

LAWS OF THE NEW SUDAN

CIVIL PROCEDURE ACT, 2003

(PROVISIONAL ORDER)

THE CIVIL PROCEDURE ACT, 2003

PART I

PRELIMINARY PROVISIONS – JURISDICTION TRANSFER OF SUITS-MATTERS NOT WITHIN THE JURISDICTION OF COURTS

CHAPTER 1.

PRELIMINARY PROVISIONS

1. Title and Comment:-

This Act may be cited as the “Civil Procedure Act, 2003” and shall come into effect on the date of signature.

2. Repeal and Saving:-

The Civil Procedure Act, 1994 is hereby replaced provide that all proceedings, orders and regulations taken or made there under shall remain in force until repealed or amended in accordance with the provisions of this Act.

3. Application:-

The provisions of this Act shall apply to procedure related to civil matters, matters of personal status, and other provisions the procedure for which is not provided for by other Laws.

4. Provisions Regulating Procedure:-

The provisions of this Act shall apply to all suits and proceedings pending before the Courts at the commencement of such proceedings except:-

- (a) the provisions modifying jurisdiction, where the commencement of such proceedings, take place after the hearing of the suit has started;
- (b) the provisions regulating the odes of objection in respect of decrees made before the commencement of such provisions where they abrogate an existing mode or create a new one.

5. Rules to be Applied on Suits of Personal Law:-

Where in any suit or other proceedings in a Civil Court, any question arises regarding succession, inheritance, legacies, gifts, marriage, divorce, family relations or the constitution of wafts, the rule for decision of such question shall be:-

- a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience and has not been by this or any other enactment altered or abolished or has not been declared void by the decision of a competent Court;

- b) the Sharia Law in cases where the parties are Muslims except so far as it has been modified by such custom as is above referred to.

6. Law to be Applied in Absence of Express Provisions:-

- (1) In matters of procedure not provided for by this Act, the Court shall apply such rules as are likely to serve the ends of justice.
- (2) In cases not provided for by any law, the Court shall act according to the New Sudan judicial precedents, custom and principles of justice equity and good conscience.

CHAPTER 2.

INTERNATIONAL JURISDICTION

7. Suits against Sudanese:-

With the leave of the Court, and with the exception of suits in respect of immovable property situated abroad, a suit may be instituted against a New Sudan National before Courts of the New Sudan even if he has no domicile or residence in the New Sudan.

8. Suits against a Foreigner with Domicile or Residence in the New Sudan:-

The Courts of the New Sudan shall be competent to try suits instituted against foreigners who are domiciled or resident in the New Sudan except suits in respect of immovable property situated abroad.

9. Suits against a Foreigner with no Domicile or Residence in the New Sudan:-

The Courts of the New Sudan shall be competent to try suits instituted against foreigners who are not domiciled or resident in the New Sudan in the following circumstances:-

- a) if the subject matter of the dispute is connected with a movable or immovable property in the New Sudan.
- b) if the suit is in respect of a liability which arose or was performed or ought to have been performed in the New Sudan, or in respect of an act of bankruptcy or other acts which took place in the New Sudan.

10. Suits of Personal Matters against a Foreigner:-

The Courts of the New Sudan shall be competent to try suits against a foreigner who has no domicile or residence in the New Sudan, in the following circumstances:-

- (a) if the suit is for the annulment of marriage or divorce or for judicial separation, provided that the petition is by a wife who is domiciled in the New Sudan against her husband who changed his New Sudan domicile and deserted his wife after the cause of action arose, or who has been deported from the New Sudan;
- (b) if the suit is for maintenance of a child resident in the New Sudan or a parent or a wife who is domiciled in the New Sudan;

- (c) if the suit is in respect of the parentage of a child resident in the New Sudan, or for the termination, restriction, stay, or re-establishment of the guardianship;
- (d) where the suit is related to any personal matter, if the plaintiff is a New Sudan National, or a foreigner and the defendant has no known domicile abroad or where the New Sudan law is the proper law to be applied;
- (e) where the suit relates to guardianship over property, if the minor or the interdict is domiciled or resident in the New Sudan, or where the New Sudan was his last domicile or residence.

11. Several Foreign Defendants:-

The Courts of the New Sudan shall be competent to try suits where all the defendants are foreigners; provided that any one or more of them is domiciled or resident in the New Sudan.

12. Matters of Inheritance and Estates:-

The Courts of the New Sudan shall be competent in matters of inheritance and suits relating to estates of deceased person where such deceased person was a New Sudan National or where the estates or any part thereof are in the New Sudan.

13. Submission to Jurisdiction:-

The Courts of the New Sudan shall be competent to try a suit not within their jurisdiction if the defendant submits to such jurisdiction expressly or impliedly and the Court shall not of its own motion declare itself incompetent for lack of jurisdiction.

14. Local Court Competent:-

In cases where Courts of the New Sudan assume jurisdiction under sections 8, 9, or 12, the plaintiff has the option to institute the suit before the Court within whose jurisdiction he resides or carries on business or before Yei Courts.

15. Subsidiary and Incidental Matters:-

Where a Court of the New Sudan is competent to try a suit such competence extends to all preliminary issues and incidental matters, as well as to all applications connected with such suit, where the demands of justice so require.

CHAPTER 3.

JURISDICTION WITH REFERENCE TO VALUE AND SUBJECT MATTER

16. The Court of Appeal:-

The Court of Appeal shall have jurisdiction to hear and determine the following:-

- a) objections by way of cassation against decrees and orders;
- b) questions involving the constitutionality of laws;
- c) interpretation of the Constitution and legal provisions;

- d) conflict of judicial jurisdiction;
- e) protection of rights and freedoms conferred by the Constitution;
- f) any other matter assigned to its jurisdiction by the Constitution or law;
- g) appeals submitted thereto against judgments and orders of the High Courts;
- h) appeals against administrative decisions made by Regional or National authorities.

17. The High Court:-

(1) A High Court shall have jurisdiction to try original suits without limit as to value or subject matter other than matters and disputes excepted by law.

(2) Without prejudice to the provisions of the above subsection a High Court shall have exclusive jurisdiction to;

- (a) try originally proceedings concerning companies, trade marks, business names, bankruptcy and settlement between creditors;
- (b) to try originally suits regarding matters of personal law in respect of foreigners.
- (c) hear and determine appeals against judgments and orders of County Court of the first or second grade Judge.

(3) Review administrative decisions made by County authorities, or any authority there under.

18. County Court:-

(1) A County Court of the first grade Judge shall have jurisdiction to try any suit without limit as to value and shall also have jurisdiction to hear and determine appeals against judgments and orders of Payam Courts such other appeals as may be expressly provided by any other law.

(2) A County Court of the second grade Judge shall have original jurisdiction to try suits of value not exceeding LS400.

19. Payam Court:-

(1) A Payam Court shall have original jurisdiction to try suits of a value not exceeding LS250 subject to any limitation which may be contained in its warrant except:-

- (a) suits in which a Government department or unit or any corporation or association which has a legal personality, is a party;
- (b) suits in which the cause of action concerns a bill of exchange or promissory note;
- (c) suits involving the interpretation of any provision of the law;
- (d) any class of suits specified from time to time by the Chief Justice.

(2) Where during the course of a suit, a matter not within the jurisdiction of a Payam Court arises, the latter shall refer that matter to the competent Court and that court shall be bound to proceed with it as if it arose in a suit before itself.

20. Procedure before Payam Court:-

- (1) A suit shall initially be instituted in the competent Payam Court and if the plaint is presented to a County Judge he shall refer it to the appropriate Payam Court.
- (2) If it appears to a Payam Court that it has not jurisdiction, it shall refer the suit to the County Court under whose jurisdiction it falls.

CHAPTER 4.

LOCAL JURISDICTION

21. Courts in which Suits be Instituted:-

Every suit shall ordinarily be instituted in the Court of the lowest grade competent to try it.

22. Suits Relating to Immovable Property:-

Suits relating to immovable property shall be instituted before the Court within whose jurisdiction the immovable property or a portion thereof is situate.

23. Suits for Compensation:-

Where a suit is for compensation for wrong done to a person or to movable property, it shall be instituted before the Court within whose jurisdiction the wrong was done or before the court within whose jurisdiction the defendant resides or carries on business.

