause list and out of the Court or enter judgment in default against the defendant.

Abridgement of time.

- 5.-(1) Subject to the provisions of these Rules, any of the times fixed by these Rules for-
 - (a) taking any step in any proceedings;
 - (b) filing any document; or
 - (c) giving any notice; may be abridged by the Court on the application of any party.
- (2) An order abridging time may be made although the application is not made by the Court in Chambers.
- (3) The Court may, as often as it thinks fit, and either before or after the expiration of the time appointed by any judgment, order or the rules, extend or adjourn the time for doing any act of taking any proceedings.

Application for interim injunction.

- 6. Where any party desires before the trial, an immediate order-

- (a) in the nature of an injunction;
- (b) for the appointment of a receiver;
- (c) for taking any accounts; or
- (d) for making any inquiries, he may apply in accordance with Order 9 Rule 1.

Interlocutory injunction on terms.

7. The Court may grant an interlocutory injunction or make any interlocutory order on such terms as to its duration, the giving of security or otherwise, as may seem just in accordance with Order 9 Rule 1.

Application in chambers.

8. Where the circumstance permits, an application may made to the Magistrate in chambers for consideration on an ex parte basis.

Notice.

9. Where an application is made ex parte for an interlocutory injunction or order, the Court may direct notice to be given to any person who may be affected by the order.

Where order is made ex-parte.

10. Any interim injunction or order granted or made ex parte shall be for such limited time only as shall be stated and the injunction or order shall be served on the person affected.

Discharge or variation of ex-parte order.

11. Where an interim injunction or order is granted or made ex parte, such injunction or order may be discharged or varied by the Court on application made by any person affected thereby, after notice is given to the party who obtained such injunction or order.

Recovery of goods where lien claimed.

- 12.-(1) Where in any action the claimant claims the recovery of specific property other than land, and the defendant admits the title of the claimant but claims to retain the property by virtue of a lien, or otherwise as security for the payment of a sum of money, the court may order that the claimant be at liberty to pay into Court, to abate the event of the action, the sum of money in respect of which the defendant claims to retain the property and such further sum (if any) for interest and costs as the Court may think fit, and that upon such payment into Court the defendant shall return the property to the claimant.

- (2) This Rule shall apply to a counterclaim as it applies to a claim, with the necessary modifications.

Preservation of subject matter.

13. When by any contract a prima facie case of liability is established and there is alleged, as a matter of defence, a right to be relieved wholly or partially from that liability, the Court may make an order for the preservation or interim custody of the subject matter of the action, or may order that the amount in dispute be brought into Court or otherwise secured.

Order for detention.

14. The Court may, upon the application of any party to an action, make any order for the detention, preservation, inspection, surveying, measuring, or weighing of any property or thing, being the subject of the action or as to which any question may arise and may authorize any persons to enter upon or into any land or building in the possession of any party to the action, and authorize any sample to be taken, or any observation, plan, or model to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Order for sale of perishables.

15. The Court may, upon the application of any party to an action, order the sale by a person to be named in the order, of any subject matter of the proceedings which-
- (a) is of a perishable nature;
 - (b) incurs charges for food or kept; or
 - (c) ought for any other sufficient reason to be sold at once

ORDER 10

Consolidation of Proceedings and Selected Actions

Generally.

1. Actions or matter pending in the same Court may be consolidated by order of the Court, of its own motion or on the application of any party on notice.

Selected action against several claimants.

- 2.-(1) Where several actions by different claimants against the same defendant in the same Court, in respect of causes of action arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to bound, so far as his liability in the several actions is concerned, by the decision in such one of the actions as may be selected by the court,

apply to the Court for an order to stay the actions, other than the one selected, until judgment is given in the selected action.

- (2) An application under this Rule shall be made on notice to the claimants who would be affected by any order made.

Where judgment is in favour of defendant in selected action.

- 3.-(1) If judgment in a selected action under Rule 2 of this Order is given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every other claimant whose action is stayed, unless any such claimant gives the Court, within five (5) days from the judgment, notice to set down his action for trial.
- (2) On judgment in the selected action being given, the Court shall notify every other claimant and if any such claimant makes a request to the Court to set down his action for trial, the Court shall appoint a day for trial, and send notice to both claimant and defendant not more than five (5) clear days before the day so appointed.

Where judgment is against the defendant in selected action.

- 4.-(1) If judgment in a selected action is given against the defendant, the claimant in the action stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs.
- (2) On judgment in the selected action being given, the Court shall notify each claimant and a claimant desiring to proceed, shall immediately make a request to the Court to set down his action for trial, and on receipt of the request, the Court shall appoint a day for the trial, and notify both claimant and defendant, not less than five (5) clear days before the day so appointed.

Selected action where there are several defendants.

- 5.-(1) Where several actions by the same claimant against several defendants are proceedings are proceeding in the same Court, and the event of the actions depends on the finding of the magistrate on some questions common to all of them, the magistrate may at any time select one of them for trial, and stay proceedings in all the others until judgment in the selected action is given.
- (2) After judgment is given in the selected action, unless the claimant and the defendant in the other actions, or any of them, submit to have judgment entered in accordance with the judgment in the selected action, the other actions shall proceed.
- (3) On receipt of the request from the claimant or defendant in any such action to set it down for trial, the Court shall appoint a day for the trial, and shall notify both claimant and defendant not more than five (5) clear days before the day so appointed.

Provided that actions or matters may not be consolidated if the effect of such consolidation is to bring the total of the consolidated actions or matters above the jurisdiction of the Magistrate's adjudicating

ORDER 11.

Discontinuance by claimant.

Notice.

1. If a claimant desires to discontinue wholly or in part any proceedings against all or any of the parties, he shall notify the Court and every party against whom he desires to discontinue.

Costs.

- 2.-(1) Where a notice of discontinuance has been given, the Court shall on the return day assess the costs incurred by the defendant before the receipt of the notice, or, if the proceedings are not wholly discontinued, the costs incurred before the receipt of the notice in relation to the part discontinued.
(2) If such costs are not paid within five (5) days, the defendant shall be entitled to apply for an execution warrant in respect of the unpaid costs:

Provided that-

- (a) if the proceedings are not wholly discontinued against the defendant, execution shall not issue before the proceedings are disposed of, except by permission of the Court; and
- (b) discontinuance under this Order shall not be a defence to any subsequent proceedings, but if subsequent proceedings are brought for substantially the same cause of action before the payment of the costs mentioned, the Court may stay the proceedings until the costs have been paid.

ORDER 12.

Special Witness.

Appointment of special witness.

1. A Magistrate may, in circumstances considered appropriate, appoint a special witness who in the opinion of the Magistrate, has specialized knowledge on any matter that is in issue in any action or proceedings before the Court

Evidence of special witness.

2. The special witness shall give evidence in person, on oath or by an affidavit.

Remuneration of special witness.

3. (1) The Court may direct that parties contribute to all expenses arising from the appointment of a special witness.
- (2) Pending his appointment, a special witness shall be required to state all costs associated with the rendering of his opinion in Court.

ORDER 13.

Payment into Court in Action.

Payment of claim and costs within six (6) days of service.

- 1.-(1) Where the only relief sought by the Claimant is the payment of money, a defendant may, within six (6) days of the service of the summons on him, pay into Court in satisfaction of the claim-
 - (a) the whole amount of the claim and costs stated on the summons; or
 - (b) so much of the claim as he admits to be due from him to the claimant together with the costs stated on the summons.
- (2) Where the whole amount of the claim and costs is paid into Court, judgment shall be entered and the defendant shall not be liable for any costs except those stated on the summons.
- (3) Where the amount paid into Court is less than the amount of the claim and costs:
 - (a) if the claimant accepts the amount paid into Court, he shall within three (3) days after receipt by him of the notice of payment into Court, deliver at the Court office a notice of acceptance; and
 - (b) on receipt of the notice of acceptance the Court shall notify the defendant who shall not be liable for any costs except those stated on the summons and the action shall only be heard on the disputed amount.

Liability admitted unless denied.

2. A defendant in an action may at any time before judgment pay money into Court-
 - (a) in satisfaction of the claim, or where several causes of action are joined in one action, in satisfaction of one or more of the causes of action; or
 - (b) on account of a sum admitted by him to be due to the claimant
 - (1) money may be paid into Court under the last preceding paragraph by one or more of several defendants sued jointly or in the alternative.
 - (2) A payment made under this Rule shall be deemed to be made with an admission of liability, unless accompanied by a notice stating that liability is denied.

When payment deemed to be on account.

3. Where the amount paid into Court under the last preceding Rule is less than the amount claimed, the payment shall be deemed to be made on account of the amount claimed, unless accompanied by a notice stating that it is made in satisfaction of the claim or, where several causes of action are jointed in one action, in satisfaction of one or more of the causes of action.

Several causes of action.

4. Where a payment under Rule 2 of this Order is made in satisfaction of one or more of several causes of action, the payment shall be accompanied by a notice specifying the cause or causes of action in respect of which it is made, and the sum paid in respect of each cause of action.

