

**EKITI STATE ADMINISTRATION  
OF CIVIL JUSTICE LAW, 2019.**

**NO. 9 OF 2019.**

**EKITI STATE OF NIGERIA**

# **EKITI STATE ADMINISTRATION OF CIVIL JUSTICE LAW, 2019.**

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**SCHEDULES**

**A LAW TO PROVIDE FOR THE ADMINISTRATION OF CIVIL JUSTICE IN EKITI STATE AND FOR OTHER CONNECTED PURPOSE.**

**NO. 9 OF 2019.**

**EKITI STATE OF NIGERIA.**

**COMMENCEMENT [ ]**

**ENACTED BY EKITI STATE HOUSE OF ASSEMBLY AS FOLLOWS:**

**PART 1 – PRELIMINARY**

**1. Objectives.**

(1) The main objectives of this Law are –

- (a) To reform and modernize the laws, practice, procedure and processes relating to the resolution of civil disputes and civil proceedings in the High Court of Ekiti and to provide for uniformity in the process of administration of civil justice;
- (b) to simplify the language relating to civil procedure;
- (c) to provide for the primary objective or purpose in relation to the conduct of civil proceedings to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute;

(2) Without limiting subsection (1), this Law provides for –

- (a) Primary obligations for participants in civil proceedings to improve standards of conduct in litigation;
- (b) the facilitation of the resolution of disputes before civil proceedings are commenced;
- (c) the enhancement of case management powers of the courts;
- (d) further enhancement of alternative dispute resolution processes to enable court to refer matters to Multi Door Court House, when established, in circumstances warranting such;

- (e) reform of the Law relating to summary judgment;
- (f) clarifying sanctions available to courts in relation to contravention of obligations relating to standards of conduct in civil litigation.

## 2. **Applicability.**

- (1) This Law shall apply to the High Court of Ekiti State and will operate alongside the Civil Procedure Rules of the High Court of Ekiti State.
- (2) In the event of any inconsistency between the provisions of this Law and the Civil Procedure Rules of the High Court of Ekiti State, the provisions of this Law shall prevail.

## 3. **Definitions.**

In this Law:

**“ADR Window”** has the meaning given in Section 48(4) of this Law.

**“Alternative Dispute Resolution”** means a process attended, or participated in, by a person involved in a civil dispute or a party for the purposes of negotiating a settlement of the civil dispute or the civil proceeding or resolving or narrowing the issues in dispute, including, but not limited to –

- (a) Mediation, whether or not referred to a mediator in accordance with rules of court;
- (b) Early neutral evaluation;
- (c) Judicial resolution conference;
- (d) Settlement conference;
- (e) Reference of a question, a civil proceeding or part of a civil proceeding to a special referee or to an Interim Remedies Reference process;
- (f) Expert determination;
- (g) Conciliation;
- (h) Arbitration.
- (i) Multi Door Court House

**“Application Windows”** has the meaning given in section 48 (4) of this Law.

**“Civil Dispute”** means a dispute which may result in the commencement of a civil proceeding;

**“Civil Proceeding”** means any proceeding in a court other than a criminal proceeding or quasi-criminal proceeding;

**“Court”** means the High Court of Ekiti State unless the context otherwise requires;

**“Criminal Proceeding”** means a proceeding to which the Administration of Criminal Justice Law of Ekiti State applies and includes-

- (a) committal proceedings;
- (b) proceedings relating to bail;
- (c) proceedings relating to the sentencing of an accused;

**“Exceptional Circumstances”** are circumstances of unusual hardship that will be caused by a course of action that may otherwise be taken under this Law;

**“Expert Witness”**, in relation to a civil proceeding, means a person who has specialized knowledge based on the person’s training, study or experience;

**“Interim Remedies Reference”** is an alternative dispute resolution mechanism by which the parties, with the assistance of a skilled neutral or panel of neutrals, work to agree terms upon which a mutually acceptable interim order may be made by the Judge.

**“Head of Jurisdiction”** means the Chief Judge of Ekiti State

**“Legal Practitioner”** means a *Nigerian Legal Practitioner* within the meaning of the Legal Practitioner’s Act CAP. L.11, LFN, Vol. 7 (2010)



**“Main Hearing Track”** has the meaning given in Section 48 (4) of this Law.

**“Primary Objective or Purpose”** has the meaning given in Section 5(1) of this Law.

**“Primary Obligations”** means the obligations set out in Sections 15-25 of this Law.

**“Paramount Duty”** means the duty set out in Section 14 of this Law.

**“Party”** means party to a civil proceeding;

**“Person”** includes an unincorporated association, a firm and a partnership;

**“Pre-Litigation Requirements”** means the requirements set out in section 32 of this Law.

**“Procedural Caution”** is a notice issued by the court under section 50 (2) (a) and (b) of this Law.

#### **4. Application of this Law.**

This Law applies to all Civil proceedings in Ekiti State.

## **PART 2**

### **PRIMARY OBJECTIVES AND OBLIGATIONS UNDER THIS LAW**

#### **5. Primary Objectives.**

(1) The primary objective or purpose of this Law in relation to civil proceedings is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

(2) Without limiting how the primary objective or purpose is achieved, it may be achieved by –

- (a) the determination of the proceeding by the court;
- (b) agreement between the parties;
- (c) any appropriate dispute resolution process –

- (i) agreed to by the parties; or
- (ii) ordered by the court.

#### **6. Court to Give Effect to Primary Objective.**

- (1) A court to which this Law applies shall give effect to the primary objective of this Law in the exercise of any of its powers, or in the interpretation of those powers, whether those powers are part of the Court's inherent jurisdiction, implied jurisdiction or statutory jurisdiction.
- (2) In giving effect to the primary objective of this Law, a court to which this Law applies shall at all times conduct its proceedings with the aim that the business scheduled for the day is accomplished.
- (3) Notwithstanding Order 5, and Order 40 of the Ekiti State High Court (Civil Procedure) Rules, 2011, no process or proceeding shall be struck out, set aside or adjourned on account of any failure to comply with any procedural requirement, and the parties may agree, or the court may make any orders required to rectify the procedural defect.
- (4) Sub-sections (2) and (3) do not apply if a party establishes that it will suffer injustice or prejudice that cannot be compensated by costs unless the process or proceeding is struck out, set aside or adjourned.

#### **7. Court's Powers to Further the Primary Objective of this Law.**

- (1) In making any order or giving any direction in a civil proceeding, a court shall further the primary objective of this Law by having regard to the following objects –
  - (a) the just determination of the civil proceeding;
  - (b) the public interest in the early settlement of disputes by agreement between parties;
  - (c) the efficient conduct of the business of the court;
  - (d) the efficient use of judicial and administrative resources;
  - (e) minimizing any delay between the commencement of a civil proceeding and its listing for trial beyond that reasonably required for any interlocutory steps that are necessary for –

- (i) the fair and just determination of the real issues in dispute;  
and
- (ii) the preparation of the case for trial;

(f) the timely determination of the civil proceeding;

(g) dealing with a civil proceeding in a manner proportionate to –

- (i) the complexity or importance of the issues in dispute; and
- (ii) the amount in dispute.

(2) For the purposes of subsection (1), the court may have regard to the following matters:-

- (a) the extent to which the parties have complied with the pre-litigation requirements or any other mandatory or voluntary pre-litigation processes;
- (b) the extent to which the parties have used reasonable endeavours to resolve the dispute by agreement or to limit the issues in dispute;
- (c) the degree of promptness with which the parties have conducted the proceeding, including the degree to which each party has been timely in undertaking interlocutory steps in relation to the proceeding;
- (d) the degree to which any lack of promptness by a party in undertaking the proceeding has arisen from circumstances beyond the control of that party;
- (e) the degree to which each person to whom the primary obligations apply has complied with the primary obligations in relation to the proceeding;
- (f) any prejudice that may be suffered by a party as a consequence of any order proposed to be made or direction proposed to be given by the court;
- (g) the public importance of the issues in dispute and the desirability of a judicial determination of those issues;
- (h) the extent to which the parties have had the benefit of legal advice and representation.

(3) Except as otherwise stated, this section does not –

- (a) limit any other power of a court to make orders or give directions; or
- (b) preclude the Court from considering any other matters when making any order or giving any direction.