24. Other Suits:-

(1) without prejudice to the provisions of section 21, any of the following shall have jurisdiction:-

- (a) the Court within whose jurisdiction the cause of action arises wholly or in part;
- (b) the Court within whose jurisdiction the defendant at the time of the commencement of the suit resides or carries on business;
- (c) the Court within whose jurisdiction any of the defendants at the commencement of the suit resides or carries on business if the Court so permits.

(2) The place of residence of a company, society or corporation shall be deemed to be the place where it carries on business or place where it has its head office or one of its branches.

(3) In suits arising out of contracts, a cause of action arises within the meaning of paragraph (a) of subsection (1) above at any of the following places, namely:-

- (a) the place where the contract was made;
- (b) the place where the contract was to be wholly or partly performed or executed;

- (c) the place where, in accordance with express or implied terms of the contract, any money was payable.

25. Where Competent Court Cannot be Ascertained:-

If the defendant has no residence or place of business in the New Sudan and it is impossible to ascertain the competent Court according to the provisions of this Chapter, the Court within whose jurisdiction the plaintiff resides, or carries on business shall have jurisdiction. If the plaintiff has neither place or residence nor place of business, the Courts in the capital shall have jurisdiction.

CHAPTER 5

TRANSFER OF SUITS

26. Transfer where more than one Court is Competent:-

- (1) Any party may apply to the Court in which the suit has been instituted to have the suit transferred to any one of the other competent Courts.
- (2) The application shall be made at the preliminary stages of the suit, and in all cases shall not be granted where issues are framed.
- (3) After hearing the other party, the Court shall determine on such application considering the interests of the parties and to what extent is it useful to transfer such suit.

27. General Power of Transfer:-

- (1) A High Court Judge may on the application of any party after giving notice to the other parties and hearing such of them as desire to be heard or of his own motion, transfer any suit pending before him or before any Court subordinate to him to any other Court subordinate to him and competent to any suit pending before any Court subordinate to him.
- (2) The Court of Appeal may exercise the powers provided for in sub-section (1) in relation to any suit pending before any Court subordinate to it.
- (3) The Chief Justice may exercise the powers provided for in sub-section (1) in relation to any suit pending before any Court in the New Sudan.

CHAPTER 6

MATTERS NOT WITHIN THE JURISDICTION OF COURTS

28. Prior Adjudication:-

- (1) No Court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of their claims, litigating under the same title in any Court in the New Sudan. Of competent jurisdiction established under this or any other Act, if the suit or issue has been heard and finally decided by such Court.
- (2) Any application contained in a petition or a ground of defense in such former suit shall be deemed to have been a matter directly substantially in issue in such suit.
- (3) Any relief claimed in the plaint which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been rejected.
- (4) Criminal proceedings are not a suit within the meaning of this section.

29. Pending Suits:-

No suit shall be allowed in respect of a dispute pending before a competent Court.

PART II.

FRAMING OF SUIT,; SUMMONS, VALUATION OF A SUIT, APPEARANCE AND NON-APPEARANCE OF PARTIES

CHAPTER 1

Framing of Suit

30. Contents of the Suit:-

- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
- (2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
- (3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

- (4) For the purposes of this section, an obligation and collateral security for its performance and successive claim arising under the same obligation shall be deemed respectively to constitute but one cause of action

31. Power of Court to Order Separate Trials:-

Where it appears to the Court that all causes of action in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

32. Institution of Suits:-

- (1) unless the law provides otherwise, every suit shall be instituted by presentation of a written plaint by the plaintiff.
- (2) Suits by or against the Government or any of the Government departments, shall be instituted by or against the Civil Authority of New Sudan (CANS).
- (3) No suit shall be instituted against CANS or against a public servant in respect of any act purporting to be done by such public servant in his official capacity or during or by reason of discharge of his duty unless and until either the plaintiff or the Court, as the case may be, have served notice of the claim or of the intention to institute proceedings, on the Attorney-General and two months (or such shorter period as the Attorney-General shall agree) shall have elapsed after such service.

33. Suing on Behalf of or Defending Persons Having Same Interest:-

- (1) Where there is a number of persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give notice of the institution of the suit to all such persons either by personal service or, where such service is, not reasonably practicable, by advertisement in newspapers or in such other manner as the County may direct.
- (2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-section (1) shall be afforded a reasonable opportunity to object and may apply to be made a party to the suit.

34. Date on Which Suit Deemed Instituted:-

A suit is deemed to be instituted on the date of payment of Court fees or, if the plaintiff is excused from payment of fees by law or order of Court, on the date of presentation of the plaint.

35. Contents of Plaint:-

The plaint shall contain the following particulars:-

- (a) The name of the Court in which the suit is instituted;
- (b) The name, profession, or occupation and place of residence of the plaintiff;
- (c) The name, profession, or occupation and place of residence of the defendant;

- (d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) The facts constituting the cause of action and when they arose;
- (f) The facts showing that the Court has jurisdiction;
- (g) The relief which the plaintiff claims;
- (h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) A statement of the value of the subject matter of the suit.

36. Amendment of Plaintiff:-

When there is an error or omission in the particulars required to be contained in a plaintiff; the Court may return it to the plaintiff for amendment during a period to be fixed by the Court, or may itself cause it to be amended there and then.

37. Summary Dismissal of Plaintiff:-

The Court shall dismiss the plaintiff summarily, where upon examination of the plaintiff and after hearing of the plaintiff if necessary, it appears that:-

- (a) It does not disclose a cause of action;
- (b) The relief claimed is undervalued and the plaintiff on being required to correct the valuation within the time fixed by the Court has failed to do so; or
- (c) The suit is one which the Court is incompetent to try.

CHAPTER 2.

SUMMONS

38. Contents of Summons:-

- (1) Where the plaintiff is presented in the proper form required by section 35 or duly amended in accordance with section 36 the Court shall, if it does not reject the plaintiff under section 37, order that the plaintiff be allowed and the fees to be paid and shall issue summons in the prescribed form containing a precise statement of the reliefs claimed, to the defendant to appear and answer at a named time and place, and it shall be signed by the Judge.
- (2) when fixing the date of hearing, the Court shall allow sufficient time between service of summons and date so fixed for hearing.
- (3) The Court may order that a copy of the plaintiff be attached to the summons.
- (4) Court fees shall be paid within seven days from the date on which payment is ordered, otherwise the plaintiff shall be dismissed.

39. Service of Summons:-

- (1) Service of summons shall be effected by officials of the Court unless the Court sees reason to direct otherwise, or if the law directs otherwise.

(2) Service of summons shall be made by delivering or tendering a copy of the summons.

(3) Wherever it is practicable, service shall be made on the defendant in person unless he has an agent empowered to accept service.

40. Time of Service of Summons:-

No summons shall be served between sunset and sunrise unless it is necessary to do so and leave of the Court is obtained

41. Service on Several Defendants:-

Save as otherwise provided by law, where there are several defendants, service of the summons shall be made on each defendant.

42. Service Where Defendant Cannot be Found or Refuses to Accept Service:-

(1) Where a defendant cannot be found, service may be made:-

(a) on any adult male member of his family residing with him or on his wife who is residing with him;

(b) where the suit is for immovable property, on any agent of the defendant or heir in charge of such property.

(2) Where the person upon whom the summons is to be served, refuses to accept service or where the serving officer after using all due and reasonable diligence cannot find the defendant and there is no agent to accept service of the summons on the defendant's behalf nor any other person on whom service can be made, the serving officer shall return the summons to the Court with a report endorsed thereon or annexed thereto explaining the circumstances.

43. Substituted Service:-

(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by any of the following means:-

(a) by fixing a copy thereof on a conspicuous place in the Court House and also on the door of the house in which the defendant resides; or

(b) by an advertisement in a daily newspaper; or

(c) in such other manner as the Court thinks fit.

(2) Service substituted by order of the Court shall be effective from the time the procedure directed by the Court has been carried out.

44. Service on Person Residing out of the New Sudan:-

If the defendant resides out of the New Sudan and has no an agent empowered to accept service, the summons shall be sent to the Chief Registrar of the Judiciary who shall, in turn, send it to the Secretariat of Foreign Affairs to serve the summons through diplomatic channels, or in such other manner as the Court may direct.

45. Service on a Firm and Business Agents:-

Summons relating to partnership or business agents shall be served at the principal place of business upon any partner or manager business agent or any person having control or management of the partnership business or, where there is no such place of management, upon any partner.