Defendants sued jointly or in alternative.

5. Where a payment under Rule 2 of this Order is made by one or more of several defendants sued jointly or in the alternative, it shall be accompanied by a notice stating the name and address of the defendant or defendants making the payment.

Notice of payment into Court.

6. The Court shall on receipt of any payment under this Order, if time permits notify the claimant and if the payment was made by one or more of several defendants sued jointly or in the alternative, notify every other defendant.

Where whole claim is paid after seven days of service or without costs.

7. Where in any case to which Rule 1 (1) (a) of this Order does not apply, the only relief claimed is the payment of money and the whole amount of the claim of paid into Court, the following provisions shall apply-
 - (1) Proceedings in the action, except those authorized by this Rule, shall be stayed, and the defendant shall not be liable for any costs incurred after the receipt by the claimant of the notice of payment into Court.
 - (2) The claimant shall not be entitled to have the amount in Court paid out to him without the Written approval of the Magistrate.
 - (3) If the amount of the costs entered on the summons is not paid into Court with the amount of the claim, the claimant may have judgment entered for such costs or any balance unpaid and the costs of entering judgment.

Where money paid into Court is accepted.

8. Where in any case to which Rule 1 (1) (b) of this Order does not apply, the amount paid into Court is less than the amount of the claim, or where the whole amount of the claim is paid into Court but there is a claim for some relief other than the payment of money, and the claimant elects to accept the sum or any one or more of specified sums paid into Court in satisfaction of his claim or of the cause or causes of action to which the specified sum or sums relate, the following provisions shall apply-
- a. the claimant shall within three (3) days after the receipt by him of the notice of payment into Court, notify the Court of his acceptance, following which the Court shall stay proceedings in the action or in respect of any cause of action to which the notice relates;
 - b. the Court shall also notify every defendant; and
 - c. the claimant shall not be entitled to have the accepted sum or sums paid out to him without the written approval of the Magistrate.

Defendant's costs.

9. If a claimant fails to give notice of acceptance within the time limited by Rule 1 or Rule 9 of this Order, he may give notice of acceptance subsequently, but the Court may order the claimant to pay any costs reasonably incurred by the defendant since the date of payment into Court, including the costs of attending Court to obtain the order.

Counter-claim.

10. A claimant or other person made defendant to a counterclaim may pay money into Court as if he were a defendant to an action, and Rules 2 to 10 of this Order shall apply with the necessary modifications.

Payment into Court not to be communicated to Magistrate.

11. Except in an action to which a defence to tender before action is pleaded, no statement of the fact that money has been paid into Court under this Order shall at the trial of any action be made to the Magistrate until all questions of liability and amount of debt or damages have been decided, but the Magistrate shall in exercising his discretion as to costs take into account both the fact that money has been paid into Court and the amount of the payment:

Provided that this Rule shall not apply where money in Court has been accepted or taken out in satisfaction.

Paying out.

12. Money paid into Court under the provisions of this Order shall not be paid out without approval in writing of the magistrate.

ORDER 14.

Evidence and Witnesses.

Admission by any party.

1. Any party to an action may give notice to any other party in the action that he admits the truth of the whole or any part of the case of the other party. And no costs incurred after the receipt of the notice in respect of the proof of any matters admitted shall be allowed

Evidence to be taken orally.

2. Except as otherwise provided by these Rules or any applicable Law, the evidence of witnesses at the trial of any action shall be taken orally on oath or affirmation, and where, by these Rules, evidence is required or permitted to be taken by affidavit, it shall nevertheless be taken orally on oath or affirmation if the Court, on any application before or at the trial, so directs.

Power to order proof by affidavit.

3. Where for the purpose of establishing any fact to which an exhibit to an affidavit is required, the following shall be acceptable as exhibits to the affidavit-
 - (a) print out of e-mails;
 - (b) print out of short message service from the network provider;
 - (c) image recording of any fact submitted in the manner acceptable to the Court, stating in writing, the existence of such video recording;
 - (d) audio recording.

Use of affidavit without order.

4. Where the circumstance require, a party may use an affidavit to establish the existence of any fact so long as he provides the other party the opportunity to have notice of the content of the affidavit and to respond in order to contradict or accept the content of the affidavit.

Service of summons to witnesses.

5. Any of the parties to any cause or action may request the Court to issue witness summons, with or without a clause requiring the production of the books, deeds, papers and writings in the possession or control of the person summoned as a witness and such summons shall be served by delivery to the person summoned.

Witnesses in general to be out of hearing.

6. Immediately prior to the trial of any cause or action in which witnesses are to be examined the Court may direct that all witnesses shall leave the Court and shall be kept out of Court as provided by Section 187 of the Evidence Act:
Provided that the Magistrate may in his discretion permit professional and technical witnesses to remain in Court; and
Provided further, that failure to comply with the provisions of this Rule, shall not invalidate the proceedings.

Penalty for disobeying witness summons.

- 7.-(1) Subject to the provisions of the Evidence Act any person summoned as a witness in civil proceedings who-
- (a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or
 - (b) refuses to be sworn or make an affirmation or give evidence;
 - (c) shall pay a fine of a sum not exceeding Forty Thousand Naira (N40,000.00) as the magistrate may direct:
Provided also that, where the person so summoned, has not appeared, penalty shall not be pronounced until a notice has been served upon him personally.
- (2) Any person present in Court who is required to give evidence but refuses without sufficient cause to be sworn or make an affirmation or to give evidence shall be liable to pay a fine referred to in this Rule.
- (3) The Magistrate may in his discretion direct that the whole or any part of any such sum, after deducting the costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.
- (4) Any sum forfeited under this Rule shall be treated as if it were a judgment debt any shall be payable forthwith to the Court unless time for payment is allowed by the Magistrate.

Evidence of witness about to leave Ekiti State.

- 8.-(1) At any time after an action is begun and before the trial, the Magistrate may take the evidence of a witness who is about to leave Ekiti State or who, from illness of old age or any other sufficient cause, is not likely to be able to be present at the trial. Such evidence may be taken at some convenient place outside the Court, if necessary.
- (2) The note of the evidence shall be signed at the time by the magistrate taking the same.
- (3) The evidence so taken and recorded may not, except for special reasons to be recorded in the magistrate's notes, be admitted as evidence at the trial unless it

is shown that the party against whom it is offered had an opportunity of being present and of cross examining the deponent.

Prisoners as witnesses.

9.-(1) It shall be lawful for the Court to issue an order to bring up any person confined as a prisoner under any sentence or order of commitment for trial, or otherwise, or under civil process, to be examined as a witness in civil proceedings pending in the Court:

Provided that such order shall not be made as of course, unless the Court shall have reasonable grounds for believing that the evidence of the prisoner is likely to be material.

(2) The officer in charge of the prison of the person in whose custody such prisoner may be, shall obey such order by bringing the prisoner to the Court in his custody, or by delivering him to an officer of the Court as the order may direct, and if the prisoner shall under the terms of the order be delivered to any officer of the Court, the officer in charge of the prison or other person shall not be liable for the escape of such prisoner:

Provided that the officer in charge of the prison or other person as aforesaid shall not be bound to obey the order unless there is tendered to him a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner, in going to, remaining at and returning from the Court.

Use of evidence taken at trial.

10. Evidence taken at the trial of an action may be at any subsequent stage of the same proceedings.

Practice as to taking evidence.

11. The practice with reference to the examination, cross examination and re-examination of a witness at the trial of an action shall extend and applicable to oral evidence taken in any proceedings at any stage.

ORDER 15.

Affidavit and Documentary Evidence.

Contents of affidavits.

1.-(1) All affidavit shall be made by some person who has knowledge of the facts stating-

(a) the deponent's residence and occupation;

- (b) what facts are within his own knowledge and his means of knowledge; and
 - (c) what facts are deposed to on information derived from other sources and what the sources are.
- (2) Affidavits shall be expressed in the first person and shall be drawn up in numbered paragraphs.

Cross-examination of deponent.

2. Subject to the provisions of these Rules and the Evidence Law, where a party desires to cross-examine a deponent who has made an affidavit filed on behalf of the other party in any proceedings, the following provisions shall apply-
- (a) he may cause to be served on the other party through the Court a notice requiring the production of the deponent for cross-examination at the trial; and
 - (b) a witness summons may be issued on the application of the party served with the notice for the purpose of summoning the deponent to attend for cross-examination.

Documents admitted in evidence.

3. Every document admitted in evidence shall be put in and read or taken as read by consent and shall be marked by the Court with a distinguishing mark or letter, and a note of the date and character of all material documents admitted in evidence shall be made by the Court in the record of the case, and each document admitted shall be retained by the Court until the proceedings have been concluded and the period for filing a notice of appeal has elapsed:

Provided that the Court may, in special circumstances, return a document to the party who puts it in, on such party giving an undertaking deemed sufficient by the Court, to keep the document marked and to return it to the Court if an appeal is lodged. After a notice of appeal has been filed, the Court or Magistrate shall not allow a document to be returned to the party who put it in at the trial unless the permission of the appeal Court has first been obtained.

