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CHAPTER H2

HIGH COURT LAW

A Law for the establishment of a High Court of justice for Jigawa State and for other purposes relating to the administration of justice.

[Amended by Law No. 7 of 2004.]

[Date of commencement: 12th February, 1998]

PART I

*Preliminary***1. Citation**

This Law may be cited as the High Court Law.

2. Interpretation

In this Law, unless the context otherwise requires—

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

“**Attorney-General**” means the Attorney-General of the State or, where the context shall require, means the Attorney-General of the Federation;

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

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

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

“**Criminal Procedure Code**” means the Criminal Procedure Code established under the Criminal Procedure Code Law;

“**customary law**”

[Definition of “customary law” deleted by Law No. 7 of 2004.]

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

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

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

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

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

“**Federation**” means the Federation of Nigeria;

“**first class chief**” means a head chief duly graded as first class under the provisions of the Emirs (Appointment and Deposition) Law;

“**Former Supreme Court**” means the Supreme Court of Justice for Nigeria established by section 3 of the Supreme Court Law;

“**Governor**” means the Governor of the State;

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

“**Judge**” includes the Chief Judge and a Judge of the High Court;

“**Judgment debt**” includes a decree;

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

“**Mandamus**”—

- (a) for the purposes of section 22 means the order of *mandamus* made in an action as defined in subsection (4) of that section;
- (b) for the purposes of sections 24 and 27, means the order of *mandamus* by which the prerogative writ of *mandamus* has been replaced;

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

“**oath**” shall include solemn affirmation and statutory declaration;

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

“**order**” includes a rule;

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

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

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

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

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

“**prescribed**” means prescribed by rules of court;

“**reference**” means a reference under an order made by the Court under the provision of this Law of Rule of Court;

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

“**second class chief**” means a head chief duly graded as second class under the provisions of the Emirs (Appointment and Deposition) Law;

“**Shari’ah Court**” means a court established, or deemed to have been established under the Shari’ah Courts Law;

“**Shari’ah Court of Appeal**” means the Shari’ah Court of Appeal established under the Shari’ah Court of Appeal Law;

“**suit**” includes action;

“**Supreme Court**” means the Supreme Court of Nigeria established by section 210 of the Constitution;

“**upper Shari’ah Court**” means an upper Shari’ah Court established or deemed to have been established, under any Shari’ah Courts Law.

PART II

Constitution of the High Court

3. Establishment of the High Court

- (1) There shall be established a High Court of Justice for the State.
- (2) The name of such court shall be the High Court of Justice of Jigawa State of Nigeria.

4. Constitution of the Court

(1) In addition to the Chief Judge the Court shall consist of such number of judges as may be appointed from time to time.

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

5. Qualifications of judges

The qualifications for appointment to the office of judge of the High Court shall be such as are prescribed by the Constitution.

6. Retiring age of judges

A judge shall vacate his office when he attains the age of sixty-five years.

7. Powers of judges

(1) All the judges of the Court shall have in all respects, save as is herein expressly otherwise provided, equal power, authority and jurisdiction under this Law.

(2) Any judge of the Court may, subject to the other provisions of this Law and of any rules of court, exercise all and any part of the original jurisdiction, civil and criminal, vested by this Law in the Court, and for such purpose shall be and from a court.

8. Precedence of judges

(1) The Chief Judge for the time being shall be the President of the Court and in his absence the senior judge present shall preside.

(2) The judges shall take precedence after the Chief Judge in order according to the date of their respective appointments and, in the case of two or more appointments having been made on the same day, in such order as the Governor may by notice in the *State Gazette* direct.

9. Salaries of judges

There shall be paid to the Chief Judges and other judges of the High Court such of salaries as may be determined from time to time.

*Seal of the Court***10. Seal**

(1) The Court shall have and use, as occasion may require, a seal, bearing the inscription "The High Court of Justice of Jigawa State of Nigeria". The seal of the Court shall be kept by the Chief Judge, and a duplicate thereof shall be kept by each judge. The Chief Judge and judges may entrust the seal or duplicates to such officers of the Court from time to time as they may respectively think fit.