46. Service on Corporation:-

(1) A summon to a company or association having a corporate status shall be served at its principal office upon the secretary or director or any p0rincipal officer of the company or association.

(2) A summon in respect of a foreign company with a branch or agent in the New Sudan shall be served on such branch or agent.

47. Service on Agent Whom Defendant Carries on Business:-

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summon is issued, service of the summon on any manager or agent, who, at the time of the service, personally carries on such business or work for such person within such limits, shall be deemed to be valid service.

(2) For the purpose of this section the captain of a ship shall be deemed an agent for the owner or chatterer of the ship.

48. Service in a Suit against Government:-

Where the CANS or any department or unit of the CANS is sued, the summons shall be served on the Attorney- General.

49. Service on Members of the SPLA and other Regular Forces:-

Where the defendant is a member of the SPLA or other regular forces, the Court shall send the summons to his commanding officer at the place where the SPLA defendant is stationed.

50. Service on Prisoners:-

Summons addressed to prisoners shall be served by delivery to the prisons officer in charge of the prison.

51. Service on Sailors:-

Summons addressed to sailors or to any person working on a ship shall be served by delivery to the captain of the ship.

52. Commencement of Service:-

In the cases provided for in sections 49, 50 and 51, service shall be effective from the time of delivery of the summons to the commanding officer, the prisons officer or the captain of the ship respectively.

53. Transmission of Summons to Another Court:-

A summon may be transmitted for service to the lowest Court within whose jurisdiction the defendant resides, or to any Court by which service can be more conveniently effected.

54. Endorsement of Service:-

The official serving the summons shall endorse on the original summons the date and time of service, the name, trade and profession of the defendant or of the person upon whom it is served and his relation to the defendant. The official shall obtain the signature of such person on the summons or the official shall prove the refusal of such person to receive the summons and the reason thereof.

55. Other Summons:-

The provisions of this Chapter shall, as far as practicable apply to all kinds of summons made by the Court.

CHAPTER 3.

VALUATION OF SUIT

56. Valuation of Suit:-

The value of a suit shall be assessed according to the rules laid down in the Schedule and rules laid down in each locality till such time when the rules committee makes regulations of general application in the New Sudan.

CHAPTER 4.

APPEARANCE AND NON-APPEARANCE OF PARTIES AND THE CONSEQUENCE OF NON APPEARANCE

57. Right to Appear:-

(1) On the day fixed for hearing of the suit, the parties shall attend at the Court in person or by their respective advocates.

(2) An appearance by the following shall be deemed as appearance by the parties themselves:-

(a) the Attorney-General, his representatives and legal counsels appearing on behalf of CANS units, whether Secretariats, Departments or parastatal bodies;

- (b) agents authorized to appear by an authentic power of attorney from an official authority.

58. Limit of Agency:-

Appointment of an agent in a suit empowers him to do all acts pertaining to the institution or defense of the suit until judgment and decree are passed and delivered by the Court before which he was authorized to appear. Without prejudice to the requirement of special authorization in certain matters provided by law, such agency includes receiving of fees and costs.

59. Consequence of Non Appearance of both Parties:-

(1) If both plaintiff and defendant fail to appear at the first sitting, the suit shall be dismissed.

(2) Where a suit is dismissed under sub-section (1), the plaintiff may bring a fresh suit, or if within a period of thirty days from the date of the dismissal of the suit, he satisfies the Court that there was sufficient cause for his failure to appear, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding With the suit.

60. Procedure where only the Plaintiff Appears:-

(1) (a) if the plaintiff appears at the first sitting and the defendant does not appear, the Court shall, if it is proved that the summons are duly served, proceed to hear the suit in his absence;

(b) if it is proved that the summons were not duly served, the court shall adjourn the suit and direct a second summons to be issued and served on the defendant;

(c) if it is proved that the summons was served on the defendant but not in sufficient time to enable him to appear and answer at the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where the defendant appears at any subsequent time to which the hearing is adjourned and assigns good cause for his previous failure to appear, he may, upon such terms as the Court may direct as to payment of costs or otherwise, be heard in answer to the suit in like manner as if he had appeared at the first sitting.

(3) Where a decree is passed against a defendant who has not appeared in accordance with sub-section (1) (a), he shall be notified of such decree, and he may apply at any time within thirty days from the date of notification to the Court by which the decree was passed for an order to set it aside; and he satisfies the Court that the summons was not duly served or that he was fixed for hearing, the Court shall make an order setting aside the decree upon such terms as to costs, payment into Court or otherwise as it thinks fit and shall appoint a day for the hearing of the suit.

61. Procedure where only the Defendant Appears:-

(1) Where at the time fixed for the first sitting, the plaintiff does not appear, and the defendant appears, the Court shall make an order that the suit be dismissed unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

(2) Where a suit is wholly or partly dismissed, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.

(3) Where a suit is so dismissed the plaintiff may apply within thirty days from the date of the dismissal for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

62. Procedure on Appearance of more of Several Plaintiffs:-

Where there are two or more plaintiffs and one or more of them appear and the other do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, proceed with the suit in the same way as if all the plaintiffs had appeared, or make such orders as it thinks fit.

63. Procedure on Non-Appearance of one or more of Several Defendants:-

Where there are two or more of them appear and the others do not appear, the suit shall proceed and the Court shall at the time of pronouncing judgement make such order as it thinks fit with respect to the defendants who do not appear.

64. Notice to be Given to Opposite Party:-

No order shall be made under section 60(3) and no decree shall be set aside under section 61(3) unless notice of the application therefore has been served on the opposite party.

65. Non-appearance of Parties on day to which the Suit is Adjourned:-

Where on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court shall make such decrees or orders as it thinks fit.

PART III.

COURT SITTING, PROCEDURE OF HEARING, WITNESSES

CHAPTER 1.

COURT SITTING

66. Official Language of Courts:-

The official language of the Courts shall be English, but a Court may hear parties or witnesses who are ignorant of English in any other language through an interpreter on oath, subject to any law providing otherwise in respect of certain cases or certain localities.

67. Open Sessions:-

The Court sessions shall be open, but the Court may sit in camera where considerations of public policy or morality so demand.

68. Mode of Taking Evidence in Court:-

The statements of the witnesses and parties to the suit or any documents or pleadings presented by them shall be taken by the Court or a clerk appointed by the Court for this purpose and the record may be read over on application by any of the parties.

69. Adjournment and Extension of Time:-

The Court may, at any stage of the suit for sufficient cause and on such terms as to costs as it thinks fit:-

- (a) from time to time, adjourn the hearing of the suit for short and reasonable periods;
- (b) either before or after the expiration of the time appointed by this Act or by an order of the Court for the doing of any act, extend the time for the doing of such act.

70. Keeping Order in Court:-

(1) The control and management of the sitting are committed to the President of the Court, and subject to the provisions of the Advocates Act 2003, the President of the Court may clear the Court of any person who contravenes the rules of the sitting or immediately sentence him to imprisonment for a period not exceeding seven days or fine not exceeding Ls.3 if he does not obey the order of the Court and the said sentence shall not be subject to appeal.

(2) The Court before the end of the hearing may withdraw such sentence.

CHAPTER 2

PROCEEDINGS OF THE SUIT.

71. Submission of Pleadings:-

- (1) At the first sitting for hearing the suit or at any time subsequent thereto to which the proceedings are adjourned, the Court shall examine the parties who appear, in order to ascertain upon what questions of law or fact the parties are at dispute.
- (2) The Court may, instead of examining the parties, order them to submit written pleadings.
- (3) "Pleading" referred to in sub-section (2) means plaint or written statement of claim or defense.

72. Contents of Pleadings:-

- (1) Every Pleading shall contain the following:-
 - (a) material facts and not law;
 - (b) material facts only in a concise form;
 - (c) material facts and not the evidence by which they are to be proved;
 - (d) dates, sums and numbers expressed in figures;
 - (e) signature of the party or his authorized agent or his advocate.
- (2) Every plaint shall be divided into paragraphs, and numbered consecutively.

73. Contents of Written Statement of Defence:-

- (1) The written statement of defence shall contain the following:-
 - (a) all grounds of defence;
 - (b) specific admission or denial of each ground alleged by the plaintiff, except amount of damages.
- (2) Every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability; provided that the Court may require any allegation of fact not specifically denied to be established by any other mode of proof.