**8. Application of Primary Obligations – Participants.**

- (1) The primary obligations in this Law apply to –
  - (a) Any person who is a party;
  - (b) any legal practitioner or other representative acting for or on behalf of a party;
  - (c) any firm of legal practitioners acting for or on behalf of a party;
  - (d) any person who provides financial assistance or other assistance to any party in so far as that person exercises any direct control, indirect control or any influence over the conduct of the civil proceeding or of a party in respect of that civil proceeding, including, but not limited to –
    - (i) an insurer;
    - (ii) a provider of funding or financial support, including any litigation funder; and
    - (iii) **Court officials/staff.**
- (2) Subject to subsection (3), the primary obligations do not apply to any witness in a civil proceeding.
- (3) The primary obligations specified in Sections 15, 18, 19, 21, 22 and 23 of this Law apply to any expert witness in a civil proceeding.
- (4) Subsection (3) is in addition to, and not in derogation from any existing duties applying to expert witnesses.

**9. Application of primary obligations – civil proceedings .**

- The primary obligations in this Law apply in respect of the conduct of any aspect of a civil proceeding in a court, including, but not limited to –
- (a) any interlocutory application or interlocutory proceedings;

- (b) any appeal from an order or a judgment in a civil proceeding;
- (c) any alternative dispute resolution undertaken in relation to a civil proceeding.

**10. Primary obligations prevail over certain other obligations and duties.**

Subject to the paramount duty, the primary obligations prevail over any legal obligation, contractual obligation or other obligation which a person to whom the primary obligations apply may have, to the extent that the obligations are inconsistent.

**11. Primary obligations and legal practitioners.**

- (1) The primary obligations do not override any duty or obligation of a legal practitioner to a client, whether arising under the common law or by or under any statute or otherwise, to the extent that those duties and obligations and the primary obligations can operate consistently.
- (2) Despite subsection (1), a legal practitioner or a firm of legal practitioners engaged by, or on behalf of, a client in connection with a civil proceeding must comply with the primary obligations despite any obligation the legal practitioner or the firm of legal practitioners has to act in accordance with the instructions or wishes of the client.
- (3) In the case of any inconsistency between any primary obligation and a duty or obligation referred to in subsection (1) or an instruction or a wish referred to in subsection (2) –
  - (a) The primary obligation prevails to the extent of that inconsistency; and
  - (b) In the case of the instruction or wish of a client, the legal practitioner is not required to comply with any instruction or wish of the client which is inconsistent with the primary obligation.

12. **Legal practitioner or firm of legal practitioners not to cause client to contravene primary obligations.**

A legal practitioner or a firm of legal practitioners engaged by, or on behalf of, a client in connection with a civil proceeding must not by his, her or its conduct **cause to support, assist, aid or counsel** the client to contravene any primary obligation

13. **Legal practitioner's duty to court not overridden.**

Nothing in this Part overrides any duty or obligation of a legal practitioner to the court, whether arising under the common law or by or under any statute or otherwise.

14. **Paramount duty**

Each person to whom the primary obligations apply has a paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that person is involved, including, but not limited to:

- (a) any interlocutory application or interlocutory proceeding;
- (b) any appeal from an order or a judgment in a civil proceeding;
- (c) any alternative dispute resolution undertaken in relation to a civil proceeding.

15. **Primary Obligation to act Honestly.**

A person to whom the primary obligations apply must act honestly at all times in relation to a civil proceeding.

16. **Primary obligation - requirement of proper basis.**

A person to whom the primary obligations apply must not make any claim or make a response to any claim in a civil proceeding that –

- (a) is frivolous; or
- (b) is vexatious; or
- (c) is an abuse of process; or
- (d) does not, on the factual and legal material available to the person at the time of making the claim or responding to the claim, as the case requires, have a proper basis.

17. **Primary obligation to only take steps to resolve or determine dispute.**

For the purpose of avoiding undue delay and expense, a person to whom the primary obligations apply must not take any step in connection with any claim or response to any claim in a civil proceeding unless the person reasonably believes that the step is necessary to facilitate the resolution or determination of the proceeding.

18. **Primary obligations to cooperate in the conduct of civil proceeding.**

A person to whom the primary obligations apply must cooperate with the parties to a civil proceeding and the court in connection with the conduct of that proceeding.

19. **Primary obligation not to mislead or deceive.**

A person to whom the primary obligations apply must not, in respect of a civil proceeding, engage in conduct which is -

- (a) misleading or deceptive; or
- (b) likely to mislead or deceive.

20. **Primary obligation to use reasonable endeavours to resolve dispute.**

A person to whom the primary obligations apply must use reasonable endeavours to resolve a dispute by agreement between the persons in dispute, including, if appropriate, by alternative dispute resolution, unless-

- (a) it is not in the interests of justice to do so; or
- (b) the dispute is of such a nature that only judicial determination is appropriate.

21. **Primary obligation to narrow the issues in dispute.**

If a person to whom the primary obligations apply cannot resolve a dispute wholly by agreement, the person must use reasonable endeavours to -

- (a) resolve by agreement any issues in dispute which can be resolved in that way; and
- (b) narrow the scope of the remaining issues in dispute unless-
  - (i) it is not in the interest of justice to do so; or
  - (ii) the dispute is of such a nature that only judicial determination is appropriate.

**22. Primary obligation to ensure costs are reasonable and proportionate.**

A person to whom the primary obligations apply must use reasonable endeavours to ensure that legal costs and other costs incurred in connection with the civil proceeding are reasonable and proportionate to –

- (a) the complexity or importance of the issues in dispute; and
- (b) the amount in dispute.

**23. Primary obligation to minimize delay.**

For the purpose of ensuring the prompt conduct of a civil proceeding, a person to whom the primary obligations apply must use reasonable endeavours in connection with the civil proceeding to - (a) act promptly; and (b) minimize delay.

**24. Primary obligation to disclose existence of documents.**

- (1) Subject to subsection (3), a person to whom the primary obligations apply must disclose to each party the existence of all documents that are, or have been, in that person's possession, custody or control -
  - (a) of which the person is aware; and
  - (b) which the person considers, or ought reasonably consider, are critical to the resolution of the dispute.
- (2) Disclosure under subsection (1) must occur at –
  - (a) the earliest reasonable time after the person becomes aware of the existence of the document; or
  - (b) such other time as a court may direct.
- (3) Subsection (1) does not apply to any document which is protected from disclosure -
  - (a) on the grounds of privilege which has not been expressly or impliedly waived; or
  - (b) under any other Law or enactment .
- (4) The primary obligation imposed by this section –



- (a) is an ongoing obligation for the duration of the civil proceeding; and
- (b) does not limit or affect a party's obligations in relation to discovery.

**25. Protection and use of information and documents disclosed under primary obligation in Section 24 of this Law.**

- (1) A person who receives any information or documents provided by another person involved in the civil proceeding as a result of disclosure in compliance with the primary obligation in section 24 of this Law is subject to an obligation not to use the information or documents, or permit the information or documents to be used, for a purpose other than in connection with the civil proceeding.
- (2) The obligation under subsection (1) is taken to be an obligation to the court, contravention of which constitutes contempt of court.
- (3) A person –
  - (a) may agree in writing to the use of information or documents otherwise protected under subsection(1); or
  - (b) may be released from the obligation imposed under subsection (1) by leave of the court.
- (4) Without limiting this section or discovery in any civil proceeding, any information or documents exchanged in compliance with the primary obligation in Section 24 of this Law must be tendered in evidence in the civil proceeding to be admissible in that proceeding.
- (5) Nothing in this section limits any other undertaking to a court (implied or specific) whether at common law or otherwise, in relation to information or documents disclosed or discovered in a civil proceeding.

**26. Court may take contravention of primary obligations into account.**

- (1) In exercising any power in relation to a civil proceeding, including the power to issue a Procedural Caution or to commit for contempt under sections 50(2) (a) and (b) of this Law, a court may take into account any contravention of the primary obligations.
- (2) Without limiting subsection (1), in exercising its discretion as to costs, a court may take into account any contravention of the primary obligations.

**27. Court may make certain orders.**

- (1) If a Court is satisfied that on the balance of probabilities, a person has contravened any primary obligation, the court may make any order it considers appropriate in the interests of justice including, but not limited to –
  - (a) an order that the person pay some or all of the legal costs or other costs or expenses of any person arising from the contravention of the primary obligation;
  - (b) an order that the legal costs or other costs or expenses of any person be payable immediately and be enforceable immediately;
  - (c) an order that the person compensate any person for any financial loss or other loss which was materially contributed to by the contravention of the primary obligation, including-
    - (i) an order for penalty interest in accordance with the penalty interest rate in respect of any delay in the payment of an amount claimed in the civil proceeding; or
    - (ii) an order for no interest or reduced interest;
  - (d) an order that the person take any steps specified in the order which are reasonably necessary to remedy any contravention of the primary obligations by the person;

- (e) an order that the person not be permitted to take specified steps in the civil proceeding;
  - (f) a Procedural Caution under Section 50 (2) (a) and (b) of this Law;
  - (g) any other order that the court considers to be in the interests of any person who has been prejudicially affected by the contravention of the primary obligations.
- (2) An order under this section may be made –
- (a) on the application of –
    - (i) any party to the civil proceeding; or
    - (ii) any other person who, in the opinion of the court, has a sufficient interest in the proceeding; or
  - (b) on the court's own motion.
- (3) This Section does not limit any other power of a court to make any order, including any order as to costs.