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

PART III

*Jurisdiction and Law***11. General jurisdiction of High Court**

The High Court shall be a superior court of record, and in addition to any other jurisdiction conferred by the Constitution, this Law or any other written law shall, be exercised subject to the limitations of the Constitution.

12. Specific subjects included in jurisdiction

Subject to the provisions of the Constitution and in particular to such of them as are reproduced in sections 13 and 14 hereof the jurisdiction vested in the Court shall include—

- (a) the judicial hearing and determination of matters in difference;
- (b) the review of cases reported to it under the Shari'ah Courts Law;
- (c) the administration or control of property and persons; and
- (d) all criminal jurisdiction which at the commencement of this Law was, or at any time afterwards may be exercisable within the State for the repression or punishment of crimes or offences or for the maintenance of order.

13. Jurisdiction excluded in certain respects

The Court shall not have jurisdiction in any disputes or matters or in respect of any questions in relation to which its jurisdiction is excluded by the provisions of the Constitution or by any legislation replacing the same.

14. Procedure for interpretation of Constitutions in High Court cases

If any question as to the interpretation of the Constitution arises in any proceedings in the High Court or in any other court established for the State such question shall be determined in the High Court manner or manners respectively prescribed by the Constitution or by any legislation replacing the same.

15. Jurisdiction not to be exercised in certain matters

(1) Subject to, the provisions of the Land Use Act, 1978 and of any other written law the High Court shall not exercise original jurisdiction in any suit or matter which—

- (a) raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a customary court;
- (b) is subject to the jurisdiction of a Shari'ah Court relating to marriage, family status, guardianship of children, inheritance or the disposition of property on death.

(2) The provisions of subsection (1) shall have effect except—

- (a) in so far as the Governor may by order otherwise direct;
- (b) in suits transferred to the High Court under the provisions of the Shari'ah Courts Law or any law replacing the same.

16. Power to appoint guardians and committees of lunatics

The Court shall have all powers and authorities in relation to the appointment and control of guardians of infants and their estates, and also keepers of the persons and estates of idiots, lunatics, and such as being of unsound mind are unable to govern themselves and their estates.

17. Mandamus in an action, injunctions and receivers

(1) The Court may grant a *mandamus* (as defined in subsection (4)) or an injunction, or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so.

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

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought, is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

(4) For the purposes of this section "*mandamus*" means the order of *mandamus* made in an action, commanding the fulfilment by a person of a quasipublic duty in which another person has a personal and private interest.

18. Relief against forfeiture for non-payment of rent

In the case of any action for a forfeiture brought for non-payment of rent, the Court shall have power to give relief in a summary manner, and subject to the same terms and condition against in all respects as to payment of rent, costs and otherwise as can be imposed by the Court, and if the lessee, his executors, administrators or assigns are so relieved they shall hold the demised premises according to the terms of the lease and without the necessity of any new lease.

19. Execution of instrument by order of Court

Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes as valid as if it had been executed or endorsed by the person originally directed to execute or endorse it.

20. Reconciliation in civil cases

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

21. Credit to Nigerians

The Court shall not enforce against a Nigerian living in any area specified by order under this section, which order the Governor is hereby empowered to make, any obligation incurred by him towards a non-Nigerian in respect of a commercial transaction, so far as it is based on credit, if it appears to the Court in its discretion that it was not reasonably probable that the Nigerian was fully aware of the nature of the obligation and the consequences of failure to perform the same.

*Prerogative Writs and Certain other State Proceedings***22. Orders of *mandamus*, prohibition and *certiorari***

(1) The prerogative writs of *mandamus*, prohibition and *certiorari* shall be issued by the High Court.

(2) Subject to the provisions of section 13 and section 25 the Court shall have all the jurisdiction to make an order of *mandamus* requiring any act to be done or an order of prohibition prohibiting any proceedings or matter, or an order of *certiorari* removing any proceedings, cause or matter into the High Court for any purpose.

23. Injunction in lieu of *quo warranto*

(1) Informations in the nature of *quo warranto* are hereby abolished.