74. Further and Better Statement or Particulars:-

A further and better statement of the nature of a claim or defence or further and better particulars of any matter stated in any pleading, may be ordered by the Court on application of the parties and upon such terms as it thinks fit.

75. Striking out or Amendment of Pleadings:-

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleadings which may be unnecessary, or which may tend to prejudice or delay the trial of the suit.

76. Amendment of Pleadings :-

- 1) The Court may at any stage of the proceedings before judgment, allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such other amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.
- 2) Every amendment shall be made within the time specified by the order of the Court, and if no time is thereby specified, within fifteen days from the date of the order, and no amendment shall be allowed after the expiry of such specified time as aforesaid or of such fifteen days as the case may be, unless the time is extended by the court.

77. Procedure Where Defendant Fails to Present Written Statement Called for by Court:-

Where the defendant from whom a written statement of defence is required, fails to present it within the time fixed by the Court, the Court may, after taking evidence in support of the plaintiffs claim, pronounce judgement against the defendant or make such order in relation to the suit as it thinks fit.

78. Framing of Issues :-

From the examination of parties and their pleadings the Court shall frame and record:-

- (a) the material facts upon which the parties are agreed;
- (b) the questions of law or fact upon which the parties are at variance;
- (c) a note of the evidence they intend to adduce to establish questions of fact which may be in issue.

79. Amendment of Issues :-

The Court at any time before passing a decree may amend the issues or frame additional issues on such terms as it thinks fit in relation to costs or any other matter.

80. Where no Defence is Made :-

The Court is not bound to frame and record issues where the defendant makes no defence.

81. Hearing of Suit:-

After framing of issues the Court shall either proceed at once to hear the suit or appoint a time for the hearing thereof

82. Mode of Hearing:-

- 1) On the day fixed for the hearing of the suit the party upon whom the burden of proof lies shall begin by stating his case and producing his evidence in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence and may then address the Court generally.
- (2) The party beginning may then reply generally on the whole case.

83. Issues of Law and Fact:-

Where issues both of law and of fact arise in the same suit and the Court is of opinion that the case or any party thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the framing of the issues of fact until after the issues of law have been determined.

CHAPTER 3.

WITNESSES

84. Power to Summon Witnesses:-

The Court may at any time, either of its own motion or on the application of any party:-

- (a) issue summons to any person whose attendance is required to give evidence or produce documents or other material objects producible as evidence;
- (b) order any person present in Court to give evidence or to produce any document or other thing then and there in his possession or power;
- (c) make such orders as may be necessary and reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection production, impounding and return of documents or other object as aforesaid.

85. Power to Compel Witnesses to Attend:-

- 1) Where a person to whom a summon has been issued under section 84 neglects or refuses to obey the common, the Court may, if it is satisfied that the person so summoned has failed to comply with it without lawful excuse or has intentionally avoided service, issue a warrant for the arrest of such person.
- 2) The Court may either instead of, or in addition to issuing a warrant of arrest of such person, make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of the attachment and of any fine which may be imposed under subsection (4) below.
- 3) Where at any time after the attachment of his property such person appears and satisfies the Court that he did not without lawful excuse fail to comply with the summons or intentionally avoid service, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment, as it thinks fit.
- 4) Where such person does not appear, or appears but fails to satisfy the Court, the Court may impose a fine on him not exceeding Ls.10 and if necessary may order his property or any part thereof to be attached and sold, or if already attached under subsection (2), to be sold for the purpose of satisfying all costs of such attachment together with the amount of such fine, if any.
- 5) The attachment shall be made in the manner provided for the attachment of property in the execution of a decree.

- 86. Consequence When any Party Present Refuses to give Evidence:-**
Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court to give evidence or to produce any document or other thing in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit
- 87. Expenses of Witnesses:-**
Where a party applies for a summon to be issued to a witness, the Court may order such party to pay into Court such sum of money as the Court thinks reasonable to defray the traveling and other expenses of the person summoned.
- 88. Mode of Hearing Witnesses:-**
Save as otherwise provided by this Act, evidence of the witnesses and of any parties appearing as witnesses shall be taken by or under the personal superintendence of the judge orally and in open Court.
- 89. Witnesses to Take Oath or Make Affirmation:-**
Every witness before giving evidence shall take an oath or make a solemn affirmation that he will speak the truth, the whole truth and nothing but the truth.
- 90. Cross-examination and Re-examination:-**
(1) Each party may cross-examine the opposite party and all his witnesses.
(2) The party calling a witness may re-examine him after he has been cross-examined by the opposite party. After re-examination, the witness shall not be further questioned or re-called, except through or by leave of the Court.
- 91. Irrelevant or Oppressive Question:-**
The Court shall disallow any question which appears to the Court to be irrelevant, oppressive or vexatious.

PART IV

POWER TO DISMISS OR ADD PARTIES JOINDER OF PARTIES-TENDER OF BEST ABATEMENT OF SUITS

CHAPTER 1.

JOINDER OF PARTIES.

- 92. Application for Joinder:-**
(1) Any interested person may apply to the Court to have him joined as a party to the suit.
(2) The application for joinder shall be made to the Court and served on the parties.

(3) No application for joinder shall be allowed after final submissions.

93. Objection to Joinder:-

- 1) Either party to the suit may object to any application for joinder whether submitted by the other party or by a stranger.
- (2) If the Court is satisfied that the application for joinder does not rely on any genuine interest or that it is meant to delay the trial of the suit, it shall reject the application.

94. Power to Dismiss or Add Parties:-

- 1) The Court may of its own motion or on the application of the parties, at any time before passing a decree, order:-
 - (a) That any person be made plaintiff or defendant if his joinder is either necessary or proper for the fair or just trial of the suit or its final disposal;
 - (b) That any plaintiff be made defendant or that any defendant be made plaintiff;
 - (c) That the names of parties improperly or unnecessarily joined be struck out.
- (2) No person shall be added as a plaintiff without his consent.

CHAPTER 2.

TENDER OF DEBT OR DAMAGES.

95. Payment into Court by Defendant:-

- 1) The defendant in any suit to recover a debt or damages may at any stage of the suit deposit in Court such sum of money as he considers to be in full settlement full of the claim.
- (2) Notice of the deposit shall be given by the Court to the plaintiff and the amount of deposit shall with the leave of the Court be paid to the plaintiff on his application.
- (3) No interest shall be allowed to the plaintiff on any sum deposited from the date of the service of such notice on the plaintiff whether such sum is in full settlement of the claim or fall short thereof.

96. Procedure Where Plaintiff Accepts Full or Partial Satisfaction:-

- (1) Where the cause of action in a suit or a part thereof is recovery of money and one of the parties admits that such money is due from him to the other, the Court may order the deposit of such money in Court or the delivery thereof to the other party on such terms as it thinks necessary.
- (2) The execution of such order shall be made in the manner provided for by this Act for execution of financial decrees.

- (3) Where the Court makes a final decree in the suit, it shall take into consideration any sum of money paid or collected in accordance with this section.
- (4) Where the plaintiff accepts such amount as satisfaction in part only of his claim he may proceed with his suit for the balance, and if the Court decides that the deposit was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the cost of the suit incurred after the deposit and the costs incurred previous thereto so far as they were caused by reason of excess claim by the plaintiff.
- (5) Where the plaintiff accepts such amount as satisfaction in full of his claim he shall present to the Court a statement to that effect and the Court shall pronounce judgment accordingly; and in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

CHAPTER 3

ABATEMENT OF SUITS

97. Death of one of the Parties:-

- 1) the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.
- 2) Where a party to a suit dies, his legal representative or heirs shall be made a party to the suit, on the application of such legal representative or heirs or of any party to the suit.

98. Bankruptcy of Plaintiff:-

- (1) The bankruptcy of a plaintiff in any suit which the receiver in such bankruptcy might maintain for the benefit of his creditors shall not cause the suit to abate unless the receiver declines to continue the suit or to give security for the costs or unless for any special reason the Court otherwise directs.
- (2) Where the receiver neglects or refuses to continue the suit the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy and the Court may make an order dismissing the suit or make any order it thinks fit.
- (3) Where a suit abates or is dismissed under the provisions of this section, the receiver may apply for an order to set aside the abatement or dismissal; and if it is proved that He was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal on such terms as to costs or otherwise as it thinks fit.