**28. Application for orders under Section 27 of this Law.**

- (1) An application for an order under Section 27 of this Law is to be made –
  - (a) in the court in which the civil proceeding was, or is being, heard; and
  - (b) in accordance with the rules of court.
- (2) An application for an order under section 27 of this Law must be made prior to the conclusion of the civil proceeding to which the application relates.
- (3) For the purposes of subsection (2), if an order, including an order in respect of costs, is made after the date of conclusion of the civil proceeding to which the application relates, the date of making of

the last of the orders is taken to be the date of conclusion of that proceeding.

**29. Extension of time for application.**

- (1) Despite Section 28 (2) of this Law, a person may apply to the court for an extension of time to apply for an order under Section 27 of this Law after the finalization of the civil proceeding.
- (2) The court may grant an extension of time for making an application under Section 27 of this Law if satisfied that the party making the application was not aware of the contravention of the primary obligations until after the end of the period specified in Section 27 of this Law.

**PART 3.**

**PRE-LITIGATION REQUIREMENTS**

**30. Application of this Part.**

- (1) This Part does not apply to –
  - (a) a civil proceeding which is an appeal;
  - (b) a civil proceeding under Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
  - (c) a civil dispute to which the Companies and Allied Matters Act , Cap. C20, Vol. 3, LFN, 2010 applies;
- (2) This Part does not apply to any civil proceeding or class of civil proceedings if the rules of Court provide that the pre-litigation requirements do not apply to that proceeding or that class of proceeding.

**31. Compliance with pre-litigation requirements prior to commencement of civil proceedings.**

- (1) Subject to subsection (2), each person involved in a civil dispute must comply with the pre-litigation requirements prior to the

commencement of any civil proceeding in a court in relation to that dispute.

- (2) Subsection (1) applies to the commencement of a civil proceeding in a court on or after the day that is six (6) months after the commencement of this Law.
- (3) Nothing in this section prevents a court exercising any power it has before the commencement of this Law in relation to the conduct of civil proceedings, including in relation to costs.

### **32. Pre-litigation requirements.**

- (1) Each person involved in a civil dispute must take reasonable steps, having regard to the person's situation and the nature of the dispute:
  - (a) to resolve the dispute by agreement; or
  - (b) to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.
- (2) For the purposes of this Section, reasonable steps include, but are not limited to –
  - (a) the exchange of appropriate pre-litigation correspondence, information and documents critical to the resolution of the dispute;
  - (b) the consideration of options for resolving the dispute without the need for civil proceedings in a court, including, but not limited to resolution through genuine and reasonable negotiations or alternative dispute resolution.
- (3) Each person involved in a civil dispute must not unreasonably refuse to participate in genuine and reasonable negotiations or alternative dispute resolution.

**33. Protection and use of information and documents disclosed under pre-litigation requirements.**

- (1) A person involved in a civil dispute who receives any information or documents provided by another person involved in a civil dispute in accordance with the pre-litigation requirements is subject to an obligation not to use the information or documents, or permit the information or documents to be used, for a purpose other than in connection with –
  - (a) the resolution of the civil dispute between the persons involved in the civil dispute; or
  - (b) any civil proceeding arising out of the civil dispute.
- (2) The obligation under subsection (1) is taken to be an obligation to the court, contravention of which constitutes contempt of court.
- (3) A person involved in a civil dispute or a party –
  - (a) may agree in writing to the use of information or documents otherwise protected under subsection (1); or
  - (b) may be released from the obligation imposed under subsection (1) by leave of the court.
- (4) Without limiting this section or discovery in any civil proceeding any documents exchanged in accordance with the pre-litigation requirements –
  - (a) are required to be discovered in any subsequent civil proceeding to be admissible in that proceeding; and
  - (b) may be available for use in any subsequent civil proceeding accordingly.
- (5) Nothing in this Section limits any other undertaking to a court (implied or specific) whether at common law or otherwise, in relation to information or documents disclosed or discovered in a civil proceeding.

**34. Proceedings may be commenced despite non-compliance.**

- (1) Unless a court otherwise orders or rules of court otherwise provide, a court may not prevent the commencement of civil proceedings in the court merely because of non-compliance with the pre-litigation requirements.
- (2) Without limiting subsection (1) of this Section, and notwithstanding anything contained in rules of Court, any action in which urgent interim relief is sought may be commenced without complying with pre-litigation requirements, whether those requirements are provided for by this Law or by rules of Court.

**35. Persons generally to bear own costs of compliance with pre-litigation requirements.**

Subject to this Part, each person involved in a civil dispute or each party to a civil proceeding is to bear that person's or party's own costs of compliance with the pre-litigation requirements, unless the rules of court otherwise provide.

**36. Court may make orders as to costs of compliance with pre-litigation requirements .**

- (1) Despite Section 35 of this Law, a court may order that a party to a civil proceeding pay all or a specific part of another party's costs of compliance with the pre-litigation requirements if satisfied that it is reasonable to do so, having regard to furthering the primary objective.
- (2) Despite Section 35 of this Law, a court may order that a legal practitioner or representative of a party to a civil proceeding, rather than the party, in the legal practitioner's or representative's own capacity, pay all or a specific part of another party's costs of compliance with the pre-litigation requirements if the court is satisfied that, by the legal practitioner's or representative's conduct in relation to compliance with the pre-litigation

requirements, another party has unnecessarily incurred costs in complying with the pre-litigation requirements.

- (3) In making an order under this section, a court may order –
  - (a) that the costs be taxed, assessed, settled or reviewed under Part 13 of this Law.
  - (b) that the costs be payable immediately and be enforceable immediately.
- (4) A Court may make an order under this Section –
  - (a) of its own motion; or
  - (b) on the application of any party to the civil proceeding.

**37. Court may take failure to comply with pre-litigation requirements or pre-litigation process into account.**

- (1) If a court is satisfied that a party to a civil proceeding has failed to comply with the pre-litigation requirements, the court may take into account that failure –
  - (a) in determining costs in the proceeding generally;
  - (b) in making any order about the procedural obligations of parties to the civil proceeding;
  - (c) in making any other order it considers appropriate.
- (2) A Court may make an order under subsection (1) –
  - (a) of its own motion; or
  - (b) on the application of any party to the civil proceeding.

**38. Scales of fees and scales of costs.**

For the purposes of this Part, scales of fees or scales of costs in relation to compliance with the pre-litigation requirements may be fixed – (a) by regulations; or (b) by rules of Court.



## **PART 4.**

### **ELECTRONIC FILING, SERVICE AND CERTIFICATION OF PROCESSES**

#### **39. Electronic Case Filing.**

- (1) The Chief Judge may issue regulations in the form of practice directions to establish and regulate the use of an Electronic Case Filing system.
- (2) The practice directions referred to in sub-section (1) may authorize the use of Court Licensed Electronic Case Filing Agency.
- (3) Where practice directions are made to authorize the use of Court Licensed Electronic Case Filing Agency, such regulations shall:
  - (a) Prescribe the criteria and procedure for licensing the Court Licensed Electronic Case Filing Agency.
  - (b) Prescribe the procedure for selecting a Court Licensed Electronic Case Filing Agency for a case.
  - (c) Provide for the remuneration of the Court Licensed Electronic Case Filing Agency by the parties, on terms that fees paid to the Court Licensed Electronic Case Filing Agency are recoverable under a costs order made by a court
  - (d) Prescribe the duties and obligations of a Court Licensed Electronic Case Filing Agency to the parties and to the Court.
  - (e) Provide for sanctions to be applied in the event of a breach of a Court Licensed Electronic Case Filing Agency's duty, including but not limited to suspending, revoking or not renewing the licence of a Court Licensed Electronic Case Filing Agency.
- (4) Where the breach of a Court Licensed Electronic Case Filing Agency's duty to the court or to the parties amounts to an offence against the administration of justice under this Law the Court

Licensed Electronic Case Filing Agency shall be liable to prosecution.

40. **Authorization for electronic filing.**

Processes in a case shall be filed under the court's Electronic Case Filing system where:

- (a) The Court has an Electronic Case Filing system and
- (b) The parties have agreed to use the Electronic Case Filing system, or
- (c) A law, rule of court, practice direction or order of court requires that parties should use the Electronic Case Filing system.