Documents not admitted in evidence.

4. Where the Court does not allow a document to be produced, the document shall be marked as having been offered in evidence but not marked rejected.

ORDER 16.

Mediation and Conciliation.

Order to attend mediation.

1. At any stage of the proceedings, where parties to the action consent, the Court may make an order referred disputes to the Citizen's Mediation Centre

Duration of mediation proceedings.

2. Mediation proceedings shall not in the any event exceed five (5) days.

Time within which to take any step.

3. The time within which to take procedural steps under this Rule shall not run during the period of mediation.

Cost of mediation.

4. The cost of mediation shall be without charge.

Report.

5. A Court appointed mediator shall report the outcome of the mediation to the Court in writing to be made a consent order of the Court within three (3) days of the end of the mediation whether or not a settlement had been achieved.

ORDER 17.

Trial.

Setting down for trial.

- 1.-(1) The claimant shall not later than ten (10) days after filing his claim, write to the Magistrate requesting the Magistrate to fix a date for trial.
 - (2) Where the claimant fails to make a request for a trial date, the Court may strike out the matter.
 - (3) Where the Magistrate fixes a date for trial, a hearing notice shall be issued by the Court and served on the parties within three (3) days, subject to the payment of the prescribed fee by the claimant.

Trial in open Court.

2. Trial of civil actions shall be held in open court:
Provided that a Magistrate may order a trial to be held in camera where a public trial would defeat public interest:
Provided also that this Rule shall not be deemed to be infringed by the provisions of Order 14 Rule 3 (c)

Where claimant does not appear.

- 3.-(1) If the claimant does not appear at the trial of an action, then, except as otherwise provided in these Rules, an order for costs shall be made against the claimant.
- (2) Where any action has been struck out under these Rules, the Court may re-instate it for trial on the same or any subsequent day on such terms as the court may deem just and the provisions of paragraph (2) of the next succeeding Rule shall apply as regards any costs awarded against the claimant under this Rule as if the claimant had been non-suited.
- (3) Where the claimant does not appear at the trial but the Court has received from him an affidavit which is admissible in evidence by virtue of any Law or Rule, the proceedings shall not be struck out but the claimant shall be deemed to have appeared at the trial and to have tendered the evidence in the affidavit.

Where claim is not proved.

- 4.-(1) Where the claimant appears but does not prove his claim to the satisfaction of the Court, it may either non-suit him, or give judgment for the defendant.
- (2) Where after a claimant has been non-suited, a subsequent action for the same or substantially the same cause of action is brought before payment of any costs awarded to the defendant when the claimant was non-suited, the Court may stay the subsequent action until such costs have been paid.

Judgment where defendant does not appear.

5. If the defendant does not appear, the Court, upon proof of service and of facts entitling the claimant to relief, may give such judgment or make such order as may be just.

Defendant appearing and admitting claim

6. Where the defendant appears on the day fixed for the trial and admits the claim, the Court shall give judgment or make such order as may be just.

If proceedings discontinued, counter-claim may proceed.

7. Where the defendant sets up a counterclaim and the claim of the claimant is discontinued, struck out, stayed or dismissed, the counter-claim may be proceeded with and the defendant, on proof of it, may have judgment.

Non-appearance on counter-claim.

8. If a person, not originally a party to the proceedings, who has been served with a counter-claim, does not appear at the trial, the Court may proceed with the trial

and may give such judgment or make such order as may be just against the person so served, or may adjourn the trial and give such directions as it thinks fit.

Exclusion of counter-claim.

9. Where the Court is of the opinion that a counter-claim could be better disposed of in independent proceedings, the Court may of its own motion or on the application of any party order the counterclaim to be excluded.

Judgment where counter-claim is established.

- 10.-(1) Where a counter-claim is established against the claim of the claimant and there is a balance in favour of one of the parties, the Court may give judgment accordingly.
- (2) Nothing in the preceding paragraph shall affect the discretion of the Court to award costs in such proportions as it thinks fit.

Misjoinder of claimant not to defeat counter-claim.

11. Where any person has been improperly or unnecessarily joined as a claimant, a defendant who has set up a counter-claim may proceed with the counter-claim against the other claimant.

Injunctions.

- 12.-(1) In any proceedings in which an injunction has been or might have been claimed, a claimant may, before or after judgment, apply for an injunction to restrain the defendant from-
- (a) the repetition or continuance of the wrongful act or breach of contract complained of; or
 - (b) the commission of any wrongful act or breach of contract of a like kind, relating to the same property or right or arising out of the same contract; and the Magistrate, in addition to giving judgment for such damages and costs as the claimant may be entitled to, may grant the injunction on such terms as may be just.
- (2) An application under this Rule may be made-
- (a) before the trial of the action in accordance with Order 9 Rule 6;
 - (b) at or immediately after the trial, in which case the order shall be included in the judgment; or
 - (c) after judgment, on notice and supported by affidavit.

Inspection by Magistrate.

- 13.-(1) The Magistrate may inspect any property or thing concerning which any question may arise in any proceedings.

- (2) The expenses of any inspection under this Rule shall be paid in the first instance by the party on whose application the inspection is made or ordered, or, if made or ordered without an application, by the claimant, and shall be costs in the proceedings unless the Magistrate otherwise orders.

Evidence and the records of proceedings.

- 14.-(1) At the trial of any proceedings, Court records shall be taken by the presiding Magistrate.
 - (2) The record of proceedings shall be deemed certified when endorsed by the presiding Magistrate and the Registrar.
 - (3) The record of the Court proceedings shall be made available to any member of the public upon payment of the prescribed fees.
 - (4) The record of proceedings in these Rules shall include the minutes of the proceedings; and all other documents, letters, exhibits, affidavits, judgments and decisions used in the action.

Procedure when both parties appear.

15. If on the day of trial, both parties appear, the claim shall be read to the defendant and the Magistrate shall require him to make his answer or defence, and on such defence or answer being made, the magistrate shall immediately record the same and shall, except where the Court considers it necessary to order otherwise, proceed in a summary way to hear and determine the cause, without further pleading or formal joinder of issue.

Evidence may be given of any claim which is not in summons.

16. Where the Magistrate deems it necessary, evidence may be given in every matter that will enable the Magistrate to determine the issues in controversy between the parties.

Order of proceedings at trial of action.

- 17.-(1) The party on whom the burden of proof lies shall be entitled to address the Court at the commencement of the case. When the party who began has closed his case, his opponent shall, provided there is any case to answer, announce whether he intends to adduce evidence or not; and if he announces that he does not intend to call evidence the party beginning shall be entitled to address the Court for a second time, for the purpose of summing up his evidence, and his opponent shall have a right of reply.
 - (2) When the party beginning has concluded his case, if the opponent decides to call witnesses, he shall be at liberty in his turn to open his case, call his witnesses and sum up and comment not only on his own evidence but on the whole case.

- (3) If the party opposed to the party who begins adduces evidence, the party beginning shall be at liberty to reply generally on the whole case.

Examination of witnesses.

18. The Magistrate after an opening address, if any has been made, shall proceed to hear the claimant and such witnesses as the claimant may call and examine such other evidence as he may adduce in support of his claim and also to hear the defendant and such witnesses as he may call and also to hear such other witnesses as the claimant may, and examine and such other evidence as he may adduce in his defence and also to hear such other witnesses as the Claimant may with the leave of the court, call and examine in reply;
Provided that where the party on whom the burden of proof lies is not the claimant, the foregoing provision of this paragraph shall apply as if the party on whom the burden of proof lies were the claimant.

ORDER 18.

Oral Address.

Court may order oral address.

1. The Court may order oral address by the parties.

Oral address to be brief and concise.

2. An oral address to the court shall be brief and concise and shall not exceed 20 minutes by each party except as the magistrate otherwise directs.

ORDER 19.

Judgment and Orders.

Giving and entering judgment.

1. – (1) At the conclusion of the hearing of an action the court shall either at the same or at a subsequent sitting deliver judgment or make a final order in action and every judgment or final order shall be in writing and signed by the Magistrate.
(2) If the parties to a proceeding in the magistrate's court have reached an agreement about a matter in dispute in the proceedings, the court may, on application by the parties, make an order or judgment on the term of the agreement.
(3) If an order is made by consent, that fact should be stated on the face of the order.
(4) Provided that judgment or orders made in error or upon misrepresentation may be set aside by the Court.

Orders of Court.

2. Upon payment of the prescribed fee, a person shall be entitled to obtain an extract of any ruling or judgment containing the order of a court with or without the record of proceedings.

Service of judgments and orders.

3. Except in case where disobedience to an order entails attachment or committal for contempt, it shall not be necessary to sever judgment and order unless the Court otherwise directs.

Judgment to state time for doing an act ordered.

4. Every judgment or order requiring any person to do an act other than the payment of the money or costs, shall state the time within which the act is to be done and where no time is stated, the provision of Rule 7 of this order shall apply.