99. Dismissal of Suit for Abandonment:-

- 1) When a suit is adjourned indefinitely, or until application is made or where an order is made staying a suit, such suit shall be dismissed if an application is made by either party within one year of the date on which the order for adjournment or stay was made.
- 2) Where a suit is dismissed under sub-section (1) no fresh suit shall be brought on the same cause of action, but either party may apply to the Court to set aside the dismissal order; provided that the application is made before the right to sue is extinguished by lapse of time, and the Court may for sufficient reason set aside the dismissal order upon such terms as to costs and otherwise as it thinks fit.

PART V

**JUDGEMENTS – CONTENTS OF JUDGEMENT
COSTS AND INTERESTS – JUDGEMENT IN SPECIAL
CASES**

CHAPTER 1

SUIT RESERVED FOR JUDGEMENT

100. Suit Reserved for Judgement:-

- 1) The Court, after the suit has been heard, shall either immediately or at any subsequent short and reasonable time, of which due notice shall be given, pronounce its judgment.
- 2) If for any reason the Court adjourns the pronouncement of judgement for a second time, the Court shall record its reasons for such adjournment, and shall fix a date for the pronouncement of judgement. The Court shall not thereafter adjourn pronouncement except for substantial and essential reasons to be recorded.

101. Pronouncement of Judgement:-

The judgement shall be pronounced in an open sitting of which due notice shall be given to the parties.

102. Judgement and its Reasons:-

The judgement shall be in writing and shall state the reasons for the decision.

103. Contents of Judgement:-

The judgement shall contain the following particulars:-

- (a) the date and place of judgement and the Court which issued it;
- (b) the name of the judges who passed it;
- (c) the name and description of the parties;
- (d) the admissions and the issues;
- (e) the reasons for the judgement;

- (f) the decree;
- (g) the signature of the judge or judges who passed the judgement.

104. Contents of Decree:-

- (1) the decree shall contain:-
 - (a) the number of the suit;
 - (b) the name and description of the parties;
 - (c) the reliefs granted or other determination of the suit.
- (2) The decree shall also state the amount of costs and by whom such costs are to be paid.
- (3) The decree shall bear the same date as the judgement and the signature of the Judge or Judges who passed it.

105. Decree for Delivery of Movable Property:-

Where the suit is for movable property and the decree is for the delivery of such property the decree shall also state the amount of money to be paid as an alternative if delivery cannot be made.

106. Decree Requiring Alteration in Land Register:-

Where the decree directs an alteration to be made in any register established under any law, the decree shall contain specific direction to the Registrar of Lands to carry out the required alteration.

107. Preliminary Decree:-

In any suit the Court may, before passing its final decree, pass a preliminary decree directing such accounts and inquiries to be taken and made as it thinks fit.

108. Judgement may Determine the Mode of Payment:-

- 1) where and in so far as the decree is for the payment of money, the Court may, for any sufficient reasons, fix the date of payment, or order that payment of the sum decreed shall be made by installments with or without interest.
- 2) Where a judgement debtor defaults in paying any installment, the decree holder shall be entitled to make execution for the whole sum remaining unpaid unless the Court otherwise directs.

109. Interest After Institution of Suit:-

- 1) Where and in so far as a decree is for the payment of money the Court may order interest to be paid on the principal sum adjudged from the date of the institution of the suit to the date of payment or to such other date as the Court thinks fit.
- 2) The rate of interest shall not exceed the rate of interest adjudged on such principal sum of any period prior to the institution of the suit, and shall not exceed:-
 - (a) in the case of a commercial transaction, 30 per cent per annum;
 - (b) in the case of a non-commercial transaction, 20 per cent per annum.

- 3) No interest shall be ordered under this section unless the plaintiff has claimed it in his plaint.
- 4) Where such decree is silent with respect to the payment of interest as aforesaid, the Court shall be deemed to have refused such interest and separate suit therefore shall not be instituted.

110. Cost:-

- 1) The Court, in making a final judgement, shall of its own motion, determine the payment of the costs of the suit.

- 2) Costs shall include fees of advocates and experts and witnesses expenses.

111. The Party Obligated to Pay Costs:-

The judgement debtor shall be ordered to pay the costs, unless the Court for sufficient reasons otherwise directs.

112. Delivery of Copy of Judgement and Decree:-

A copy of the judgement or of any part of the record shall be given to any party on payment of fees and a copy of a decree shall be given without fees.

PART VI

SUITS BY OR AGAINST MINORS AND TRUSTEES – SUITS RELATING TO MORTGAGE OF IMMOVABLE PROPERTY SUIT FOR THE PARTITION OF IMMOVABLE PROPERTY – ARBITRATION

CHAPTER 1

SUIT BY OR AGAINST TRUSTEES, EXECUTORS, ADMINISTRATORS, MINORS OR PERSONS OF UNSOUND MIND

113. Representation of Beneficiaries:-

In all suits concerning property vested in a trustee, executor or administrator, where the suit is between the person, the trustee, executor or administrator, shall represent the persons so interested and it shall not ordinarily be necessary to make them parties to the suit, unless the Court otherwise directs.

114. Joinder of Trustees:-

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them; provided that the executors who have not proved their testator's will, trustees, executors or administrators outside the New Sudan, shall not be made parties unless the Court otherwise directs.

115. Representation of Minor by Guardian Ad Litem:-

In every suit in which a minor is either plaintiff or defendant, he shall be represented by a guardian ad litem appointed by the Court.

116. Guardian of the Property Shall be Appointed Guardian Ad Litem:-

Where a guardian of the property of a minor has been appointed by a Court of competent jurisdiction, such guardian shall be appointed to be the guardian ad litem unless the Court for sufficient reasons otherwise directs.

117. Retirement and Removal of Guardian:-

Where the guardian ad litem desires to retire or does not do his duty or where other sufficient ground appears, the Court may permit him to retire or may remove him and in such case shall appoint a fresh guardian ad litem in his place.

118. Execution Against Minors:-

1) where the execution of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian ad litem shall be appointed and notice of the application shall be served on such guardian.

2) The provisions of section 117 shall apply to the guardian ad litem in the execution.

119. Guardian not to Compromise without Leave of the Court:-

No guardian ad litem shall, without the leave of the Court, enter into an agreement or compromise on behalf of a minor with reference to the suit in which he acts as guardian, and any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

120. Extend of Application of the Provisions of this Chapter:-

The provisions contained in sections 110 to 119 so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who, though not so adjudged, are found by the Court by reason of mental or physical infirmity, to be incapable of protecting their interests when suing or being sued.

CHAPTER 2.

SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

121. Institution of Suit for Redemption:-

(1) A mortgagor may institute a suit for redemption:-

- (a) at any time after the principal money secured by the mortgage become payable; or
- (b) where a time for payment of the principal money is not specified in the mortgage deed, at any time after the expiration of one year from the date of the mortgage.

- (2) Any person who is interested in the mortgaged property or in the mortgage, shall be joined as a party.

122. Conditions for Institution of a Suit for Redemption:-

Where a time for the payment of the principal money is not specified in the mortgage deed or where the mortgagor has not exercised his right to redeem at the expiration of such time, the mortgagor shall not be entitled to redeem except in the following cases:-

- (a) if the property mortgaged is agricultural land and the mortgager has entered into possession in accordance with the terms of the mortgage deed, unless the mortgager has give notice to the mortgagor of his intention to redeem and until the mortgager has had sufficient time to harvest any crop under cultivation at the time of such notice;
- (b) if the property mortgaged is land other than agricultural land and the mortgager has entered into possession in accordance with the terms of mortgage deed, unless the mortgagor has given the mortgager three months notice of his intention to redeem;
- (c) in any other case until the mortgagor has given to the mortgager three months notice of his intention to redeem or has paid or tendered to the mortgager three months' interest in lieu of such notice.

123. Conditions for Institution of a Suit for Sale or Foreclosure:-

1) Where default in payment of the principal or of the interest or of any other periodical payment secured by a mortgage has been made for a period of one month, the mortgager may, after giving notice in writing to the mortgagor of his intention to do so, institute a suit for the sale or foreclosure of the mortgaged property.

- (2) No such suit shall be instituted before the expiration of one month from the service of the notice provided for in sub-section (1).