41. **Electronic Service.**

- (1) The Chief Judge may issue regulations in the form of practice directions to supplement the provisions of this Part in relation to electronic service of court processes.
- (2) The practice directions referred to in sub-section (1) may authorize the use of Court Licensed Electronic Process Servers.
- (3) Where practice directions are made to authorize the use of Court Licensed Electronic Process Servers, such regulations shall:
  - (a) Prescribe the criteria and procedure for licensing Court Licensed Electronic Process Servers
  - (b) Prescribe the procedure for selecting a Court Licensed Electronic Process Server for a case
  - (c) Provide for the remuneration of the Court Licensed Electronic Process Server by the parties, on terms that fees paid to the Court Licensed Electronic Process Server are recoverable under a costs order made by a court
  - (d) Prescribe the duties and obligations of a Court Licensed Electronic Process Server to the parties and to the court
  - (e) Provide for sanctions to be applied in the event of a breach of a Court Licensed Electronic Process Server's duty, including but not limited to suspending, revoking or not

renewing the license of a Court Licensed Electronic Process Server.

- (4) Where the breach of a Court Licensed Electronic Process Server's duty to the court or to the parties amounts to an offence against the administration of justice under this Law, the Court Licensed Electronic Case Filing Service Provider shall be liable to prosecution.

#### **42. Authorization for electronic service.**

- (1) A document may be electronically served if:
  - (a) Electronic service is provided for by law, practice direction or court order; or
  - (b) The recipient agrees to accept electronic service
- (2) In this Section, electronic service means a notification to an electronic address, including but not limited to an email address or a social network portal, which:
  - (a) provides a hypertext link to an electronic site where the court process sought to be served may be downloaded and
  - (b) generates an electronic feedback that the notification has been delivered to the electronic address
- (3) A party indicates that the party agrees to accept electronic service by:
  - (a) serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice shall include the electronic service address at which the party agrees to accept service; or
  - (b) electronically filing any document with the court.
- (4) A party who requests an order that a process be served electronically shall provide proof that the electronic service address to which the party proposes to send a notification of service has been used by the party intended to be served during a period not longer than thirty days preceding the request for electronic service.
- (5) A document may be electronically served on a non-party if the non-party consents to electronic service or electronic service is otherwise provided for by law, practice direction or court order.

All provisions of this Act that apply or relate to a party also apply to any non-party who has agreed to or is otherwise required by law or court order to accept electronic service or to electronically serve documents.

**43. Maintenance of electronic service lists.**

A Court shall maintain and make available electronically to the parties an electronic service list that contains any current electronic service addresses provided by the parties.

**44. Service by the parties.**

- (1) Notwithstanding Section 43 of this Law, parties are responsible for electronic service on all other parties in the case.
- (2) A party may serve a court process electronically on the condition that the court process is one which may be served by a party under the rules of court.

**45. Change of electronic service address.**

- (1) A party whose electronic service address changes while the appeal or original proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.
- (2) A party's election to contract with a Court Licensed Electronic Process Server to electronically serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under sub-section (1) of this Section.

**46. Reliability and integrity of documents served by electronic notification.**

- (1) A Court Licensed Electronic Process Server that serves a document by means of electronic notification must:

- (a) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;
- (b) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and
- (c) Maintain the hyperlink until the case is concluded.

**47. Proof of service.**

- (1) Proof of electronic service shall be by a certificate in the form prescribed in Appendix B to this Law.
- (2) The Court Licensed Electronic Process Server shall send an electronic copy of the certificate referred to in sub-section (1) to:
  - (a) the electronic address of the court, and
  - (b) the Court Licensed Electronic Case Filing Agency, where the process was filed under section 40 of this Law unless the electronic case filing and electronic service were performed by the same Agency, and
  - (c) the electronic address of the parties.

**PART 5.**

**CASE MANAGEMENT IN HIGH COURT.**

**48. Scheduling: the Case Management Meeting and the Procedural Timetable**

- (1) Within four (4) weeks from the service of a writ of summons or petitions, except originating summons and motions, the parties shall meet with the assigned Judge in Chambers to agree on a procedural timetable for the case (the Case Management Meeting). Alternatively the parties may, by agreement contained in an exchange of correspondence and approved by the Judge, hold such Case Management Meeting by telephone conference and/or video with the Judge.
- (2) The Case Management Meeting shall be held on a date to be appointed by the Judge.

- (3) The Procedural Timetable agreed at the Case Management Meeting shall be in the form set out in Appendix C to this Law
- (4) In the Procedural Timetable, the Judge and the parties shall schedule activities for the case under three different tracks as follows:
  - (a) The Main Hearing Track, which shall consist of the activities set out in the first column of the Table in Appendix E to this Law.
  - (b) The Application Windows which shall consist of the activities set out in the second column of the Table in Appendix F to this Law.
  - (c) The ADR Window which shall consist of the activities set out in the third column of the Table in Appendix G to this Law.
- (5) Unless in exceptional circumstances, no activity on the Main Hearing Track shall be delayed on account of any activity in an Application Window or in the ADR window. Accordingly, the Judge and the parties shall schedule and implement activities in the Application Windows and in the ADR Window such that they run concurrently with events on the Main Hearing Track.
- (6) On or before the date of the first Case Management Meeting, each party shall designate a case representative by letter to the Judge and the other party.
- (7) A case representative shall be responsible for ensuring that the party complies with its paramount obligation and its primary obligations under this Law, and that all case management directions and agreements are implemented.
- (8) Where the party is a natural person, the party's case representative shall be that party or another natural person that the party has appointed by Power of Attorney, or in the event of the death of such party, the party's executors or administrators.

- (9) Where the party is a non-natural person, the case representative shall be a staff of that party who has sufficient authority to make decisions regarding the management of the case.
- (10) Where a party is a non-natural person and its designated case representative leaves the employment of the party, the Directors of the party or, where the body has no Board of Directors, the members of its governing body shall be jointly and severally responsible for ensuring that a new case representative is designated.

49. **Participation in the Case Management Meeting is not a Waiver of Jurisdictional Objections.**

A party's participation in the Case Management Meeting shall not constitute a waiver of any jurisdictional objection, and the court shall schedule the hearing of any jurisdictional objection in accordance with the Procedural Timetable agreed at the Case Management Meeting.

50. **Enforcement of Deadlines in the Procedural Timetable.**

- (1) The deadlines in the Procedural Timetable shall be strictly enforced in accordance with the following principles:
  - (a) Subject to paragraph (f) (i) and (ii) of this sub-section, where a failure to comply with a deadline on the Procedural Timetable causes an adjournment of a hearing date or results in an increased demand on the court's time, the defaulting party will, at the direction of the Judge, be liable to pay a default penalty to the court as may be specified in the court's rules or practice directions;
  - (b) Subject to paragraph (f) (i) and (ii) of this sub-section, where a failure to comply with a deadline on the Procedural Timetable results in wasted party costs, the defaulting party shall, at the Judge's direction, pay the wasted costs of the non-defaulting party on a full indemnity basis and such costs shall be assessed in accordance with the procedure and the principles set out in Part 13 of this Law

- (c) As soon as a party knows that it is unable to meet a deadline, it shall promptly notify the court and the other party, and a Case Management Meeting must be held with the Judge in chambers or, as the parties and the Judge may agree, by telephone conference or correspondence, to revise the Procedural Timetable.
- (d) If the non-defaulting party indicates that it will oppose the defaulting party's application for the extension of a procedural deadline, the defaulting party must file an application for extension of time which will be heard in court;
- (e) The application for extension of time must state:
  - (i) the date when the defaulting party first became aware of the circumstances giving rise to the failure to meet the procedural deadline and
  - (ii) whether the circumstances were caused by: (a) the defaulting party; (b) the defaulting party's Legal Practitioner; (c) another party or (d) the Court;
- (f) Where a party's failure to meet a procedural deadline is caused by an act or omission of:
  - (i) The defaulting party – then the default penalty and the costs mentioned in sub-section (1) (a) and (b) above will be paid by the defaulting party;
  - (ii) The defaulting party's Legal Practitioner - then the default penalty and the costs mentioned in sub-section (1) (a) and (b) above will be paid by the defaulting party's Legal Practitioner;
  - (iii) Another party – then such other party shall not be entitled to be reimbursed for its wasted costs, but shall be liable to pay any costs and default fees referred to in sub-section (1) (a) and (b) above as may be directed by the Judge;



- (iv) The Court – then the Judge shall cause an inquiry to be made as to the circumstances of the act or omission and must make a note of such circumstances in the Revised Procedural Timetable and, as the case may be, in the court’s decision on the application for extension of time.
- (2) Where a party or its Legal Practitioner persistently defaults in meeting a procedural deadline, or persistently causes another party to fail to meet a procedural deadline, the following consequences will apply:
  - (a) Where a party’s act or omission causes that party or another party to fail to meet a procedural deadline on more than two occasions cumulatively,
    - (i) the Judge will issue a Procedural Caution to the party in the form of a court order as set out in Appendix D to this Law.
    - (ii) if, after the issuance of a Procedural Caution as mentioned in (i) above, the party to whom the Procedural Caution is issued does an act or makes an omission that causes that party or another party to fail to meet a procedural deadline, the Judge may summarily commit the party’s case representative, or, in the event there is no case representative, the Directors of the party, to prison for contempt;
  - (b) Where an act or omission of a party’s Legal Practitioner causes that party or another party to fail to meet a procedural deadline on more than two occasions cumulatively,
    - (i) the Judge shall issue a Procedural Caution to the Legal Practitioner in the form of a court order as set out in Appendix A to this Law.