Judgment in action for recovery of chattel.

5. If the claimant in an action for the recovery of any chattel or thing establishes his claim, judgment shall be given either for the delivery of the chattel or thing or for payment of the value as proved at the trial, as the Court may think fit, and in either case the court may award in addition such damages as the justice of the case may require.

Orders to be made.

6. Subject to particular Rules, the court may in all action make any order which the circumstances of the action justify and which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.

Order to be obeyed without demand.

7. A Person directed to pay money or do any other act is bound to obey the order without any demand for payment or performance. If no time specified for the doing of any act (not being payment of money), the act shall be done within 5 days after the order has been made unless the court shall enlarge the time by the same or any subsequent order.

Rule 12 of this Order shall regulate the time for complying with order for payment of money.

Payment and suspension of judgments and orders.

- 8.-(1) When a judgment is given or an order is made by a Court under which a sum of money of any amount is payable, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of cost or otherwise, the court may, as it thinks fit order the money to be paid either-
- (a) In one sum, immediately or within such period as the court may fix; or
 - (b) By such installment payable at such time as the court may fix.
- (2) Where a judgment has been given or an order made for the payment of any sum by installment or otherwise, and it appears to the Court that the person liable under the judgment or order is unable to pay the sum ordered to be paid at the time or by the installment ordered, the court may, on the application of such person made on notice, order the amount unpaid under the judgment or order to be paid by installments, or if already payable by installments, by the same or smaller installments, and may from time vary such order.

Execution and power to stay execution.

- 9 (1) The issue of any execution in any proceedings shall be in accordance with the provision of the sheriffs and Civil process Law.
- (2) If at any time it appeared to the satisfaction of the magistrate that any party to any proceedings is unable from any cause to pay sum recovered against him, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of cost or otherwise, or any installments, the magistrate may in his discretion, issue in the proceedings for such time and on such term as the cause of inability has ceased.

Finality of judgment.

10. Every judgment and order of the Court shall, except as provided by this Law or any other Law, be final and conclusive between the parties.

Where money is to be paid to a party.

11. Where money payable under a judgment or order is order is directed to be paid by one party to another party or his legal practitioner instead of into court, a direction to that effect shall be inserted in the judgment or order.

Time for payment of a judgment debt or costs.

- 12.-(1) Where judgment is given or an order is made for the payment of, otherwise than by installment of sum of money and costs or the costs shall be payable on such day as may be specified in the judgment or order or if no day is specified then at the expiration of five (5) days from the date of the judgment or order.

(2) Notwithstanding the provisions of the last preceding paragraph, the Court may at any time before the expiration of the period allowed for payment, on application made on notice, make an order for payment at an earlier date.

Payment in reduction of amount due under judgment.

13. A person liable to pay money under a judgment or order, may at any time pay money into Court in reduction of the amount payable by him:

Provided that where no order has been made for the payment by installment, the registrar shall not receive any sum lesser than the full amount payable, If the person entitled to the benefit of the judgment or order has, at or before the time when such sum becomes payable, given written directions to the registrar not to receive any sum less than the full amount payable, and if in any such case, any less sum is paid into court and is inadvertently received, The Court shall, If so directed in the writing by the person entitled to the benefit of the judgment or order, place the sum so paid in credit the person by whom it was paid, and shall on request, return the amount to him.

Notice of payment into Court.

14. Where any payment into court is made under a judgment or order, the Court shall notify the person entitled to the money.

Where duty is payable.

15. Before executing any order directing the payment or transfer of any fund in respect of which any duty is payable to the revenue, it shall be the duty of registrar, before making the payment or transfer, to acquire a certificate from the proper officer of, or the production of the receipt for the payment of the duty chargeable.

Order enforceable by committal.

16.- (1) Orders in the nature of an injunction and all orders within the competence of the Court which, if they were made in an action in the court, could in that court be enforced by order of the Magistrate by committal.

(2) The Magistrate may give judgment for one party against another in relation to the whole or any part of a proceeding if the court is satisfied that the other party has no reasonable justification of successfully defending the whole or any part of the proceeding.

ORDER 20.

Fees.

Subject to the provision of the Magistrate “Court Law, the fees as prescribed in the schedule to these Rules shall be paid in the Registry at or before the time of the Issuance or filing of the process or document to which such fees relate or, Where a fee is prescribed for the performance of any act, before such act is performed.

ORDER 21

Costs.

Costs.

1. Subject to the provision of any Law or Rules, the costs of proceedings on the civil side in a Magistrate’s Court shall be at the discretion of the court and the court shall have power to grant a lump sum.

Letter of demand.

2. (a) In all civil proceedings, it shall be the duty of every legal practitioner to write a letter of demand before commencing action in a Magistrates’ Court.
(b) Failure to write the letter or failure to comply with the requirements of letter of demand shall be considered in determining cost to be awarded to the appropriate party.

Counsel cost.

3. Where the act or conduct of any legal practitioner appearing on behalf of the party is in the opinion of the Court directly responsible to the events leading to award of cost, the legal practitioner shall be personally responsible for the payment of the cost.

Consideration for award of cost.

4. (a) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensation for his time and effort in coming to Court. The Magistrate may take into account all the circumstances of the case,
(b) When costs are ordered to be paid, the amount of such costs, shall, if practicable, be summarily determined by the Magistrate at the time of delivering the judgment or making the order.

Enforcement.

5. An order for the payment of costs may be enforced in like manner as any other order of a Magistrate’s Court for the payment of the money.

Stay of proceedings where Order for costs is not complied with.

6. Where the Court order costs to be paid, or security to be given for costs by any party, the Court shall order all proceedings by or on behalf of that party in the same suit or proceeding, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

Security for costs.

- 7.- (1) In all proceedings the Court may either of its own motion or on the application of any defendant, if it deems it fit to require any claimant or defendant to any suit, either at the commencement or at any time during the progress, to give security for the costs of any particular proceeding to the satisfaction of the Court, by deposit or otherwise.
- (2) The general principle to be applied to the Court when ordering a claimant to give security for costs is that no person shall be precluded on the ground of poverty from commencing an action except in special circumstances such as where the claimant does not reside, or is only residing temporarily in Ekiti State, or where the claimant has already failed to pay costs awarded against him.
- (3) A defendant shall not be ordered to furnish security for costs except in special circumstances, for example, where he is pursuing a distinct counterclaim or applies for a transfer of the action to the High Court although the action is within the jurisdiction of the Magistrate's court.

Mode of giving security.

8. The provision of these Rules shall be followed when security for costs is to be given by bond or by a deposit of money.

Application of High Court rules as to solicitors.

9. The provisions of the High Court Law and the rules made there under regulating the fees of solicitors, the taxation and recovery of such fees and disbursements and the payment out to them of money which has been paid into court, shall, in so far as they are not incompatible with the provisions of this Order, apply *mutatis mutandis* to any solicitor engaged in any proceedings in a Magistrate's Court.

Agreements between solicitors and illiterate persons.

- 10.(1) Any agreement made by a solicitor with his client for an inclusive fee for the conduct of a case shall, if the client is illiterate, be null and void unless it shall have been made in duplicate and the solicitors and his client shall have signed and made their mark, or sign his signature, respectively on both copies in one and the

same transaction and in the presence of a witness, other than an employee or casual employee of the solicitor, who understood the language and script in which the agreement was written and explained its terms to the client and was present at the transaction of the signing and marking thereof and set his signature also to the agreement; and unless one of the copies so signed shall also have been given to the client in the presence of the same witness and as part of the same single transaction of signing and marking them.

(2) The onus of proof that the requirements of this Rule have been complied with shall be on the solicitor seeking to enforce any such agreement.

(3) For the purpose of this Rule, the word “**illiterate**” shall include any person who may be able to read but may nevertheless not be able to understand the purport of such an agreement, and the onus of proof that a person is not illiterate in this sense shall be upon the solicitor.

Duty of solicitors in relation to costs.

11. When any solicitor has conducted a case under an agreement for an inclusive fee, or has conducted a case not under an inclusive charge but has presented his bill and the fee or bill has been paid in full and costs awarded to his client by the court are subsequently paid to the solicitor, the solicitor shall refund to the client an amount equal to the costs received; if the fee or bill has not been paid in full but the receipt of the costs awarded causes an excess, an amount equal to the excess shall be refunded to the client. When no excess is caused, the amount of costs received shall be deducted in computing the balance due from his client under the agreement or on the bill.

Suits by solicitors to recoveries.

12. In any suit brought by a Solicitor to recover from his client any sum of money due under an inclusive agreement for conducting a proceeding in the Court, the Court may reduce the amount claimed if it thinks the same or any part thereof to be harsh and unreasonable but before doing so shall have regard to the degree of skill, labour and responsibility involved and to the nature of the practice of the solicitor.

Solicitors to be officer of the Court.

13. Every solicitor while retained for a cause in a magistrate’s court shall be an officer of the Court and when retained for a manner other than a proceeding in Court, which subsequently develops into a proceeding in court, he shall be deemed to have been an officer of the court from the date of his original retainer.