124. Where a Mortgagee is not Entitled to a Decree for Foreclosure:-

The mortgager shall not be entitled to a decree for foreclosure:-

- (a) where the time for payment of the principal money is not specified in the mortgage deed and the mortgager has entered into possession of the mortgaged property in accordance with the terms of the mortgage deed; or
- (b) in any other case, until the Court has made an order for the sale of the mortgaged property and no sale have been effected.

125. Discharge of Debt on Foreclosure:-

Where the Court has passed a decree for foreclosure the debt secured by the mortgage shall be extinguished.

126. Account between the Mortgagor and the Mortgagee:-

- 1) where during the continuance of the mortgage, the mortgager takes possession of the mortgaged property the Court shall take an account between the mortgagor and the mortgager in the following manner:-

- (a) the mortgager shall be debited with the rents and profits which he has received from the mortgaged property or which, but for his willful default, neglect or mismanagement, he would have received or with fair occupation rent, whichever is the greater, respect thereof;
 - (b) the mortgager shall be credited with any sums property spent by him on the preservation, maintenance and management of the mortgaged property and with any payment of taxation or any other expenses of the mortgaged property which the mortgagors bound to pay;
 - (c) the mortgager shall be credited with an interest not exceeding 40 percent per annum or as the Court may think fit where no payment of interest or any periodical payment in lieu of interest is provided for in the mortgage deed;
 - (d) where the amount of rents and profits mentioned in paragraph (a) and received by the mortgagor exceeds the aggregate of the amounts mentioned in paragraphs (b) and (c), the excess shall be deemed to be in reduction firstly of the amount periodically paid in lieu of interest (if any), and then in reduction of the mortgage money.
- 2) The provisions of this section shall not apply to customary mortgages of agricultural land where both the mortgagor and mortgager are New Sudan Nationals.

127. Decree in Suit for Sale or Foreclosure:-

- 1) in a suit for sale or foreclosure if the plaintiff succeeds, the Court shall make a preliminary decree determining the sum due to the plaintiff, interest and the costs, and directing that:-
- (a) the defendant shall pay into Court the amount so due on a day to be fixed by the Court and not to exceed six months;
 - (b) if the defendant pays into Court the amount so due the plaintiff shall, if so required, retransfer the property to the defendant free from the mortgage and from all encumbrances and shall deliver to the defendant all documents in his possession or power relating to the mortgaged property;
 - (c) if such payment is not made on or before the day fixed by the Court, the Court shall order that the mortgaged property or a sufficient part thereof, be sold by public auction, and the proceeds of the sale (after defraying there out the expenses of the sale) be paid into Court and applied in payment of what is decreed due to the plaintiff as aforesaid, together with subsequent interest and costs and that the balance, if any, be paid to the defendant or other person entitled to receive it.
- 2) Where payment is not made in accordance with sub-section (1), the Court shall on application made in that behalf by the plaintiff, pass a final decree that the mortgaged property or a sufficient part thereof, be sold and that the proceeds of the sale be dealt with as mentioned in the preliminary decree.

128. Conditions of Sale of Land:-

- 1) The provisions relating to the sale of land in execution of a decree shall, so far as may be, applied to a sale under this Part.

- 2) the Court shall fix a reserve price which shall not be less than the amount found due.
- 3) If no offer to purchase at the reserve price is made, the Court may order the property to be put up for sale again in like manner but without a reserve.

129. Application for Foreclosure:-

If no sale is effected the plaintiff may apply to the Court for foreclosure.

130. Procedure Under Application for Foreclosure:-

- 1) Where an application for foreclosure is made under section 129, the Court shall cause notice to be served upon the defendant that it will pass a decree for foreclosure unless a sufficient sum has been paid into Court within one month from the date of such notice to satisfy the amount found due as aforesaid and any further interest, costs and expenses then due including the costs of abortive sale.
- 2) If such sum has not been paid into Court within such time, the Court shall pass a decree for foreclosure.

131. Decree for Foreclosure:-

The decree for foreclosure shall direct that the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property.

132. Right of Subsequent Mortgagee to Redeem and Foreclose:-

Where property is mortgaged for successive debts to successive mortgagees, any mortgagee may institute a suit to redeem the interest of prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

CHAPTER 3.

SUITS FOR THE PARTITION OF IMMOVABLE PROPERTY

133. Who may Institute Partition Suit:-

Where immovable property is held by co-owners in undivided shares a suit for the partition of such property may be instituted by:-

- (a) any one or more of the co-owners; or
- (b) any person in whose favour an order for the sale of an undivided share in such property in execution of decree has been made.

134. Where Partition may be Refused:-

Where the property sought to be partitioned is land which in accordance with local custom is cultivated as a single unit the Court may, if it is satisfied that a partition would be detrimental to the interest of the co-owners generally, refuse to make a partition.

135. Where Court may Order Sale:-

- 1) Where the Court under section 134, refuses to make a partition, or where owing to the number of co-owners or for any other reason the property sought to be partitioned is incapable of partition, and one or more of the co-owners or the person institution the suit demand his or their share be sold, or that such property to be sold, the Court shall in default of any agreement between the co-owners, value the shares of the co-owners who demand the sale, and offer such shares at such valuation to any or all of the other co-owners in such proportion as it thinks fit.
- 2) If the other co-owners are not willing to purchase the shares offered, the Court may order the sale of such property or the separation and sale of such shares, or make such other order for the disposal of the suit as it thinks fit.
- 3) Where the Court orders a sale under sub-section (2), such sale shall be carried out, so far as may be, in the manner prescribed for the sale of immovable property in the execution of a decree.

136. Where Share a Co-Owner is to added to the Share of another Co-owner:-

- 1) Where the property sought to be partitioned is capable of partition generally but the share when partitioned of any particular co-owner is less in area than any minimum laid down by any enactment for the time being in force, the Court shall add such share to the share of any other co-owner or distribute such share amongst two or more other co-owners in such manner and in such proportions as in default of agreement, it thinks fit.
- 2) Where the Court proceeds under sub-section (1), it shall assess the value of such share and shall in the final decree order to be paid to the owner of such share by each person who has received in addition to his share, the value of such addition.

137. Provisions as to Payment:-

Where any sum is payable under section 135 or 136 by any co-owner to any other co-owner the Court may allow such time as it thinks reasonable for payment and such sum shall be a charge on the share of the persons liable to pay it until it has been paid.

CHAPTER 4.

ARBITRATION

138. Reference to Arbitration:-

Where in any suit if all the parties interested agree that any matter in issue between them shall be referred to arbitration, they may at any time before judgement is pronounced apply in writing to the Court for an order of reference.

139. Contents of Reference:-

- 1) The order of reference shall specify the names of the arbitrators, the precise matter or matters submitted to arbitration and such period as it thinks reasonable for the making of the award.
- 2) The Court may make provision in the order of reference for the remuneration of the arbitrators.

140. Appointment of Arbitrators:-

- 1) The arbitrators shall be appointed in such manner as may be agreed upon by the parties.
- 2) Where the parties have agreed upon an even number of arbitrators, the Court shall appoint one additional arbitrator;
- 3) Where the parties cannot agree with respect to the appointment of the arbitrator or arbitrators, each party shall nominate either one or two arbitrators as the Court may decide; provided that each party shall nominate the same number, and the Court shall appoint one additional arbitrator.

141. Appointment of Alternative Arbitrator:-

- 1) Where the arbitrator refuses to accept the office or dies or refuses to act or becomes incapable of acting or if he retires or is dismissed, or leaves the New Sudan in circumstances showing that he will probably not return within a reasonable time, the Court shall call upon the party who nominated such arbitrator or, if such arbitrator was appointed by agreement, upon the parties, to nominate a fresh arbitrator.
- 2) If no arbitrator is nominated within the period fixed by the Court, the Court may, after giving the parties an opportunity of being heard, appoint an arbitrator or make an order superseding the arbitration; and in such case the Court shall proceed with the suit.

142. Summoning Witnesses and Parties:-

- 1) The Court shall issue the same processes it issues in suits tried before it to the parties and witnesses whom the arbitrator desires to examine.
- 2) Persons not attending in accordance with such process or making any other default or refusing to give their evidence or guilty of any contempt to the arbitrator during the investigation of the matters referred, shall be subject by order of the Court on the representation of the arbitrator to the like disadvantages, penalties and punishments as they would incur for the like offences in suit tried before the Court.