- (ii) if, after the issuance of a Procedural Caution as mentioned in (i) above, the Legal Practitioner to whom the Procedural Caution is issued does an act or makes an omission that causes that party or another party to fail to meet a procedural deadline, the Judge may summarily commit the Legal Practitioner to prison for contempt;
- (iii) in addition to (i) and (ii) above, the Judge shall issue a report of the Legal Practitioner's conduct to the Disciplinary Committee of the Nigerian Bar Association and the Legal Practitioners' Privileges Committee.

## **PART 6.**

### **SUMMARY JUDGMENT**

**51. References to defendant and plaintiff in this Part.**

In this Part, a reference -

- (a) to a plaintiff includes a reference to a plaintiff by counterclaim; and
- (b) to a defendant includes a reference to a defendant by counterclaim.

**52. Plaintiff may apply for summary judgment in proceeding.**

A plaintiff in a civil proceeding may apply to the court for summary judgment in the proceeding on the ground that a defendant's defence or part of that defence has no real prospect of success.

**53. Defendant may apply for summary judgment in proceeding.**

A defendant who has a counter-claim in a civil proceeding may apply to the court for summary judgment in the proceeding on the ground that a plaintiff has no defence to such Counter-Claim or that the Plaintiff's claim or part of the Plaintiff's claim has no real prospect of success.

**54. Summary judgment if no real prospect of success.**

- (1) Unless in exceptional circumstances, a court shall give summary judgment in any civil proceeding if satisfied that a claim, a defence or a counterclaim or part of the claim, defence or counterclaim, as the case requires, has no real prospect of success.
- (2) A court shall give summary judgment in any civil proceeding under subsection (1) –
  - (a) on the application of a plaintiff in a civil proceeding;
  - (b) on the application of a defendant in a civil proceeding;
- (3) When determining whether a claim, a defence or a counterclaim or part of the claim, defence or counterclaim, as the case requires, has no real prospect of success, a court shall take into account the documents or other evidence frontloaded with the statement of claim, statement of defence or statement of counterclaim, and in particular shall consider:
  - (a) whether, in the case of a claim or counterclaim, if the defendant did not file any evidence at all, he, she or it would nevertheless be entitled to judgement dismissing or striking out the claim or counterclaim;
  - (b) whether, in the case of a defence, if the plaintiff did not file any further evidence, he, she or it would nevertheless be entitled to judgement for all or part of the claim or counterclaim;
- (4) In order to determine whether a claim, a defence or a counterclaim or part of the claim, defence or counterclaim, as the case requires, has no real prospect of success, a court shall have the power to determine the admissibility of documents or other evidence frontloaded with the statement of claim, statement of defence or statement of counterclaim.
- (5) **Notwithstanding the provisions of Section 51, 52, 53 and 54 of this Law, the Court shall always ensure full hearing of all cases before coming up with judgment.**

**55. Interaction with rules of court.**

The powers of the court under this Part are in addition to, and do not derogate from, any powers a court has under rules of a court in relation to summary disposal of any civil proceeding.

**PART 7.**

**ALTERNATIVE DISPUTE RESOLUTION**

**56. Court may order proceeding to alternative dispute resolution**

- (1) A court may make an order referring a civil proceeding, or part of a civil proceeding, to alternative dispute resolution, provided that no item on the Main Hearing Track and the Application Windows of the Procedural Timetable shall be suspended during the alternative dispute resolution process, unless the parties agree otherwise.
- (2) Subject to the proviso in sub-section (1), and subject to any rules of court, an order under subsection (1) may be made without the consent of the parties if the type of alternative dispute resolution to which the civil proceeding or part of the civil proceeding is referred is not –
  - (a) arbitration; or
  - (b) expert determination; or
  - (c) any other type of alternative dispute resolution which results, directly or indirectly, in a binding outcome.

**57. Interaction with other laws, rules of Court and enactment.**

The powers of a court under this Part are in addition to, and do not derogate from, any powers the court has under any law or enactment in relation to alternative dispute resolution.

## PART 8.

### APPLICATIONS FOR EX-PARTE INTERIM REMEDIES AND THE INTERIM REMEDIES REFERENCE.

#### 58. Provisions regulating the grant of Ex-Parte Restraining or Preservative Orders:

- (1) Where, in any proceeding, a party applies for or has obtained an *ex-parte* order by which a party or non-party is required to perform an act or is restrained from performing an act, the primary principles that a court shall apply when considering an application to grant or discharge such *ex-parte* order are that:
  - (a) The order must be granted in deserving cases
  - (b) The order must only be granted in deserving cases
  - (c) A case is deserving if the party who applies for the order demonstrates *prima facie* that:-
    - (i) There is a real probability that the act which the party seeks to restrain or that the omission which the party seeks to prevent will occur by a date no longer than seven days after the date on which the application for the *ex-parte* order is made and
    - (ii) The party had no knowledge, and could not reasonably have had knowledge of the threat of the act or omission during any period prior to seven working days before the date on which the party filed the application for the *ex-parte* order, or circumstances exist which made it impracticable for the party to apply for the order within the prescribed time despite having such knowledge, and
    - (iii) The party will suffer injury that cannot be cured by an award of pecuniary damages unless the *ex-parte* order is granted, and

- (iv) The party has served an *inter-partes* application for interim relief on the same terms on the other parties or will do so within 24 hours after an *ex-parte* order is made.
- (v) **The party must disclose in affidavit all facts known to the party which will affect the directive of the Judge to grant or refuse to make the order.**
- (d) Notwithstanding paragraph (c), a case is deserving if the order sought is an asset freezing, search or such other special type of *ex-parte* order and the application satisfies any special conditions prescribed by law for the grant of such order
- (e) An order that is shown not to meet the requirements of paragraph (c) of Section 58 (1) of this Law, or that has been obtained in breach of a party's duty of full disclosure to the Court must be discharged promptly.
- (f) A party's duty of full disclosure to the court includes a duty to disclose, in the affidavit supporting the application for the *ex-parte* order:-
  - (i) Every case or argument which, to the knowledge of the applying party, any other party has made in contradiction to or in opposition to the allegations forming the basis of the applying party's case for substantive and interim relief.
  - (ii) Any written notice served by any party pursuant to sub-section (2) of Section 58 of this Law.
- (g) The duty referred to in paragraph (f) Subsection 58 (1) of this Law is not satisfied by merely exhibiting a document to the affidavit supporting the application for an *ex-parte* order.

- (2) A person may, by written notice delivered to another person (in this sub-section called the potential applicant) undertake:-
- (a) To participate in any hearing scheduled for the consideration of any application by the potential applicant for an *ex-parte* order, where the hearing is scheduled for a date not less than 48 hours from the service of the application for the *ex-parte* order on the party and
  - (b) For a period not more than seven days after the service of the application for the *ex-parte* order, to refrain from acting or failing to act in a manner that may pre-empt any order that may be made by the court.
- (3) Where it is disclosed to a Court hearing an application for an *ex-parte* order that -
- (a) A person has given notice in the terms set out in sub-section (2) of Section 58 of this Law, but
  - (b) The party applying for the *ex-parte* order has not served the application on the person giving the notice

The Court shall direct that the person giving the notice be served with the application for the *ex-parte* order.

Provided that the court may proceed to hear and grant the application for the *ex-parte* order or deal with the matter in such other way as may appear just to it if the person giving the notice does not appear at a hearing scheduled not less than 48 hours from the service of the application for the *ex-parte* order on the person.

- (4) *Any ex-parte order by which a party or non-party is required to perform an act or not to perform an act shall include an endorsement to be made by the Presiding Judge in the following terms, i.e.*

“This order shall remain in force until ..... (date)..... and no person shall be required to comply with the terms of this order after the aforesaid date”.