ORDER 22.

Receivers.

Appointment.

1.-(1)Where before, or at the hearing of any proceedings it appears to the Court if expedient that a receiver be appointed, such an appointment may be made by the Magistrate of his own motion or on application .

(2)The order shall be in writing.

Receiver to give security.

2. Every Receiver other than an officer of the Court shall, unless otherwise ordered, give such security to the Registrar for the faithful discharge of his duties, and the payment over of money, as the Magistrate shall direct.

Remuneration.

3. Every Receiver shall, unless otherwise ordered be allowed proper remuneration.

Accounts.

4. - (1) Every Receiver shall deliver at the Registry of the Court for examination by the Registrar such accounts at such time or time as the Magistrate may direct.

(2) Every such account shall unless otherwise ordered be verified by affidavit.

(3) When any account has been delivered, the Court shall fix a time for the passing of the account and shall give notices of it to the Receiver and the parties.

Passing account.

5. At the time appointed for the passing of the account, the Receiver and any party may, and if required by the Registrar, attend at the Registry and the Registrar may require the Receiver to produce any voucher necessary for verifying the account and may disallow any item not proved to his satisfaction.

Registrar certificate.

6. The Registrar shall after examining the account make and sign a certificate stating the result of the examination.

Review by Magistrate.

7. The Receiver or any party dissatisfied with the allowance by the Registrar of any item in the account may apply to the Magistrate in chamber for a variation or review of the decision as contained in a certificate of account and the Magistrate may make such further order on the application as he thinks fit.

Payment of balance into Court.

8. Any balance certified to be due from the Receiver shall, subject to the next succeeding Rule, be paid into Court within Seven days of the date of the Registrar's certificate.

Payment direct to party entitled.

9. The Magistrate may at any time order the Receiver to pay over to the party entitled to the beneficial interest or to the guardian of any infant any accruing rents or interest instead of paying them into Court, and may authorize the Receiver to take credit for such payment in his accounts.

Default by Receiver.

10. Where any Receiver has failed to deliver or pass any account or to make any payment certified to be due from him; The Magistrate may require the receiver to attend before him to show cause why such default has been made and may make such order as he deems, fit, including a direction to charge the Receiver with interest at five percent (5%) per annum on any balance which has remained in his hands for more than seven (7) days from the date on which it was certified to be due or the Magistrate may discharge the Receiver and appoint another and make such order as to costs as he deems fit at the Central Bank of Nigeria approved rate of interest.

ORDER 23.

Miscellaneous.

Effect of non-compliance.

- 1.- (1) Where in the beginning or purporting to begin any proceedings, there has by reason of anything done or left undone, been a failure to comply with the requirement of the these Rules, the failure shall not nullify the proceedings.
- (2) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Magistrate may give any direction as he deems fit to regularize such steps.

Notices.

2. All notices required by these Rules shall be in writing unless expressly authorized by the Court to be given orally.

Computation of time.

- 3.-(1) Where anything is required by these Rules to be done within a specified period or after the happening of a particular event, the period shall be computed from the next day on which the event happened, unless the period is expressed to be inclusive of such day.
- (2) Where anything is required by these Rules to be done within a period not exceeding forty-eight hours or where a period not exceeding forty- eight hours is required by these Rules to elapse between the doing of an act and the happening of a particular event, no Sunday or public holiday shall be included in the computation of that period.
- (3)Where the time prescribed for doing any act expires on a Sunday or public holiday and for that reason the act cannot be done on that day, the act shall be in time if done on the next day on which the registry of the Court is opened.

Legal Practitioner acting for party.

- 4.-(1) Where a legal practitioner signs on behalf of a claimant the particular required for the entry of a claim or sign on behalf of the defendant a memorandum of acceptance of service of a summons, or a defense, counterclaim or admission, the legal practitioner shall be considered the legal practitioner for the claimant or defendant as the case may be until the action is finally concluded or notices of change of legal practitioner is given in accordance with this Rules.
- (2)Where a party for whom a legal practitioner has acted desire to change his legal practitioner, he or the new legal practitioner, shall give not less than forty-eight hour's notices to the Court and to every other party of the appointment of the new legal practitioner with the new practitioner's address for service.
- (3)Where a party for whom a legal practitioner has acted desires to act in person, he shall give notice to the Court stating his intention to act in person and giving an address for service.
- (4)Where a legal practitioner who is acting for a party desire to withdraw before the action is concluded, he shall write to the Magistrate in chambers for permission to withdraw and shall give reasons for his application and the Court may, if it deems proper, grant such permission.
- (5)Any Rule which requires as many copies of documents as there are claimants or defendants to be filed, served, delivered, sent or given, shall be sufficiently complied with, as regards two or more claimants or defendants represented by the same practitioner, if one copy of the document is filed, served, delivered, sent or given in respect of the claimant or defendants so represented.

Officer not to sign ledger on behalf of party or become surety in any civil proceedings.

5. No officer of a Magistrate's Court shall-
- (a) Sign any document or any other book of the Court, or receive money, on behalf of any party to proceedings in the Court ; or
 - (b) Become a surety in any proceedings where security is required.

Payment of Court fees.

6. Any obligation imposed by these Rules on the Court to do any act at the instance of any party to proceedings in the Court shall be subject to the provision of Order 19 requiring the payment of a Court fees on the proceedings, and accordingly the Magistrate may, notwithstanding anything in these Rules, postpone the doing of the act until any fees has been discharged.

Expenses of advertisements.

7. The expense of advertisement in any proceedings in the Court shall be borne in the first instance by such party as the Court may direct, and shall be paid to the registry before the advertisement is inserted.

Security.

8. Where by or under any Law or Rules any person is required to give security in relation to proceedings in the Court, then subject to any express provision in any Law or Rules the-
- a. Security shall be given by a deposit of the money or by bond;
 - b. amount of the security and the number of sureties (if any) shall be fixed by the Magistrate; and
 - c. The person giving the security shall give it at his own expense.

Deposit.

9. Where security is given by a deposit of money, the following provisions shall apply-
- (1) The person giving security shall deposit the money, in the registry of the Court and shall file a memorandum signed by him or his legal practitioner and approved by the Court stating the conditions on which the deposit is made.
 - (2) Upon the deposit being made, the Registry shall issue to the person making the deposit a receipt and shall deposit a copy in the Court's file.
 - (3) The Magistrate may order the money to be paid out at such time and to such person as he thinks fit.

Bond.

10. Where security is given by a bond, the following provision shall apply-
 - (1) The bond shall be given by the person giving security and by the sureties (if any required).
 - (2) Where the bond is to be given by the person giving security and sureties-
 - (a) each surety shall make an affidavit and file it in the Court;
 - (b) the Court shall give notice to the parties and shall state in the notice to the obligee that any object which he may have to make to the sureties or any of them must be made on the day stated in the notice;
 - (c) The bond shall be executed before a Commissioner for Oaths and filed in Court upon payment of the prescribed fees; and
 - (d) No officer of the court shall become surety to a bond.
 - (3) The bond shall be deposited with the court until the proceedings are finally disposed of.

Duplicates.

11. In the event of any warrant, order or other document issued by the court being destroyed or lost, a duplicate may be issued from time to time, upon payment of the prescribed fees and upon proof by affidavit or otherwise to the satisfaction of the Magistrate, of the loss or destruction of the document.

Copies.

12. A copy of any document in the custody of the Court shall be prepared by the Registrar for any person entitled to require it upon payment of the prescribed fees.

Impounding documents.

- 13.-(1) The Court may order any document put in evidence at any stage of an action to be impounded.
- (2) A document which has been impounded shall not be delivered out of the Court or inspected, except on an order signed by the Magistrate:
Provided that upon the request in writing of a law officer of the State the impounded document shall be given into the custody of such Law officer.

Filing.

14. No document shall be filed unless it bears the reference number of the proceedings and the name of the parties and unless the prescribed fee has been paid.

Interpreters.

15. Persons appointed as interpreters to the court shall be sworn on first appointment and need not be sworn at each trial thereafter.

Custody of records.

16. All books and records kept for the purposes of the Law shall remain in the custody of the Court, but may be removed by leave of the Magistrate.

Forms.

17. All forms used in civil proceedings in the Court shall be in the prescribed form as defined in Order 25.

ORDER 24.

CUSTODY OF MONEY.

Registrar to take charge of fees and other payment.

1. All fees payable in respect of civil proceedings under the Magistrate Courts' Law, and all penalties, forfeitures and fines imposed there under or under any other Law, if not by such laws directed to be otherwise applied, shall be paid to the Registrar and accounted for by him to the Accountant General of the Ekiti State.

Registrar to account to Accountant-General.

2. The Registrar of every Court from time to time, as often as he shall be required to do so by the Accountant-General of Ekiti State, shall account in full to the said Accountant-General for all monies which have been received by him under these Rules and shall produce for examination all books and papers which the said Accountant-General shall consider necessary for the elucidation of such accounts and the proper checking thereof.

Audit of Accounts.