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

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

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

24. Injunction of High Court limited in issue of prerogative orders

No order of *mandamus*, of prohibition or of *certiorari* and no injunction under the provisions of section 25 shall be made or granted by the High Court in respect of any proceedings in a Shari'ah Court or in the Shari'ah Court of Appeal save such as may be necessary in the exercise of its powers under section 42 of the Constitution or any law enactment under that section, or in accordance with courts rule of procedure.

*Law to be Applied***25. Extent of application of law**

Subject to the provisions of any written law and in particular of this section and of sections 29 and 31 of this Law—

- (a) the common law;
- (b) the doctrines of equity,

and shall, in so far as they relate to any matter with respect to which the Legislature of the State, is for the time being competent to make laws, be in force within the jurisdiction of the Court.

26. Law and equity to be concurrently administered

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

27. Rules of equity to prevail

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

28. Determination of matter completely and finally

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

*Probate***29. Law and practice in probate cases**

The jurisdiction of the High Court in probate cases and proceedings may, subject to the provisions of this Law and especially of section 30, and to rules of court, be exercised by the Court.

* Sections 28 to 34 are currently subject to review throughout the Federation to dispense with the currency of the Statutes of General Application and Imperial Laws. Jigawa State had made some of the necessary laws at the closing date for the Revision and these are included in the list of chapters. Reference should be made to the Application of Laws (Miscellaneous Provisions) Edition (BAS 13 of 1989) included at Cap. 8.

*Customary Law***30. Application of customary law**

(1) The High Court shall observe, and enforce the observance of customary law which is not repugnant to natural justice, equity, and good conscience, not incompatible either directly or by implication with any law for the time being in force, and nothing in this Law shall deprive any person of the benefit of any such customary law.

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

(3) No party shall be entitled to claim benefit of any 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 regulated exclusively by common law or that such transactions are transactions unknown to customary law.

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

*Practice and Procedure Generally***31. Practice and procedure generally**

Subject to the other provisions of this Law the jurisdiction vested in the High Court shall be exercised, so far as regards practice and procedure, in the manner provided by this Law, by the Criminal Procedure Code or by any other written law including such orders of court as may be made pursuant to this Law or any other written law and, in civil causes and matters, in accordance with the provisions of the High Court (Civil Procedure Rules) Law.

PART IV

*Special Provisions Relating to Appellate Jurisdiction***32. Constitution to prevail**

The provisions of this Part shall have effect only subject to the provisions of the Constitution relating to the appellate jurisdiction of courts established for State.

33. Jurisdiction of High Court in appeals and cases stated from lower courts

The High Court shall have appellate jurisdiction to hear and determine all appeals from the decisions of magistrates' courts and given in the exercise of the original jurisdiction of such courts as well as cases stated or questions of law referred by such courts in accordance with the provisions of any written law.

34. Power of revision of decisions of Magistrates' Courts

The High Court shall have powers of revision in respect of all proceedings in or magistrates' courts in accordance with the provisions of any written law.

35. Constitution of the High Court in its appellate jurisdiction

(1) The High Court in the exercise of its appellate jurisdiction shall, under this Law shall be duly constituted if it consists of at least two judges of that Court.

(2) The determination of any question before a court constituted under this section shall be according to the opinion of the majority of the members of the Court hearing the appeal.

(3) Where in any appeal heard by a court constituted of two judges only the members of the Court fail to agree upon any matter for decision on the appeal then if one of the members agrees with the judgment of the Court or authority from which the appeal is brought that judgment shall be deemed to be the judgment of the Court and in any other event and subject to the provisions of subsection (4) the appeal shall be reserved for hearing before a court constituted of an uneven number of judges not being less than three.

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

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

36. Judgment of the High Court in criminal appeal cases

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

*Appeals from Magistrate's Courts in Civil Cases***37. Power of the High Court in appeals from Magistrates' Courts**

On the hearing of any appeal from a magistrate court the Court may draw any inference of fact and either—

- (a) order a new trial on such terms as the Court thinks just; or
- (b) order judgment to be entered for any party; or
- (c) make a final or other order on such terms as the Court thinks proper to ensure.