- (5) No person shall be held to be in disobedience of an order bearing the endorsement set out in sub-section (4) of this section by virtue of any act done or omitted to be done by such person after the date referred to in the endorsement.
- (6) No person shall be absolved from civil liability for any act done or omitted to be done by such person in order to give effect to an order bearing the endorsement set out in sub-section (4) of this section when such act was done or omitted to be done after the expiration of the date referred to in the endorsement.
- (7) No person shall be held to be in disobedience of an order that does not bear the endorsement set out in sub-section (4) of this section by virtue of any act done or omitted to be done by such person.
- (8) No person shall be absolved from civil liability for any act done or omitted to be done by such person in order to give effect to an order that does not bear the endorsement set out in sub-section (4) of this Section.
- (9) The date to be included in the endorsement set out in sub-section (4) of this Section shall be a date not longer than 7 days from the date on which the *ex parte* order is made.
- (10) The date mentioned in the endorsement set out in sub-section (4) of this Section may be extended by a court if and only if a party or non-party who is required to perform an act or not to perform an act has, by act or omission, precluded or delayed a prompt re-consideration of the *ex-parte* order at the *inter-partes* hearing referred to in sub-section 11 of this Section.
- (11) When a Judge makes an *ex-parte* order by which a party or non-party is required to perform an act or not to perform an act, the Judge shall schedule a date, no longer than fourteen days from the date on which the *ex-parte* order is made, for an *inter partes* hearing to re-consider the *ex-parte* order.
- (12) At the *inter partes* hearing scheduled for the re-consideration of the *ex-parte* order, the Court shall:-



- (a) **hear any application to discharge the *ex-parte* order or extend the duration of the order;**
  - (b) refer the parties to an Interim Remedies Reference in accordance with Section 59 of this Law, unless the parties have otherwise agreed terms upon which the *ex-parte* order may be continued or discharged, or upon which a different type of order may be made;
  - (c) fix the date by which the Interim Remedies Reference must be concluded.
- (13) At the *inter partes* hearing for the re-consideration of the *ex-parte* order, the Court may, after hearing the parties and after considering all the circumstances, make such other order in place of the *ex-parte* order as may, in the determination of the Court, achieve a fair balance between the parties, and such other order shall last until the earlier of –
- (a) The decision of the Court on an application to discharge the *ex-parte* order or
  - (b) **The decision of the Court on an *inter partes* application for interlocutory injunction following the conclusion of an Interim Remedies Reference.**
- (14) **The provisions of this Part shall operate without prejudice to any Law which:**
- (a) **Limits the circumstances in which mandatory orders may be granted;**
  - (b) Provides for additional conditions that an applicant for an *ex-parte* restraining or preservative order must satisfy
  - (c) Provides for the grant of an asset freezing, search or other specific type of *ex-parte* order under special conditions.

**59. The Interim Remedies Reference.**

- (1) Whenever an application is made to court for any of the remedies mentioned in sub-section (2) below, the court shall make an order directing the parties to explore, by way of an Interim Remedies Reference, the possibility of agreeing, with the assistance of a neutral and under the rules of a licensed Dispute Resolution Institution and any other individual chartered mediators and conciliators, terms upon which the order may be made or refused, or upon which a different type of order may be made, and shall adjourn the hearing of the application for a period not exceeding thirty days during which the Interim Remedies Reference must be concluded.
- (2) This Section applies to applications for:
  - (a) Interim and interlocutory injunctions
  - (b) Interim preservation of property
  - (c) Any other interim or interlocutory application where the purpose of such application is to protect the subject matter of the litigation or of any evidence that is required for the purpose of the litigation.
- (3) When adjourning the application as aforesaid, the court shall, after hearing the parties, make any order for the interim preservation of the subject matter of the dispute, or such other order as may be required by the circumstances of the case, to last until the date on which a Consent Order is made under sub-section (5) of this section or until the *inter partes* application is determined under sub-section (8) of this section.
- (4) Where the parties agree the terms upon which a mutually acceptable interim order may be made by the Judge, such terms will be drawn up in the form of Interim Terms of Settlement signed by the parties and the neutral.
- (5) At the resumed sitting in relation to the application, the Judge will make a Consent Order in terms of the Interim Terms of Settlement.

- (6) If the parties cannot agree terms upon which a mutually acceptable interim order may be made by the Judge, the neutral will file a report with the court stating his or her findings as to what measure will: (a) best preserve the value of the subject of the dispute and (b) achieve the most commercially viable balance between the parties' respective interests.
- (7) At the resumed *inter partes* hearing, the parties shall have the opportunity to comment on the findings of the neutral as stated above.
- (8) When determining the *inter partes* application, the Judge shall take into consideration the findings of the neutral as stated above and the parties' comments in relation to those findings.

## **PART 9.**

### **ELECTRONIC RECORDING AND TRANSCRIPTION OF COURT PROCEEDINGS.**

#### **60. Verbatim recording and transcription of all court proceedings.**

- (1) As from the commencement of this Law, all proceedings of the High Court of Ekiti State Courts to which this Law applies shall be recorded, transcribed and provided to the parties in accordance with the provisions set out in the Schedule to this Law.
- (2) As from the commencement of this Law, it shall no longer be required for Judges to record long-hand notes of proceedings, and the verbatim transcripts produced in accordance with the provisions set out in the Schedule to this Law shall be the only valid record of the proceedings of the High Court of Ekiti State to which this Law applies.

## **PART 10.**

### **INTERLOCUTORY APPEALS AND STAY OF PROCEEDINGS.**

#### **61. No stay of proceedings pending interlocutory appeal**

- (1) Except as in sub-section (2) of this section, the proceedings in any matter before the court shall not be stayed to await the outcome of an interlocutory appeal from a decision of that court, and notwithstanding that an interlocutory appeal has been filed, the parties and their Legal Practitioners shall take all steps required, and comply with all directions given by the Judge to ensure that the proceedings are completed in a prompt, cost-effective and efficient manner, and in accordance with the Procedural Timetable.
- (2) Sub-section (1) above does not apply to:
  - (a) An application for stay of proceedings pursuant to sections 4 or 5 of the Arbitration & Conciliation Act, Cap. A. 18 LFN Vol. 1, LFN (2010).
  - (b) An application for stay of proceedings pending an appeal from a court's decision in relation to an application made pursuant to sections 4 or 5 of the Arbitration & Conciliation Act, Cap. A. 18, LFN, Vol. 1, LFN (2010)
  - (c) An application to stay or strike out proceedings commenced in Nigeria where the parties have agreed to resolve their dispute in a court or other tribunal of another country;
  - (d) An application for stay of proceedings pending an appeal from a Court's decision on an application referred to in (c) above.

#### **62. Remedies in place of stay of proceedings.**

- (1) Where:-
  - (a) a party has objected to any proceedings before the court on the ground that:

- (i) such party was not properly served with court process or ought not to have been served with court process;
- (ii) there has been a mis-joinder or non-joinder of a party or
- (iii) any other ground which may be waived by the party's participation in the proceedings;
- (b) the Court has overruled such objection and
- (c) the party has filed an interlocutory appeal from the court's decision overruling such objection,

the party shall not be deemed to have waived such objection by virtue of the fact that such party has taken all steps required, and complied with all directions given by the Judge to ensure that the proceedings are completed.

(2) Where:-

- (a) a party has objected to any proceeding before the Court on the ground that:
  - (i) such party was not properly served with Court process or ought not to have been served with Court process;
  - (ii) there has been a mis-joinder or non-joinder of a party;
  - (iii) the Court lack jurisdiction or any other ground, whether such ground may or may not be waived by the party's participation in the proceedings;
- (b) the Court has overruled such objection and
- (c) the party has filed an interlocutory appeal from the Court's decision overruling such objection;
- (d) a judgement or order has subsequently been made by the Court, by which the party is:
  - (i) directed to pay an amount of money;
  - (ii) required to perform an act or
  - (iii) restrained from performing an act,

the circumstances stated in (a) to (c) above shall be deemed to be special circumstances entitling such party to file an application for stay of execution in the first instance at the Court of Appeal, and no execution, whether by writ of attachment, writ of possession, committal proceedings, garnishee proceeding or howsoever otherwise shall issue against such party until the Court of Appeal has heard and decided upon the application for stay of execution.

## **PART 11.**

### **FAST TRACT APPEAL PROCEEDINGS.**

#### **63. Fast- Track Appeal Procedure:**

- (1) The Supreme Court of Nigeria and the Court of Appeal shall hear appeals qualified for fast track (“qualifying appeals”) in accordance with such rules of court or practice directions as may be in force for the expedited hearing and determination of appeals.
- (2) An appeal is a qualifying appeal if it is:
  - (a) an appeal against a decision where an interim or interlocutory restraining or preservative order has been granted or refused;
  - (b) an appeal against a decision in relation to any matter arising under the Arbitration and Conciliation Act;
  - (c) an appeal which by rules of court or practice directions is qualified for hearing under the fast tract procedure.