3. All accounts kept by a Registrar shall be audited at such time and in such manner as the Auditor-General of Ekiti State may direct.

Registrar to enter all moneys in Cash Book.

4. All monies coming into the hands of the Registrar of every Court in the course of the Court shall be entered into a book to be kept for that purpose, to be called the Cash Book, which shall record the number of the plaint in respect of which each sum is paid, together with the folio of such plaint in the Civil Cause book. Every entry in the cash Book shall show whether the payment is made by the claimant or defendant, and whether for fees on process into court, award, or cost as the case may be.

Registrar to comply with financial instructions.

5. All monies coming into the hands of the registrar of every Court in the course of the business of the Court shall be retained, deposited and paid out in accordance with the provisions of the Government financial instructions or regulations for the time being in force.

ORDER 25.

Interpretation.

In these Rules, unless the context otherwise requires:

“**address for service**” means the address of a place where any document may be left for, or sent by post to, the party giving the address;

“**admission**” and “**counter claim**” mean respectively any document, which shows that the defendant desires to ask for time for payment of the amount of the claim and costs, or to set up a counter-claim;

“**date of commencement of trail**” shall have the same meaning as contained in Section 2 of the Magistrate’ Court Law;

“**guardian**” includes guardian ad litem, committee, and next friend;

“Ekiti State” means Ekiti State;

“**Magistrate’s Court**” means a Court established by the Magistrates’ Courts Law;

“**Magistrate in chambers**” means the Magistrate carrying out judicial or other functions prescribed by Law other than in open Court’s;

“**Prescribed form**” means and includes any form now in use in the court, with such modifications and adaptations as the circumstances may require, and any form which may hereinafter be provided by Rules of Court;

“**process**” include any summons to appear and answer a claim, any order made by the Court and any other document or notice required, for any purpose connected with the Court, to be served on any person;

“**Registry**” means the office occupied by the Registrar and other officers of the Court.

ORDER 26.

Saving.

Where no other provision is made by any written law or by these Rules the present practice and procedure shall remain in force:

Provided that no practice which is inconsistent with any of these Rules shall apply in any Court.

Citation.

These Rules may be cited as the Magistrates' Court (Civil Procedure) Rules 2014.

MAGISTRATES' COURTS LAW

SCHEDULE
Fees payable in the Magistrates' Courts.

1. For the recovery of specified sums
 - a. Not exceeding ₦10,000 ₦750.00
 - b. Not exceeding ₦50,000 ₦1,250.00
 - c. Between ₦50,000 and ₦500,000 ₦1,750.00
 - d. Between ₦500,000 and ₦1,000,000 ₦2,750.00

Being the sum claimed as at the time of filing any application at the Magistrate's Court.

2. For the possession of property and the payment of arrears of rent and mesne profit between landlord and tenant: at the rates under item 1 reckoned on the annual rent or value.
3. For the appointment of a guardian ₦750:00
4. For an injunction or order to stay waste or alienation or for the detention and preservation of any property the subject of a suit, or to restrain breach of the contract or tort; if an ancillary claim in the suit: three fifths of the fee payable on the primary claim but not exceeding ₦400:00
5. For any other relief or assistance not specifically provided for ₦3000:00

Note:

(a) Item 1- The sum claimed as debt or damages shall be specified.

(b) Item 2- The annual rent or value to be specified shall be that which is payable under the lease granted to the tenant sued to the lease last granted to any person before the bringing of the action, whichever be the greater. If it is something other than money, whether wholly or in part, its nature and annual value shall be specified. If the rent or value was understated, the Court may order the balance of the fee chargeable to be paid; and if it was understated knowingly or negligently, the Court may also order a sum equal to such balance to be paid as penalty. In either case, the Court may direct

that the proceedings shall not continue until the balance and penalty (if any) are paid.

6. Application for warrant	₦200.00
7. On filing any application to the Magistrate in Chambers	₦200.00
8. Filing security bond	₦200.00
9. Filing of affidavit or any other paper	₦200.00
10.-(a) CTC of Ruling	₦500:00
(b) Cost per page	₦500:00
11-(a) CTC of Judgment	₦500:00
(b) Cost per page	₦500:00
12. For obtaining CTC of Court records or proceedings per page	₦100:00
13.-(1) Warrant of possession	₦1,500:00
(a) Not exceeding ₦ 500,000	₦565:00
(b) Between ₦500,000 and ₦1 million	₦1,125:00
(2) Execution	₦375:00
(3) Filing	₦50:00
(4) Service and Mileage	₦300:00
14. Registration of arbitral award	₦500:00
15. For certifying a copy as a Certified True Copy	₦200:00
16. For swearing to an affidavit of making a declaration	₦200:00
17. For every subpoena	₦200:00
18. Witness Statement on Oath	₦200:00
19. Exhibit (per exhibit)	₦100:00
20. For searching the archives	₦1,000:00
21.-(a) For service of any process or document including hearing	

Notice per party within the Magisterial District	N500:00
(b) Additional payment per kilometer	N250.00
22. For any other application or other document not referred to	N200.00
23 .For payments into Court (except when ordered by the court or proceeds of execution):	
(a) Not exceeding #50,000.00 or any part of it	N200.00
(b) Exceeding #50,000.00 or any part of it	N500.00

Notes:

Where a Bailiff serves more than one document or writ on the same route, one mileage rate only is to be charged, and apportioned upon the documents or writs.

Where the Bailiff executed any duty in person by direction of the Court he is entitled, instead of mileage fees, to his actual expense and such traveling allowance as the Court may allow.

In addition to the above fees, the party on whose behalf such services are to be performed shall be liable to pay such expenses as the Court may think reasonable.

For the performing of duty other day not expressly provided, the Bailiff or Special Bailiff may receive such fees as the Court may allow:

**PART II
ALLOWANCES TO WITNESSES.**

	N	:K
Professional men, mercantile agents, banks managers, surveyors, and any officer of the public service whose salary is not less than N12,000 a year.....	300	:00
Merchants, captains of ships, mercantile assistants and officers in the public Service whose salary is N6,000 but less than N1,200...from	1500	:00
	to 3,000	:00
Auctioneers, Chiefs, Master tradesmen, Pilots, Clerks and the like.....from	5,000	:00
	to 2,500	:00
Officers in the Public service whose salary is less than		

₦4,000.....	from	2,500:00
	to	2,500:00
Artisans, Journeymen and the like.....		5,000:00
Servants, labourers, canoemen and the like.....		2,500:00
Women, if not included in the above categories	from	2,500:00
	to	3,000:00

Note – The traveling expenses of witnesses shall be allowed according to the sums reasonably and actually paid.

No allowance, other than the authorized by Civil Service Rules, is made to an officer of the public service who is summoned as a witness by the State or by any department of the Government. In all other cases he is allowed costs and traveling expenses as if he were not in the public service.

Fees, costs and expenses payable to an officer in the public service shall be pad into revenue unless otherwise ordered.

The court shall have the authority to disallow in proper cases the payment of any of the allowances to witnesses aforesaid.

MAGISTRATES' COURTS BILL

CIVIL ORDER 1

ORDINARY SUMMONS

Order 1, Rule 4

IN THE MAGISTRATES' COURT

Claim No

Between Claimant

..... and Defendant

The Claimant's claims -

Debt or damages (particulars are attached) N :
k

Court fee

Other disbursements

Costs

Total _____

You are hereby summoned to appear at

.....

Magistrate's court

On the day of 20

At 0' clock in the noon when the claim will be heard.

To the Defendant.

Dated this Day of 20

.....

Registrar

NOTE – Form 4A is attached. You are advised to read it carefully and to complete it and return it to the registrar of the Court if you have a counter – claim or a defense or wish to admit the claim and thus save costs.

Your attention is also called to Order 2 Rules 1, 5 and 6 of the Magistrate's Court Civil Procedure) Rules.

CIVIL FORM 2
COURT BOOK OF MAGISTRATES' COURT, EKITI STATE

Court Book of causes in the Magistrates' Court from the day of 20 to the..... day of 20

No. of Claim or Application	Date of filing or Claim Application	Name of Claimant (or Applicant)	Name of Defendant (or Respondent)	Substance of Claim or Matter	Date of Judgment or final Order	Minutes of Judgment or final Order	Magistrate Adjudicating	Costs

MAGISTRATES' COURTS LAW

CIVIL FORM 3

**UNDERTAKING BY GUARDIAN TO BE RESPONSIBLE FOR
DEFENDANT’S COSTS**

Order 1, Rule 3

IN THE MAGISTRATES’ COURT
No. of Claim.....

I, the undersigned
of
being the guardian of who is an
infant / a person of unsound mind, who is desirous of commencing an action in this
Court, against Of
..... Undertake
to be responsible for the costs of the said
..... in those proceedings, in the manner following; if the
said fail to pay to the said
..... When and in such manner as
the court shall order, all such proceedings as the court shall direct him to pay to the
said I
will immediately pay the same to the registrar of the Court.