38. Procedure on appeal

Subject to the provisions of this and any other written law the procedure, practice and manner of appeals from magistrate courts shall be in accordance with any rules made under this Law and any other written law authorising the making of such rules.

39. Appearance of appellant

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

*Appeals from Magistrates' Courts in Criminal Cases***40. Summary dismissal of criminal appeals**

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

Provided that no appeal shall be dismissed summarily unless the appellant or the legal practitioner appearing for him has had a reasonable opportunity of being heard in support of the same.

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

41. Notice of time, place and hearing

If the judge does not dismiss the appeal summarily, he shall cause notice to be given to the appellant and to the respondent or to their respective legal practitioners, if any, on the record and if one of the parties is a public officer, to the Attorney-General of the time and place at which such appeal will be heard and shall furnish the Attorney-General with a copy of the proceedings and of the notice and grounds of appeal and the provisions of the Criminal Procedure Code shall apply to such service.

42. Determination of criminal appeals from magistrates

On the hearing of any appeal against a conviction by a magistrate in a criminal case the Court shall allow the appeal if it thinks that the judgment of the magistrate should be set aside on the ground that—

- (a) it is unreasonable or cannot be supported having regard to the evidence; or
- (b) the magistrate has made a wrong decision on any question of law; or
- (c) there was a miscarriage of justice,

and in any other case shall dismiss the appeal:

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

43. Power of High Court in criminal appeals from magistrates

On the conclusion of the hearing of an appeal from a magistrate in a criminal case the High Court shall at the same or any subsequent sitting pronounce judgment on the appeal and in giving such judgment the Court may—

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

44. Effect of wrong venue

No finding, sentence or order of any Magistrate's Court sitting in its criminal jurisdiction shall be set aside merely on the ground that the inquiry, trial or other proceeding, in the course of which it was arrived at or passed, took place in a wrong division or district unless it appears that such error has in fact occasioned a failure of justice.

45. Appearance of appellant in criminal cases

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

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

*General Provisions relating to Appeals from Magistrates' Courts***46. Defects in notice of appeal and recognisance**

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

47. Objections to form of grounds for appeal

(1) No objection on account of any defect in the form of setting forth any ground for appeal shall be allowed in an appeal from a District Court or a Magistrate's Court, unless the High Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to inquire into the subject matter thereof or to prepare for the hearing.

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

48. Objections to complaint, charge, conviction or order

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

49. Defects in proceedings under appeal

On any appeal from a decision of a Magistrate's Court no objection shall be taken or allowed to any proceeding in such court for any defect or error which might have been amended by such court, or to any complaint, summons, warrant, or other process to or of such court for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in such court:

Provided, however, that if any error, defect, or variance mentioned in this section appears to the High Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the High Court either to refer the case back to the magistrate, as the case may be, with directions to rehear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

50. Additional evidence

On any appeal from a decision of a Magistrate's Court the High Court may, where it may consider it necessary that evidence should be adduced, either—

- (a) order such evidence to be adduced before the High Court on some day to be fixed in that behalf; or
- (b) refer the case back to the magistrate as the case may be, to take such evidence, and may in such case either direct the magistrate, to adjudicate 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.

51. Restriction on review

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

52. Costs in appeals from magistrates

Subject to the express provisions of this Law, the High Court may in any appeal from appeals from a magistrate make such order as to the costs of the proceedings in the Magistrate's Court, as the case may be, and in the High Court as it may think just.

53. Notice of appeal and limitation of time

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

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

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

54. Enlargement of time

The High Court may, if it deems fit, enlarge any period of time prescribed by this Law (other than the period of time prescribed in section 53 (3)) (or the Magistrate Courts Law) or the Criminal Procedure Code Law (except where that law prescribes a period of time within which notice of appeal must be given against a sentence of caning) or any rules under any of such laws.

55. Finality of judgment

Every judgment of the High Court in an appeal from a District Court or a Magistrate's Court shall, subject to the provisions of the Constitution or any written law relating to further appeal, be final and conclusive.

*Provisions Pending Appeal***56. Provisions pending appeal**

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

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

(3) Subject to the provisions of subsections (1) and (2) of this section, an appeal to the Court of Appeal shall not operate as a stay of execution but the 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.