## **PART 12.**

### **DISPUTE RESOLUTION INSTITUTIONS.**

#### **64. Licensing Dispute Resolution Institutions:**

- (1) The Chief Judge shall, upon the application of a Dispute Resolution Institution or other individual chartered mediators and conciliators,

license such institution to provide the services referred to in Sections 59 and 65(d) of this Law, provided that the Dispute Resolution Institution satisfies the eligibility criteria set out in sub-section (2) below.

- (2) An institution shall be eligible to be licensed under sub-section (1) if it:
  - (a) is incorporated under the Companies and Allied Matters Act for the purpose of providing Dispute Resolution Services;
  - (b) has its registered office within the court's jurisdiction;
  - (c) has at least two officers among its operational staff who have legal qualifications (at least a first degree in law);
  - (d) has rules of arbitration and mediation;
  - (e) has a list of qualified experts in the following disciplines, namely:
    - (i) Arbitration,
    - (ii) Alternative Dispute Resolution,
    - (iii) Accounting,
    - (iv) Valuation. and
    - (v) such other disciplines as may be prescribed by practice direction.

### **PART 13. COSTS.**

#### **65. General.**

- (1) A successful litigant is entitled to recover from the losing side its reasonable legal and other costs incurred in conducting the proceedings in an economical, expeditious and proper manner.
- (2) Where the Court has made an order in respect of costs, the actual amount recoverable will be determined as follows:
  - (a) If the parties have agreed between themselves the amount of cost that will be paid pursuant to a costs order, then the costs shall be determined in accordance with such agreement;

- (b) Where the parties have not agreed the amount of costs that will be paid, the party in whose favor a costs order has been made may opt for the costs to be assessed by the Judge or to be assessed on taxation;
- (c) Where the party opts for assessment by the court, the Judge shall make his or her own assessment of the amount of legal fees and disbursements which a reasonable litigant is likely to have incurred and award that amount;
- (d) Where the party opts for assessment by taxation, the Judge shall refer the case to taxation under its Rules or to a licensed Dispute Resolution Institution which shall appoint an expert to determine the costs.

**66. Items Recoverable as Costs.**

- (1) The items of expenditure incurred by a litigant that can be recovered as costs are:
  - (a) legal practitioners fees
  - (b) court fees,
  - (c) fees charged by expert witnesses,
  - (d) reasonable travelling and hotel expenses for any witness travelling to the jurisdiction of the court to give evidence;
  - (e) the fees of a Dispute Resolution Institution that has provided a service under this Law;
  - (f) the fees of a Court Licensed Electronic Case Filing Agency;
  - (g) the fees of a Court Licensed Electronic Process Server;
  - (h) the fees of a Court Licensed Recorder and Transcriber;
  - (i) any other expense that has been reasonably and properly incurred by the successful litigant's legal practitioner in the course of conducting the proceedings, and which is not an expense that should



normally be included in the overheads reflected in a legal practitioner's fees.

- (2) When fixing the costs to be paid as attorney's fees, the Court or a taxing expert shall be guided by the principle that only costs reasonably incurred are reimbursable, and shall in particular have regard to the reasonableness of:
  - (a) the number of lawyers engaged to perform particular tasks;
  - (b) the time spent in performing such tasks;
  - (c) the fees or charges ascribed to each lawyer, in the light of any evidence as to comparable fees from other jurisdictions or any scale of charge-out rates that may be published from time to time.
- (3) The fees and costs of a lawyer who is not a Legal Practitioner within the meaning of the Legal Practitioners Act are not recoverable unless they are incurred in obtaining expert evidence of foreign law.

#### **67. Procedure for Taxation.**

- (1) Where the amount of the costs is to be determined by taxation, the successful litigant shall submit a detailed Bill of Costs to the paying party within 14 days from the making of the costs order.
- (2) The paying party shall respond with any objections to the items of cost claimed within 14 days from the date the Bill of Costs is served on that party.
- (3) When responding to the Bill of Costs the paying party shall set out which items of costs are agreed and which items it objects to, and shall give any detailed reasons for such objection.
- (4) If, within 7 days from the response of the paying party, the parties do not agree on the amount of costs recoverable, the successful party shall commence formal taxation by applying to the Court to

direct taxation under its Rules, or to appoint a licensed Dispute Resolution Institution for the purpose of the taxation.

- (5) If the Court directs taxation under its Rules, the taxation shall proceed in accordance with those Rules.
- (6) If the Court appoints a Dispute Resolution Institution for the taxation, the Dispute Resolution Institution shall select a taxation expert and notify such selection to the parties within 14 days from the date that it receives the court order by which it was appointed.
- (7) Within 7 days after the Dispute Resolution Institution notifies the selection of the taxation expert to the parties, a party may state any objection to the expert on the ground that:
  - (a) the expert is not qualified to perform the taxation or
  - (b) there are circumstances which give rise to reasonable doubts about the independence or impartiality of the expert.
- (8) If no objection is communicated to the Dispute Resolution Institution within 7 days after the Dispute Resolution Institution notifies the selection of the taxation expert to the parties, the Dispute Resolution Institution shall confirm the appointment of the taxation expert and notify the parties.
- (9) If a party objects to the taxation expert, the Dispute Resolution Institution shall determine the objection in accordance with its rules for the taxation of costs. If it rejects the objection, it shall confirm the appointment of the taxation expert. If it upholds the objection, it shall select another taxation expert and notify the parties.
- (10) Within 7 days after it receives notice of the confirmation of the taxation expert's appointment, the successful party shall submit to the taxation expert, with copy to the paying party and the Dispute Resolution Institution, a claim bundle consisting of:
  - (a) its Bill of Costs accompanied by relevant supporting documents;

- (b) any objections to the Bill of Costs communicated by the paying party under sub-section 67 (7) above;
  - (c) its written submissions in response to any objections communicated by the paying party.
- (11) If the paying party has not communicated any objections to the items of cost claimed, the successful party shall apply to the taxing expert for a Costs Certificate in default for the full amount claimed.
- (12) If the paying party had communicated an objection to the Bill of Costs, it shall submit written submissions in reply to those of the successful party within 14 days after it receives the claim bundle.
- (13) The taxation expert shall conduct the costs determination in accordance with any rules for taxation of costs maintained by the responsible Dispute Resolution Institution, and shall issue his or her decision in the form of a Costs Certificate setting out the amount that the paying party must pay.

**68. Assessing the Costs of a Losing Party who has Appealed.**

- (1) A losing party who has been adjudged liable to pay the costs of the proceedings and who has appealed from the judgment of the Court in the substantive case may:
- (a) at the time the court is requested to assess the costs of the successful party under section 65(2) of this Law, require the Court to assess its own costs as well;
  - (b) at the time of submitting its response to a Bill of Costs under section 67(2) of this Law, submit its own Bill of Costs to the successful party.
- (2) Where the losing party submits its own Bill of Costs to the successful party pursuant to sub-section 68 (1) of this Law, the procedure set out in section 67 of this Law shall apply to the losing party's Bill of Costs in the same manner as they apply to the successful party's Bill of Costs.

- (3) In the event that an appellate court upholds the losing party's appeal, it shall award the costs of the proceedings in the lower court for the amount certified by the taxation expert in respect of the losing party's Bill of Costs.

**69. Review of Taxation by a Judge.**

If any party is dissatisfied with the amount of the Costs certificate issued by the taxation expert, it may apply to a Judge to review the taxation expert's decision. The application for review shall be made within 14 days after the decision to be reviewed or within such other period as the Court may allow, and shall be heard and determined in accordance with the rules of the Court in relation to the filing and determination of interlocutory applications.

**70. Fees and Costs of Taxation.**

- (1) The costs of the taxation shall consist of:
  - (a) any court filing fees;
  - (b) the administrative fees of the Dispute Resolution Institution and
  - (c) the fees of the taxation expert.
- (2) The costs of the taxation shall be recoverable and shall be included in the Costs Certificate issued by the taxation expert.

**71. Enforcement of Costs Certificate.**

- (1) The amount awarded by the taxation expert's Costs Certificate shall be enforceable as a judgment debt in the same way that an order of the Court for the payment of money is enforced.
- (2) Proceedings for the assessment or taxation of costs shall not be stayed on account of an appeal from the judgment of the court in the substantive dispute, provided that no amount awarded by the taxation expert's Costs Certificate shall be enforced until any application for stay of execution of the judgment has been determined.

72. **Application of this Part.**

For the avoidance of doubt, this Part of this Law shall apply to proceedings in the High Court of Ekiti State.