DATED this Day of 20

(signed)

Signed by the above – named
in my presence

.....
Legal Practitioner

(Address)

Commissioner of Oaths

**CIVIL FORM 4
SUMMARY SUMMONS**

Order 3, Rule 1

IN THE MAGISTRATES' COURT OF EKITI STATE

TO THE DEFENDANT

The Claimant claims - N : K
Debt (particulars are attached)
Court Fees Other
Disbursements Costs
.....

Total N _____

Judgment may be obtained against you and enforced without further notice unless within ten days of the service of this summon inclusive of the day of service you:

Pay the total amount of the claim and costs into Court
or

Send to the Court an Admission, Defense or Counter – claim for which the attached form should be used.

DATED this day of 20.....

.....
Registrar

INSTRUCTIONS.

- (1) If you admit the claim or any part of it, pay the amount admitted and costs into Court within ten days after service of this summons, inclusive of the day of service. If you require longer time for payment complete the form of **ADMISSION** attached.
- (2) If you dispute the claim or any part of it, complete the form of **DEFENCE** attached.

- (3) If you have a claim against the claimant, complete the form of COUNTER-CLAIM attached.
- (4) After completing and signing the form, deliver it to the registrar of the Court not later than ten days after service of this summons inclusive of the day of service. Unless you make an admission and proposal for payment which is accepted, you will receive notice from the Court of day on which you will have an opportunity of being heard on your proposal for payment, defense or counter-claim.
- (5) Delay in payment or in returning the form may add to the costs.
- (6) You can obtain help in completing the form at any Magistrate's Court office.
- (7) Payment otherwise than in cash to the registrar of the Court is made at the payer's risk.

CIVIL FORM 4A
FORM OF ADMISSON, DEFENCE AND COUNTER-CLAIM
TO ACCOMPANY FORM

Order 3, Rule 3

IN THEMAGISTRATE COURT OF EKITI STATE
No. of Claim.....

Vs

I admit the claimant' claim (or N.....part of claimant's claim), and I ask permission to pay the sum with the costs on that amount, on theday ofday of20.....

(Admission)

(or by installment of N.....per).....) because

(1).....
.....
.....

[(1) state why you cannot pay at once]

or I have a special defense (such as limitation of action, infancy, discharge under)

(Defense)

Any written law, res judicata or I dispute the claimant's claim (or N... part of the claimant's) claim because (2).....

[(2) state shortly the facts you wish to put before the court.]

Or I have a counterclaim or set- off against the claimant for N

for.....

[Counter- claim.]

To be signed here.....

Defendant

Defendant's address for service in Ekiti State.....

DATED thisday of20.....

NOTE- where the defendant admits the whole or part of the claim, his signature Should be witnessed by a legal practitioner, or by the Registrar or other officer of the Court.

CIVIL FORM 5
FROM FOR ENTRY OF JUDGMENT IN SUMMARY ACTION

Order 3, Rule 5

(Form A)

I REQUEST that judgment in default be entered against the defendant (name the defendant, or if there are more defendants and it is desired to enter judgment against some or one only, name them or him), payable immediately or on theday ofor by installments of ~~N~~.....for every.....the first installment to be paid on the.....day of, 20.....

~~N~~ : K

Amount of claim as stated in summons.....

Amount (if any) since received by claimant.....

Balance of claim for which judgment is to be entered.....

Court fees entered on summons.....

~~N~~ : K

Costs entered on summons.....

Costs (if any) on entering judgment.....

Total

~~N~~

DATED thisday of, 20.....

.....
Claimant or Claimant's Legal Practitioner

To the Registrar of the Court.

CIVIL FORM 6
ORDER FOR SUBSTITUTED SERVICE

Order 5 Rule 2

UPON READING the Affidavit of.....
ofsworn upon the.....day of20.....

IT IS ORDERED that a.....issued in this action together with a Copy of
this Order be served on the person of or above the apparent age of Eighteen years
at.....being the
Usual (or last know) place of residence (or business) of.....

.....
(Name of Claimant, Defendant, Witness or Party)

(or that a.....issued in this action together
With a copy of the order, be sent by registered post addressed
to.....

(name of claimant, defendant, witness or party)

At.....being the usual (or
last known) place or residence (or business) of the said (or that
notice of the.....be published in the
.....Gazette).

(or that notice of thebe published in
The.....newspaper in (number) separate issues).

(or that a copy of the.....is this action(or matter)
shall be affixed to the premises at.....
Being the usual (or last known) place of residence (or business)
of.....)

(the claimant, defendant, witness or party)

(or as may other wise be ordered by the Court).

ORDERED this.....day of20.....

.....
Magistrate

CIVIL FORM 7

**SUBSTITUTED SERVICE, NOTICE IN GAZETTE OR NEWSPAPER OR
POSTING UP IN PUBLIC PLACE**

Order 5, Rule 2

IN THEMAGISTRATE'S COURT OF EKITI STATE

Suit No.....

TAKE NOTICE that an action has been commenced against you in the above Court byof.....for.....and that an order has been made that publication of notice of the entry of such Action (in the Gazette or the Newspaper, or by posting up at.....) shall be deemed to be good and sufficient service of the summons (or.....) on you.

THE ACTION will be heard at.....on the day of.....20.....at the hour of..... In the..... noon, on which day you are to appear, and if you.

Do not appear either in person or by legal practitioner, you will be bound by any decision or order given or made in the proceedings.

DATED thisday of, 20.....

.....
Registrar

CIVIL FORM 8

**AFFIDAVIT OF SERVICE
Order 5, Rule 7**

I,..... of
make oath and say as follows –

1. The I am over eighteen years of age and
 - (a) am bailiff of the court (under Warrant No.....); or
 - (b) have been designated by the sheriff to server the, a true copy of which is annexed and marked ‘ A’.

2. That I did on the day of, 20.....
Serve the a true copy of which is annexed and marked ‘A’,
On the defendant-
 - (a) by delivering the same to the said defendant personally at
 - (b) By delivering the same atto

Who stated that he was a partner in the defendant firm or who stated that he carried on business in the name of the defendant firm?

or

- (c) by delivering the same at to a person who did not give his name but stated that he was a partner in (or carried n business in the name of the defendant firm).

or

- (d) by delivering the same at begin the principal places of business of the defendant firm in Ekiti State to

or

- (e) by delivering the same at to A legal practitioner, who represented that he was authorized to accept service on behalf of the defendant and who at the time of such delivery endorsed upon the copy of the summons by me, a memorandum that he accepted service of it on behalf of such defendant.

Endorse the copy of the summons or other process thus:

“ This paper marked “A” is a true copy of the summons or other process referred to in the annexed affidavit”.

This affidavit must be within two days after the day of service.

CIVIL FORM 9

ORDER TO ADJOURN PROCEEDINGS

Order 9, Rule 4

TAKEN NOTICE that the hearing of this action (or matter) (or judgment summons) has been adjourned until the..... day of20, at the hour of in the noon

DATED thisday of,20.....

.....

Registrar

MAGISTRATES' COURTS LAW

CIVIL FORM 10

NOTICE OF DAY FIXED FOR HEARING AFTER

GENERAL ADJUDGMENT

Order 9, Rule 4

TAKE NOTICE that the bearing of this action will take place on.....
The.....day of....., 20.....at the hour
of.....in thenoon.

DATED thisday of, 20.....

.....

Registrar

MAGISTRATES' COURTS LAW

CIVIL FORM 11

**INTERLOCUTORY INJUNCTION
Order 9, Rule 7**

IN THEMAGISTRATES' COURT OF EKITI STATE

No. of claim

BetweenA.B.....Claimant

And

.....C.D.....Defendant

THE CLAIMANT undertakes by his legal practitioner to abide by any order this court may make as to damages, in case this court shall later be of the opinion that the defendants shall have sustained any damage by reason of this order, which the claimant ought to pay.

NOW, THEREFOREthe defendant in this action, by himself, his servants, work men and agents, or otherwise is strictly enjoined and restrained fromuntil the day after the day upon which this action shall be heard, or until further order, or until theday of.....,20upon which day this court will consider whether this order shall be further continued.

DATED thisday of, 20.....

.....

Magistrate

NOTICE AS TO CONSEQUENCES OF DISOBEDIENCE OF COURT

To.....C.D..... of.....

TAKE NOTICE, that unless you obey the directions contained in this order you will be guilty of contempt of court and will be liable to be committed to prison

DATED this.....day of,20.....

.....

Registrar

CIVIL FORM 12

**NOTICE OF DISCONTINUANCE OF PROCEEDINGS
OR WITHDRAWAL OF PART OF CLAIM**

Order 11, Rule 1

TAKE NOTICE that I shall not proceed further in this action or matter and that I hereby withdraw from the action (add, if so, as against the defendant.....)

(Or take notice that I now withdraw so much of my claim in this action or matter as relates to (specified the claim which is withdrawn, and add, if so) as against the defendant

.....)

DATED thisday of, 20.....

.....