PART V*Appeals from Shari'ah Courts***57. High Court to hear appeals from upper Shari'ah Courts**

The High Court shall have jurisdiction to hear appeals (other than appeals in respect of which matters which are the subject of the jurisdiction of the Shari'ah Court of Appeal) from upper Shari'ah Courts.

58. Assessors in Shari'ah Court appeals

(1) On the hearing of an appeal from a Shari'ah Court in the exercise of its jurisdiction under section 57 the High Court may, if it shall think fit to do so, require the aid of one or more assessors and may hear the appeal wholly or partially with their assistance.

(2) The High Court may require the aid of such persons as it shall think fit in the capacity of assessors and it shall not be necessary for such persons to be specially qualified within the meaning of section 82 (1).

59. Common law not to be applied in cases governed by customary law

Where the jurisdiction conferred on any Shari'ah Court is, as regards law, practice or procedure, regulated in any particular by customary law, no objection to any proceeding in such court, shall be taken or allowed on the hearing of an appeal from a decision of any court on the ground only that, in any such particular, there has been a failure to principle of common law or any rule of evidence or procedure, if such proceeding or decision is not in fact contrary to natural justice, morality, equity or good conscience nor incompatible with the provisions of any written law.

60. Summary dismissal of criminal appeal from Shari'ah Court

(1) When the High Court has received the requisite notice of appeal and memorandum of the grounds of appeal in a criminal appeal from a Shari'ah Court judge, a judge shall peruse the same and if he considers that there is no sufficient ground for interfering may dismiss the appeal summarily:

Provided that no appeal shall be dismissed summarily unless the appellant or the legal practitioner appearing for him has had a reasonable opportunity of being heard in support of the same.

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

PART VI*Divisions, Distribution of Business, Sessions, etc.***61. Court open throughout the year**

The Court shall be open throughout the year except on Saturdays, Sundays and Public Holidays for the transaction of the general legal business pending therein.

62. Divisions and distribution of business

(1) For the more convenient dispatch of business the Court may sit in two or more divisions.

(2) Subject to the other provisions of this Law and in particular to sections 63 and 64 the Chief Judge—

- (a) shall direct one or more judges to sit in one or more judicial divisions;
- (b) may determine the distribution of the business before the Court among the judges thereof; and
- (c) may assign any judicial duty to any judge or judges.

63. Judicial divisions, sessions, etc.

The Chief Judge may by directions provide, in such manner and subject to such judicial conditions as he may think fit, for all or any of the following matters—

- (a) the division of the State into judicial divisions, the assignment of any part of the State to any judicial division and the designation of any such judicial division by name;

- (b) the appointment of the times and places at which sessions of the High Court are to be held and the alteration of such times and places in such manner as may be specified in any direction made under this section;
- (c) any matters which appear necessary to the Chief Justice for carrying into effect any direction made under this section.

64. Power to dispense with holding of sessions in places where unnecessary

If at any time it appears to the Chief Judge that there is no business or no substantial business to be transacted at a sessions then about to be held at any place, he may, direct that sessions shall not on that particular occasion be held at that place and thereupon such sessions shall not be held.

65. Effect of judge's absence from a sitting

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

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

Power of Transfer

66. Transfer of cause to Magistrate's Court

(1) A judge may at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, transfer any cause or matter before him to a Magistrate Court in the case of a civil cause or matter or a Magistrate's Court in the case of a criminal cause:

Provided that no cause or matter shall be transferred to a Magistrate Court unless the magistrate thereof, as the case may be, has jurisdiction to hear and determine the same.

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

67. Transfer of cause from one judge to another

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

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

- (a) to any particular cause or matter in dependence either—
 - (i) in its entirety; or
 - (ii) in respect of any part thereof; or
 - (iii) in respect of any procedure to be taken thereon; or
- (b) generally to all such causes or matters as may be described in such order whether future or in dependence at the date of the order.

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

68. Power to cancel or vary order of transfer

The Chief Judge or judge, as the case may be, may, at any time before final judgment has been given by the Court to which a cause or matter has been transferred, cancel, vary or amend any order made by him under section 66 or 67 respectively.