143. Failure to Issue the Award Within the Specified Period:-

- 1) the arbitrators shall issue the award within the period specified in the order of reference and the Court may extend such period from time to time as it thinks fit.

- 2) Where the arbitrators cannot, without sufficient reason, issue the award within the period specified, the Court may make an order superseding the arbitration, and in such case shall proceed with the suit.

144. Award:-

- 1) the arbitrators shall make an award separately upon each matter referred to in the order of reference unless the award on one or more of such matters is sufficient for the determination of the dispute.
- 2) The award shall be determined by the majority of arbitrators.
- 3) The award shall be in writing and shall be signed by the persons who made it and it shall be regarded as valid if signed by the majority of the arbitrators.
- 4) The award shall be submitted to the Court together with any depositions and documents.
- 5) The Court shall cause notice to be served on the parties to attend and hear the award.

145. Opinion of the Court:-

The arbitrators may, with the leave of the Court, request the opinion of the Court as to any of the matters referred to arbitration and such opinion shall form part of the award.

146. Power to Modify or Correct Award:-

The Court may modify or correct an award:-

- (a) where it appears that part of the award is upon matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred;
- (b) where the award is imperfect in form, or containing any obvious error which can be amended without affecting such decision;
- (c) where the award contains clerical or arithmetical mistakes.

147. Where Award is Remitted:-

- 1) The court may remit the award or any matter referred to arbitration to the reconsideration of the same by arbitrators upon such terms as it thinks fit in the following conditions:-
 - (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;
 - (b) where the award is so indefinite as to be incapable of execution;
 - (c) where the award clearly contravenes the law.

148. Grounds for setting aside an Award:-

1) An award remitted under section 147 becomes void on failure of the arbitrators to reconsider it within the time fixed by the Court.

(2) The parties may apply to have the award set aside on one of the following grounds, namely:-

- (a) corruption or misconduct of the arbitrators or of any of them;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of willfully misleading or deceiving the arbitrators;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit, in accordance with section 143 (2).
- (d) The award having been made after the expiration of the period allowed by the Court, or being otherwise invalid.

(3) Any application to set aside an award shall be made within ten days after the day on which the parties were notified of the award.

149. Superseding Arbitration and Proceeding with the Suit:-

Where an award becomes void under section 148 (1) or is set-aside under section 148 (2) the Court shall make an order superseding the arbitration, and in such case shall proceed with the suit.

150. Judgement According to Award:-

Where the Court did not remit the award to the arbitrators for reconsideration or where the time fixed by section 148 (3) has expired and no application has been made to set aside the award or an application having been made was refused, the Court shall proceed to pronounce judgement in accordance with the award.

151. Order as to Costs of Arbitration:-

The Court shall make an order respecting the costs of the arbitration where any question arises respecting such costs, and the award contains no provisions concerning them.

152. Application to File in Court Agreement to Refer to Arbitration:-

1) Where any person agree in writing that any dispute between them shall be referred to arbitration, such parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the others or other of them as defendants or defendant, if the application has been presented by all the parties, if the application has been presented by all the parties, if otherwise, between the applicant as plaintiff and the other parties as defendants.

- 3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring such parties to show cause within the time specified in the notice why the agreement should not be filed.
- 4) Where no sufficient cause preventing the agreement to be filed is shown, the Court shall order the agreement to be filed and shall make an order of reference to the arbitrator or arbitrators appointed in accordance with the provisions of the agreement or if there is no such provision and the parties cannot agree, the Court shall appoint the arbitrators in the manner provided in section 140.

153. Stay of Suit Where There is an Agreement to Refer to Arbitration:-

- 1) Where any party to any agreement to refer to arbitration or any person claiming under him, institutes any suit against any party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit at the earliest possible opportunity and before the hearing has started, may apply to the Court to stay the suit.
- 2) If the Court is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, it may make an order staying the suit.

154. Application of Foregoing Proceedings to Disputes not Before the Court:-

The provisions of sections 138 to 151 inclusive shall be applicable so far as practicable to all proceedings under the order of reference in case of disputes not raised before the Courts.

155. Arbitration without the Intervention of the Court:-

- 1) Where any matter has been referred to arbitration without the intervention of a Court and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject matter of the award that the award be filed in Court.
- 2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.
- 3) The Court shall direct notice to be given to the parties to the arbitration requiring them to show cause why the award should not be filed and where the Court is satisfied that there is no ground for objection to the award and that it is valid according to the agreement of reference, the Court shall order the award to be filed and shall proceed to pronounce judgement according to the award.

PART VII

PROVISIONAL REMEDIES

156. Power to Arrest Defendant:-

Where at any stage of hearing of any suit of the value of LS50 or more, the plaintiff satisfies the Court by affidavit or otherwise of any one or more of the under mentioned matters, the Court may, subject to the provisions of section 172 issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance and these matters are:-

- (a) that the defendant, with intent to delay the plaintiff or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him:-
 - (i) has absconded or left the local limits of the jurisdiction of the Court; or
 - (ii) is about to abscond or to leave the local limits of the jurisdiction of the Court; or
 - (iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof; or
- (b) that the defendant is about to leave the New Sudan in circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit; provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court as a trust until the suit is disposed of or until further order of the Court; provided also that the defendant shall not be arrested if he furnishes such security as the Court which issued the warrant may direct.

157. Order against Defendant to Furnish Security to Answer Claim or to Appear:-

- 1) Where the defendant fails to show such cause referred to in section 156 the Court shall order him either to deposit in Court, money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any decree that may be passed against him in the suit, and may make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the first proviso to section 156.
- 2) Every surety for the appearance of a defendant shall bind himself in default of such appearance to pay any sum of money which the defendant may be ordered to pay in the suit.

158. Application by Surety for Discharge:-

- 1) the surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.
- 2) On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.
- 3) On the appearance of the defendant in pursuance of the summons or warrant or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation and shall call upon the defendant to find a fresh surety.

159. Power to Commit the Defendant:-

Where the defendant fails to comply with any order under section 156 or section 158, the Court may, subject to the provisions of section 172 either make an order forbidding him to leave the New Sudan or commit him to prison until decision of the suit, or where a decree is passed against the defendant until the decree has been satisfied; provided that no person shall be imprisoned or have his liberty restricted under this section in any case for a period longer than three months; and the period shall not exceed six weeks when the amount or value of the subject matter of the suit does not exceed LS100; provided also that no person shall be detained under this section after he has complied with the order made under either section 156 or section 158.

160. Where Defendant May be Called to Furnish Security:-

- 1) Where at any stage of a suit the Court is satisfied by affidavit or otherwise that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him:-
 - (a) is about to dispose of the whole or any part of his property or to remove the same from the local limits of the jurisdiction of the Court; or
 - (b) has quitted the local limits of the jurisdiction of the Court leaving therein property belonging to him,the Court may require the defendant, within a time to be fixed by the Court, to furnish security in such sum as may be specified in the order, or to produce and place at the disposal of the Court when required, the said property or its value or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.
- 2) The plaintiff shall in his application, unless the Court otherwise directs, specify the property required to be attached, where it is situated and the estimated value thereof.
- 3) The Court may also in the order direct the immediate attachment of the whole or any part of the property specified in the application provisionally until the defendant has furnished such security as is specified in the order or until the defendant has appeared and shown cause why he should not furnish such security.

161. Power of Attachment of Property:-

- 1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required within the time fixed by the Court, the Court may order that the property specified in the application of the plaintiff or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit shall be attached.
- 2) Where the defendant shows such cause or furnishes the required security and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

162. Claim by Third Party to Attached Property:-

If before judgement is passed any claim is made to the property attached, such claim shall be investigated in the manner herein provided for the investigation of claims to property attached in execution of a decree.

163. Removal of Order of Attachment:-

Where an order is made for attachment before judgment the Court shall order the attachment to be withdrawn when the defendant furnishes the security required together with security for the costs of the attachment or when the suit is dismissed.

164. Attachment not to Affect Rights of Third Parties nor Prevent the Property from being Sold in Execution:-

Attachment before judgment shall not affect the rights of strangers existing prior to the attachment of persons who are not parties to the suit, nor prevent the property from being sold in execution of any decree against the defendant whether such decree has been obtained in a suit instituted either before or after the attachment.

165. Manner of Making Order of Attachment:-

Save as otherwise expressly provided in this Act, the attachment shall be made in the manner provided for the attachment in execution of a decree.