Claimant

MAGISTRATES' COURTS CLERK

CIVIL FORM 13

**JUDGMENT FOR COSTS AGAINST CLAIMANT ON
DISCONTINUANCE OR WITHDRAWAL OF PART OF CLAIM, OR
FAILURE TO GIVE SECURITY**

Order 11, Rule 2

The Claimant having by notice in writing dated the.....day
of....., 20.....wholly discontinued this action (or
matter)(or withdrawn so much of this claim in this action (or matter)as relate
to.....)
(Or the claimant having failed to comply with an order requiring him to deposit
the sum of N..... as security for the defendant's cost of this action).

IT IS ORDERED that the claimant do pay the said sum of N.....

To the Registrar immediately.

DATED thisday of, 20.....

.....

Magistrate

CIVIL FORM 14

ORDER TO BRING UP PRISONER TO GIVE EVIDENCE
Section 53 and Order 14, Rule 9

To: (Officer who has custody of prisoner).

WHEREAS thehas made an application to me, for an order under Section 53 of the Magistrates' Court Law to bring up before this courtwho it is said Is detained as a prisoner in your custody, to be examined as a witness on behalf of the said.....in the above action

YOU ARE THEREFORE, by this order issued pursuant to the said Section of the Law, required upon tender made to you of a reasonable sum for the transportation and maintenance of the officers and of the saidin going to, remaining at, and returning from this court, to bring the said Before this court atonthe..... day of, 20at the hour ofin thenoon, then and there to be examined as a witness on behalf of saidand immediately after the said Shall have given his testimony before the court, you are required to safely conduct him to the place from which he shall have been brought under this order.

DATED thisday of, 20.....

.....
Magistrate

CIVIL FORMS 15

**NOTICE TO DEFENDANT OF ACCEPTANCE BY CLAIMANT OF
PAYMENT INTO COURT.**

Order 13, Rule 9

TAKE NOTICE that the claimant (or judgment creditor) has accepted the sum of N..... paid into court in satisfaction of his claim in the above action (or in respect of his cause of action for)

Dated this Day of20.....

.....

Registrar

MAGISTRATES' COURTS LAW

CIVIL FORM 16

**JUDGMENT FOR CLAIMANT FOR COSTS WHERE WHOLE CLAIM PAID
OR AMOUNT PAID INTO COURT ACCEPTED IN SATISFACTION.
Order 13, Rules 8 and 9.**

THE DEFENDANT having paid into court the whole amount of the claimant's claim (or the sum of ₦ paid into court by the defendant having been accepted the claimant in satisfaction of his claim) and the claimant's costs being ₦.....or having been taxed and allowed at the sum of ₦.....

IT IS ADJUDGED that the claimant do recover against the defendant the sum of ₦ for his costs (including the costs entering judgment) And its is ordered that the defendant pay the same to the Registrar immediately.

DATED this.....day of, 20.....

.....
Magistrate

MAGISTRATES' COURTS LAW

CIVIL FORM 17

**NOTICE TO A DEFENDANT SUED JOINTLY OR IN THE ALTERNATIVE
(NOTICE OF PAYMENT INTO COURT BY A CO-DEFENDANT)
Order 13, Rule 7**

TAKE NOTICE That the defendanthas paid into the court the sum of ₦.....(on account of the claimant's claim)(or in satisfaction of the claimant's claim)or in satisfaction of the claimant's cause of action for(add, if so, with a denial of liability or with a defence of tender before action).

DATED thisday of....., 20.....

.....
Magistrate

MAGISTRATES' COURTS LAW

CIVILFORM 18

**SUMMONS TO WITNESS TO GIVE ORAL EVIDENCE.
Order 14, Rules 5**

YOU ARE summoned to attend aton.....
Theday of,20.....at
The hour ofin the noon, and so form day to
day, until the above action is tried, to give evidence in the above action or matter.

IN DEFAULT of your attendance, you will be liable to forfeit N.....if there
was paid or tendered to you at the time of the service of this summons your
reasonable expenses of traveling to and from the Court, together with a sum as
compensation for loss of time according to the prescribed scale.

DATED this.....day of, 20.....

.....
Magistrate

Toof

This summon was issued on the application of the (claimant or defendant).

Sum to be paid or tendered to the witness- N.....

CIVIL FORM 19

SUMMONS TO WITNESS TO PRODUCE DOCUMENTS.

Order 14, Rules 5.

You are summoned to attend at
on theday of, 20.....

At the hours ofin thenoon ,and so on from day to
day, until the above action or matter is tried to give evidence in the above action or
matter and also to bring with you and produce the several documents specified below.
(Here, insert list of documents required to be produced)

IN DEFAULT of your attendance or of production by you all or any of the specified
documents, you will be liable to forfeit ₦..... if there was paid or tendered to
you at the time of service of this summons your reasonable expenses of traveling to
and from the court together with a sum as compensation for loss of time according to
the prescribed scale.(Where the witness is in merely required to produce documents
the words “to give evidence in the above action or matter and also “should be
omitted.)

DATED thisday of,20.....

.....

Magistrate

To.....of

This summons was issued on the application of the (claimant or defendant).

Sum to be paid or tendered to the witness- ₦.....

CIVIL FORM 20

JUDGMENT FOR CLAIMANT (PAYMENT BY INSTALMENTS).

Order 19, Rule 8

IT IS ADJUDGED that the claimant do recover against the defendant the sum of..... ₦ :
For the debt (or damages), and costs..... ₦ :
Amounting together to the sum of ₦ :
And the defendant having paid the sum of ₦ :
Into court (or to the claimant)

IT IS ORDERED that the defendant do pay the sum of ₦.....
To the Registrar by installment of ₦.....for every; the first
Installment to be paid on theday of.....20.....

IN CASE DEFAULT is made in payment of any installment according to this order,
execution or successive executions may issue for the whole of the said sum and costs
then remaining unpaid, or for such portion unpaid, as the court shall order.

DATED this day of20.....

.....
Magistrate

CIVIL FORM 21

**BOND BY PERSON GIVING SECURITY.
Order 23, Rule 10(1)**

We.....
of.....
and.....
of.....
and.....
of.....

Are jointly and severally held and firmly bound toin the
Sum of ₦ naira to be paid to the said

Or his attorney, executors, administrators or assigns; we bind each and every one of
us and each of our heirs, executors and administrators jointly and severally, by this
bond.

Sealed with our seals and dated thisday of ...

Two thousand.....

Whereas (1).....

[(1) Here recite the circumstances in which the bond is required.]

NOW THE CONDITION of this obligation is such that if the above-bound..... do
(2) then this obligation shall be void and of the effect, otherwise the same shall
remain in full force and virtue.

[(2)Here state the obligation undertaken]

SEAL

SEAL

SEAL

Signed, sealed and delivered by the above-bound in the presence of

.....

Magistrate

Or

Commissioner for Oaths

CIVIL FORM 22
THIRD PARTY NOTICE.
Order 7, Rule 1 (4)

IN THE MAGISTRATE COURT OF EKITI STATE.....

No. of Claim.....

Between.....A.B....., Claimant

and

.....C,D.....Defendant,

and

.....E.F.....Third Party

TAKE NOTICE that this action has been brought by the claimant against the defendant orand that the defendant claims against you that –

- (a) he is entitled to contribution from you to the extent of
- or (b) he is entitled to be indemnified by you against liability in respect of.....
- or (c) he is entitled to the following relief or remedy relating to or connected with the original subject matter of the action, namely
- or (d) the following question or issue relating to or connected with the subject matter of the action should properly be determined as between the claimant and the defendant and the third party, namely

The grounds of the defendant's claim are-

AND TAKE NOTICE that if you dispute the claimant's claim against the defendant or the defendant's claim against you, you must take all necessary steps for your defence, and appear on the day fixed for the hearing of the action when the claimant's claim against the defendant and the defendant's claim against you will be heard and determined.

In default of your appearing at the day of hearing you will be deemed to admit-

- (1) the claimant's claim against the defendant; and
- (2) the defendant's claim against you; and
- (3) your liability to (contribute to the extend claimed) or (indemnify the defendant); or

(4) the defendant's right to the relief or remedy claimed in paragraph (c) above;
and

(5) the validity of any judgment in the action;

And you will be bound by the judgment in the action which may be enforced by execution against your goods.

DATED this day of 20,

MAGISTRATES' COURTS LAW

CIVIL FORM 23
AFFIDAVIT ON APPLICATION ON BEHALF OF INFANT OR PERSON OF
UN SOUND MIND FOR APPOINTMENT OF GUARDIAN AT LAW

Order 4, Rule 10

I, of..... Make
oath and say as follows-

- (1) The defendant was served with the in this action (or
matter) on the day of..... 20
- (2) The defendant is an infant (or person of
unsound mind not adjudge a lunatic)
- (3) Is a fit and proper person to act as a guardian at law
of the said defendant and has no interest in the matters in question in this action
(or matter) adverse to that of the said
Defendant, and the consent of the said To act as such
guardian is annexed.

.....
Deponent

Sworn at this day of 20 before me

.....
Commissioner for Oaths