69. Telegram to have validity of order

The Chief Judge or judge, as the case may be, may, if it appear expedient, in the first instance transmit by telegram the contents of any order made by him under section 66, 67 or 68 and such telegram shall, until receipt of the said order, have the same validity and effects as if it were the said order.

70. Effects of order of transfer

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

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

71. Power to transfer cause to Shari'ah Court

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

72. Order of transfer not subject to appeal

No appeal shall, subject to the provisions of section 32, lie from any order of transfer made under section 66, 67, 68, 69 or 71.

73. Transfer to Shari'ah Court of Appeal

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

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

74. Transfer from Shari'ah Court of Appeal

Notwithstanding anything contained in any rules made to the contrary, no appeal transferred to the High Court by the Shari'ah Court of Appeal in accordance with section 15 of the Shari'ah Court of Appeal Law, shall be questioned on the ground that it has not been entered within the time prescribed for entering appeals to the High Court.

PART VII

*General Provisions relating to Trial, Practice and Procedure**Trial by Judge Alone***75. Mode of trial in original jurisdiction**

Every proceeding in the High Court in the exercise of its original jurisdiction and all business arising thereout shall, so far as is practicable and convenient and subject to the provisions of any written law, be heard and disposed of by a single judge, and all proceedings in an action subsequent to the hearing or trial, down to and including the final judgment or order, shall, so far as is practicable and convenient, be taken before the judge before whom the trial or hearing took place.

76. Powers of single judge in court and in chambers

A judge may, subject to rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the High Court in all such causes and matters and in all such proceedings in any causes or matters as may be heard in court or in chambers.

77. Discharge of orders made in chambers

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

78. Procedure where second action for same cause

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

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

*Keeping of Minutes***79. Notes of evidence and minutes of proceedings to be kept by presiding judge**

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

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

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

80. Inspection

In any cause, the Court may on the application of either party, or of its own motion, make such order for the inspection by the Court, the jury, 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 respecting such inspection as to the Court may seem fit.

*Trial with a Jury or with Assessors***81. Trial with assessors**

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

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

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

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

*Inquiries and Trials by Referees***83. Reference for report**

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

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

84. Reference for trial

In any cause or matter, other than a criminal proceeding—

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court or a judge conveniently be conducted by the Court through its ordinary officers; or
- (c) if the question in dispute consists wholly or in part of accounts,

the Court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court.

85. Powers and remuneration of referees and arbitrators

(1) In all cases of reference to an official or special referee or an arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and subject to rules of court shall have such authority, and conduct the referee in such manner, as the Court or a judge may direct.

(2) The report or award of an official or special referee or arbitrator on any reference shall, unless set aside by the Court or a judge, be equivalent to a finding of the Court.

(3) The remuneration to be paid to a special referee or arbitrator to whom any matter is referred under an order of the Court or a judge, shall be determined by the Court or a judge.

86. Court to have powers as in submissions

The Court or a judge shall, in relation to references, have all such powers as are conferred by the Arbitration Law on the Court or a judge in relation to submissions.

87. Power to order *habeas corpus ad testificandum* to issue

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

88. Statement of case pending arbitration

A referee or arbitrator may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case the opinion of the Court any question of law arising in the course of the reference.

89. Power of court to impose terms as to costs

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

*Disallowance of Costs in certain Cases***90. Disallowance of costs in certain cases**

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

*Power to Arrest Debtor in certain Cases***91. Power to arrest debtor quitting Nigeria or Jigawa State**

(1) Where the plaintiff in any action in the High Court proves at any time before final judgment by evidence on oath to the satisfaction of the Court that he has good cause of action against the defendant to any amount and that there is probable cause for believing that the defendant is about to quit Nigeria or the State unless he be apprehended and that the absence of the defendant from Nigeria or the State will materially prejudice the plaintiff

in the prosecution of his action, the Court may, in the manner prescribed by rules of court, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he has paid into court such sum claimed and costs, or given security as prescribed by rules of court, that he will not go out of Nigeria or the State without the leave of the Court, in a sum not exceeding the amount claimed in the action.