73. **Citation.**

This Law shall be cited as Ekiti State Administration of Civil Justice Law, 2019.

**FIRST SCHEDULE**  
**VERBATIM RECORDING AND TRANSCRIPTION**  
**OF PROCEEDINGS.**

*Selection of CLRTs:*

1. The Chief Judge shall license Recorders and Transcribers (“Court Licensed Recorders and Transcribers” or “CLRTs”). A list of licensed CLRTs will be published by the Court on its website and through other means by which the court communicates with the public. CLRTs will be licensed on the basis of the following criteria:
  - (i) A CLRT must be incorporated under the Companies and Allied Matters Act.
  - (ii) A CLRT must have a paid up capital of not less than ₦1,000,000.00, or such other amount as a Head of Court may prescribe by Practice Direction.
  - (iii) A CLRT must have at least two officers among its operational staff who have legal qualifications (at least a first degree in law).
  - (iv) A CLRT must have technical equipment required to:
    - (a) Record full-day sessions of all the cases heard in the court to which the CLRT is assigned;
    - (b) Record each case in a separate audio file;
    - (c) Record each audio file in a format which can be zipped and transmitted by email, for example – (MP3, MPEG, WMA ..... etc);
    - (d) Record the duration of each recording.
    - (e) A CLRT must offer competitive hourly rates for recording and transcribing.
2. A CLRT will be assigned to as many court-rooms as its proven capacity permits.
3. A license of a CLRT shall not be valid for more than two (2) years and may be reviewed on the basis of:
  - (i) the criteria mentioned above, and

- (ii) the evaluation of the CLRT's performance by the Judge and the parties' legal practitioners.

Operation:

4. The CLRT will set up its audio recording equipment in the court before the court convenes each day.
5. The CLRT will record each case for the day in a separate audio file.
6. Immediately after the court session for the day, the CLRT will send the audio file in zipped format to email addresses provided by: (a) the court and (b) the parties' legal practitioners.
7. The CLRT will transcribe the audio recording and send the transcript by e-mail in Microsoft Word and any other available means of communication format to the parties within 48 hours from the date of the hearing.

Correction of Transcripts:

8. Within 7 days after receiving the transcripts, the parties' legal practitioners will exchange their comments on the transcript by email, copied to the CLRT.
9. Within 7 days thereafter, the parties' legal practitioners will endeavour to agree a common transcript.
10. When the parties' legal practitioners have agreed a common transcript, they will communicate the common transcript to the CLRT by email.
11. If there are any aspects of the transcript on which the parties' legal practitioners cannot agree, the parties' legal practitioners will meet with the CLRT, who will make a final determination based on the recorded audio file, and produce a common transcript.
12. The CLRT will transmit the common transcript to the court in electronic and hard-copy versions, with the parties in copy.
13. A party may obtain a certified true copy of such common transcript from the Court.

14. Notwithstanding the above, correction of transcript shall be governed by the following:
  - (a) A rebuttable presumption of correctness and regularity of the produced transcript;
  - (b) A mandatory certification of a transcript within 48 hours;
  - (c) A process of review of the transcript only where a party or parties dispute the contents or any part thereof;
  - (d) A right to receive the raw record in audio form where the record is disputed.

Remuneration of CLRTs:

15. A CLRT's fees for recording and transcribing will be computed by multiplying its hourly rates by the duration of the proceedings recorded.
16. The fees of the CLRT will be paid directly by the parties to the CLRT, upon an invoice issued by the CLRT to the parties' legal practitioners.
17. Payment of the fees of the CLRT must be shared equally by the parties, and a court shall have the same power to enforce the payment of the CLRT's fees as it has to enforce costs orders made by the court.
18. The fees paid by a party to a CLRT shall be part of the party's costs in the action, and shall be recoverable in the same manner as other costs incurred by the party.

Duty of CLRT and Performance Evaluation:

19. A CLRT has a duty to the court and to the parties to perform its duties with reasonable care and skill, and with utmost honesty and good faith.
20. Each time a CLRT transmits a common transcript to the parties' legal practitioners, it shall enclose with the transcript an evaluation form on



which the Judge and the legal practitioners shall evaluate the performance of the CLRT on a performance scale of 1 to 3, where:

1 = Dissatisfied

2 = Impressed

3 = Very Impressed

21. A legal practitioner who has evaluated a CLRT shall transmit such evaluation to the Court and the other parties by email, with the CLRT in copy.
22. A Judge who has evaluated a CLRT shall transmit such evaluation to the other parties' legal practitioners by email, with the CLRT in copy.
23. Practice directions may provide for sanctions to be applied in the event of a breach of a CLRT's duty to the court and to the parties, including but not limited to suspending, revoking or not renewing the licence of a CLRT.
24. (1) Where the breach of a CLRT's duty to the court or to the parties amounts to an offence against the administration of justice under an Act of the National Assembly or a law of a State, the CLRT shall be liable to be prosecuted for such offence.  
(2) A breach of CLRT's duty by CLRT to the court or to the parties shall be an offence under this law and upon conviction be liable to a fine of ₦100,000.00

**SECOND SCHEDULE**  
**APPENDIX A**  
**PROCEDURAL CAUTION TO LEGAL PRACTITIONER**  
**IN THE [COURT]**  
**SUIT NO....**  
**BETWEEN**  
**[PLAINTIFF/CLAIMANT/APPLICANT]**  
**• And -**  
**[DEFENDANT/RESPONDENT]**

To [Name and address of Legal Practitioner]

TAKE NOTICE that if by act or omission, you further cause [party] to default in meeting a deadline on the Procedural Timetable:

1. You will be liable to be committed to prison for contempt.
2. Your conduct will be reported to the Disciplinary Committee of the Nigerian Bar Association and the Legal Practitioners' privileges Committee.

Dated this .....day of.....

**JUDGE**

**THIRD SCHEDULE.**

**APPENDIX B**

**Proof of Electronic Service.**

**IN THE [COURT]**

**SUIT NO....**

**BETWEEN**

**[PLAINTIFF/CLAIMANT/APPLICANT]**

**• And -**

**[DEFENDANT/RESPONDENT]**

I, [Name of relevant officer in Court Licensed Electronic Service Agency] of [address of Court Licensed Electronic Service Agency] whose electronic address is [email address of Court Licensed Electronic Service Agency] do hereby certify, on oath, that:-

1. On [date] I served a copy of the following document(s) on the following parties or their counsel of record electronically by [state manner of electronic service, identity of the person on whom service was effected and electronic service address of person on whom service was effected.
2. I am not related to and I have connection with either/any of the parties to this suit.
3. I make this affidavit in good faith...etc

**DEPONENT.**

## FIFTH SCHEDULE.

### APPENDIX C

#### CASE MANAGEMENT – PROCEDURAL TIMETABLE.

S/N	Main Hearing Track	Application Windows	ADR Window
1.	Service of Statement of Claim	<u>Application Window 1</u>	ADR Window starts.
2.	Case Management Meeting (4 weeks after (1))	<ul style="list-style-type: none"> <li>• Injunctions, Preservative orders, etc</li> </ul>	
3.	Statement of Defence and Counterclaim  ([.....] days after (1))	<u>Application Window 2</u>	
4.	Statement of Reply  ([.....] days after (2))	<ul style="list-style-type: none"> <li>• Summary Judgement</li> </ul>	
5.	Notice to Admit/Notice of Admission/Agreement on admitted issues and contested issues  ([...] days after [...])	<ul style="list-style-type: none"> <li>• Joinder.</li> <li>• Consolidation.</li> </ul>	
6.	Discovery/Inspection  ([...] days after [...])	<u>Application Window 3</u>	
7.	Trial/Hearing	<ul style="list-style-type: none"> <li>• Strike-out applications.</li> <li>• Accounts.</li> </ul>	

8.	Respondent's submissions  ([...] days after [7])	Written			
9.	Respondent's submissions  ([...] days after [8])	Written			ADR Window ends
10.	Claimant's Written submission  ([...] days after [9])				
11.	Respondent's Reply on Points of Law  ([...] days after [10])				
12.	Oral Submissions				
13.	Judgement  ([...] days after [13])				

**FOURTH SCHEDULE**  
**APPENDIX D**  
**PROCEDURAL CAUTION TO PARTY**  
**IN THE [COURT]**  
**SUIT NO....**  
**BETWEEN**  
**[PLAINTIFF/CLAIMANT/APPLICANT]**  
**- And -**  
**[DEFENDANT/RESPONDENT]**

To [Name and address of party]

TAKE NOTICE that if you further default in meeting a deadline on the Procedural Timetable, you will be liable to be committed to prison for contempt.

Dated this .....day of.....

**JUDGE**