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

Witnesses

92. Allowances to witnesses and method of payment

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

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

93. Forfeiture for neglecting witness summons

Subject to the provisions of the Evidence Act any person summoned as a witness in the Court 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 given evidence,

shall forfeit a sum not exceeding two hundred naira as the judge may direct:

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

94. Persons in court may be required to give evidence though not summoned

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

95. Evidence of prisoners

A judge may issue a warrant under his hand for bringing 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 any cause depending, or to be inquired of, in the Court:

Provided that such warrant shall not be granted as of course, nor unless the judge shall have probable grounds for believing that the evidence of the prisoner is likely to prove material.

96. Production of prisoners

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

*Saving of Rules of Evidence***97. Law not to affect rules of evidence**

Nothing in this Law and nothing in rules of court made or to be made under this Law shall affect the mode of giving evidence by the oral examination of witnesses, or the rules of evidence:

Provided that nothing in this section shall—

- (a) prejudice the operation of any rules of court made in pursuance of the express power conferred by this Law to make rules of court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given;
- (b) affect the power of the Court for special reasons to allow depositions or affidavits to be read.

*Representation of Parties***98. Right of appearance of legal practitioners**

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

99. 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 the Attorney-General or by any other law officer or legal practitioner duly authorised in that behalf by the Attorney-General.

(2) Subject to the provisions of any written law in any civil cause or matter in which the State or any public officer in his official capacity is a party, that officer may be represented by the Attorney-General or by any other law officer or legal practitioners duly authorised by the Attorney-General.

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

100. Award of costs where public officer represented by law officers

In any civil cause or matter in which a public officer of the State in his official capacity is a party, and is represented, in accordance with the provisions of section 99 (2) may award costs either—

- (a) to or against such public officer personally; or
- (b) to or against the State Government.

101. Representation of local government

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

102. Representation of first and second class chiefs

In any suit brought by or against a first or second class chief in either his official or personal capacity such chief may be represented in the High Court at any stage of the proceedings by any indigene of his chiefdom who shall satisfy the Court that he has the authority to represent such chief.

103. Acting without authority of contempt of court

(1) Any person who does not act or takes any step in any proceedings in the High Court at any stage thereof in the name of or on behalf of any other person without being thereunto lawfully authorised and who knows himself not to be so authorised shall be guilty of contempt of court.

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

PART VIII

Officers of the Court and Rules of Court

104. Chief Registrar, Probate Registrar and other officers

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

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

105. Negligence or misconduct of officers

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

106. Restriction on officers of court buying property sold at execution

No officer of the Court shall or may directly or indirectly or by the intervention of a trustee or otherwise purchase any property sold at execution, and in the event of any such person purchasing or being interested in the purchase of any property at execution sale, such purchase shall be entirely void:

Provided that nothing herein contained shall prevent any such person from purchasing by leave of the Court at an execution sale, any property which it may be necessary for him to purchase in order to protect the interest of himself, his wife or child.

*Commissioners for Oaths***107. Appointment of commissioners for affidavits or for taking evidence**

(1) The Chief Judge may appoint under his hand and the seal of the Court, from time to time, such and so many persons as may be requisite to be commissioners within the State for taking affidavits and declarations and receiving production of documents, or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in the Court, and any order of the Court for the attendance and examination of witnesses or production of documents before any such commissioner shall be enforced in the same manner as an order to attend and be examined or produce documents before the Court.

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

108. Protection of commissioners from actions

No action shall be brought against any commissioner in respect of any act or order *bona fide* performed or made by him in the execution, or supposed execution, of the powers or jurisdiction vested in him, but every such act or order if in excess of such powers and jurisdiction shall be liable to be revised, altered, amended or set aside upon summary application to the Court.

*Protection of Judicial and certain other Officers***109. Protection of judges and persons executing warrants, etc.**

(1) No judge or person appointed to act as a judge shall be liable for any act done by him or ordered by him to be done in the discharge 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 officer of any court or other person bound to execute any warrant or order issued by a judge or by a person acting as a judge shall be liable in any action for damages in respect of the execution of such warrant or order unless it be proved that he executed the same in an unlawful manner.