166. Order Against the Damage or Alienation of Property in Dispute:-

Where at any stage of a suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, the Court may, by order, grant temporary injunction to restrain such act or make such other order as it thinks fit for the purpose of staying and preventing the wasting, damaging or alienation of the property until the disposal of the suit or until further order.

167. Injunction against Breach of Contract or other Injury:-

At any stage in a suit for restraining the defendant from committing a breach of contract or other injury, the Court may, upon the application of the plaintiff by order grant such temporary injunction as it thinks fit to restrain the defendant from committing the breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

168. Notice to the Opposite Party:-

The Court shall in all cases, except where it appears that the object or granting the injunction would be defeated by delay, before granting an injunction direct notice of the application for it to be given to the opposite party.

169. Order for Injunction May be Discharged, Varied or Set Aside:-

Any order for an injunction may be discharged, varied or set aside by the Court on application made thereto by any party dissatisfied with such order.

170. Injunction to a Corporation Binding on its Officers:-

An injunction directed to a corporation is binding not only on the corporation itself but also on all members and officers of the corporation whose personal action it seeks to restrain.

171. Appointment of Receiver:-

Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, movable or immovable, the subject matter of a suit under attachment, the Court may by order appoint a receiver of such property and may grant him such fee or commission, and entrust him with such powers subject to such conditions as the Court thinks fit.

172. Conditions Subject to Which Orders are Made:-

- 1) The Court may direct that no warrant of arrest shall be issued under section 156 unless and until the plaintiff pays into Court such sum as the Court thinks sufficient to cover the cost of arresting the defendant and bringing him before the Court.
- 2) No order shall be made by the Court under section unless and until the plaintiff pays into Court such sum as the Court thinks sufficient for the subsistence of the defendant during the period of his detention.
- 3) Any order made under any of the sections of this Chapter may be made upon such terms as to keeping an account, giving security or otherwise, as regards the person in whose favour it is made as the Court thinks fit.

173. Compensation for Obtaining Warrant of Arrest, Attachment or Injunction on Insufficient Grounds:-

- 1) Where in any suit in which a warrant of arrest or order of attachment has been effected or a temporary injunction granted under the provisions of this Chapter:-
 - (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds; or
 - (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting it;the defendant may apply to the Court and the Court may upon such application award by its order against the plaintiff such amount not exceeding LS100 or as it deems a reasonable compensation to the defendant for the

expenses or injury caused to him: provided that a Court shall not award under this section an amount exceeding the limits of its pecuniary jurisdiction.

- 2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

PART VIII

OBJECTIONS AGAINST JUDGEMENTS GENERAL PROVISIONS – APPEAL – CASSATION

CHAPTER I

GENERAL PROVISIONS

174. Who may Object Against a Decree or Order:-

No objection against a decree or order shall lie except at the instance of the party against whom such decree or order is passed and does not lie at the instance of any party who accepted the decree or order or whose claim has been fully granted.

175. Where no Right of Objection Exists:-

No right of objection exists against an interlocutory order before final judgement except in the following cases:-

- (a) an order from which an appeal is expressly allowed by law;
- (b) an order staying or suspending the suit;
- (c) assumption of jurisdiction;
- (d) an order capable of instantaneous execution;
- (e) an order superseding an order of reference where the arbitration award has not been complied with within the time allowed by Court;
- (f) an order on an award stated in the form of a request of the opinion of the Court;
- (g) an order modifying or correcting an award;
- (h) an order filing or refusing to file an agreement to refer to arbitration;
- (i) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
- (j) an order refusing to set aside the arbitration award or to remit it to the arbitrators.

176. Time for Objection:-

(1) Time for objection commences from the date of the communication of the judgement or order to the parties unless the law otherwise directs.

(2) Nevertheless the time for objection commences from the date of pronouncement of the judgment where the person against whom the decree has been passed was present in Court when the judgment was pronounced or was summoned to attend and he failed to do so.

177. Effect of Failure to Observe Time:-

Failure to observe the time for the submission of objections shall result in the loss of the right thereto, and the Court of its own motion, shall pass an order accordingly,

178. Effect of Objection:-

(1) An objection is operative only in favour of or against the parties to it.

(2) Nevertheless where a decree is in respect of an indivisible interest or a joint obligation or in respect of a suit in which the law necessitates the joinder of a certain person, any person against whom a decree is passed and who fails to object within the time prescribed or accepts the decree, may object to the decree during the pendency of an objection submitted by any other party affected by the decree, may object to the decree during the pendency of an objection submitted by any other party affected by the decree within the prescribed time by joining with the objector in his claim. If such person fails to apply to be joined, the Court shall order the objector to join him as a party to the objection. Where the objection is directed against one of several decree-holders and was made in time the others shall be joined even though the time for objection has expired.

179. Stay of Execution:-

The Court to which an objection is submitted may, on the application of any interested party, order the stay of execution of the decree or order if it is satisfied that substantial loss may result there from or for any other reason as the Court may think fit. The Court may make an expert order of stay pending the final disposal of the application to stay execution.

180. Protection of the Rights of the Parties:-

The Court staying execution under section 179, may order security to be furnished or make any other order as it deems fit for the protection of the interests of the decree-holder. Where the Court refuses to stay execution it may make such order as it deems necessary for the protection of the interests of the judgement debtor.

181. Modifying or Setting aside a Decree:-

(1) The Court to which an objection is submitted shall not set aside or modify a decree unless due notice of the objection and opportunity to answer orally or in writing is given to the other party.

(2) No decree or order shall on objection be reversed or varied nor, in any case, be sent back for retrial on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit unless it affects the merits of the case or the jurisdiction of the Court.

182. Where Objection Considered Submitted:-

An objection is considered submitted on the date when fees are paid or on the date of the presentation of the memorandum where the objector is excused from payment of fees by law or order of Court.

183. Memorandum of Objection and its Content:-

- (1) Every objection shall be drawn up to the competent Court in the form of a memorandum, and shall include, in addition to the general contents of the plaint, the order or decree appealed from, the date of the order or decree, the grounds on which the objection is based and the applicant's claim.
- (2) The memorandum shall be accompanied by a copy of the order or decree against which the objection is raised.
- (3) The memorandum may be submitted to the Court which passed the order or decree against which the objection is raised, and the Court shall then send to the appellate Court the memorandum, the record of the suit and any document showing that, the prescribed fees have been paid.

184. Judge not to Participate in Objection against his own Judgement:-

The judge; who made or participated in making the judgment against which an objection is raised, shall not hear or participate in hearing the objection.

185. Summary Dismissal of Objections:-

The Court before which an objection is raised, after perusal of the record, may summarily dismiss the objection without hearing the party against whom the objection is raised, if in its opinion the objection is hopeless.

186. Contents of Judgement and Decree:-

- (1) The judgement shall include the reasons on which it is based and shall also contain the following:-
 - (a) the points for determination;
 - (b) the decision thereon;
 - (c) the reasons for the decision;
 - (d) where the decree is amended or set aside, the relief granted to the party raising the objection.
- (2) The decree shall bear the same date as the judgement and shall contain the number of the suit, the names of the parties, the decision, costs and by whom payable and shall be signed by the judge or President of the Court.

187. Fresh Claims:-

No fresh claims shall be allowed on the objection and shall be rejected by the Court of its own motion.

188. Judgement:-

The judgement shall be pronounced in an open Court to which the parties shall be summoned and it may also be communicated to the parties in writing.

CHAPTER 2. APPEALS

189. Appeals:-

(1) Appeals against judgement of Payam Court shall lie to a County Court of 1st grade Judge . Appeals against judgements of a County Court of the first or second grade Judge shall lie to the High Court.

(2) Appeals against judgements of a High Court Judge shall lie to the Court of Appeal.

190. Cross and Subsidiary Appeal:-

(1) The respondent may, at any stage before final submission, submit a cross appeal in the manner prescribed herein for presenting appeals, or by a memorandum containing the grounds thereof.

(2) Where the original appeal has been withdrawn or dismissed the Court may proceed to hear and determine the cross appeal after serving notice on the original appellant.

(3) Where the respondent has accepted the judgement appealed against before the appeal was submitted or where the time for appeal has expired, such cross appeal shall be deemed as a cross appeal incidental to the original appeal and shall lapse with it.

191. Time for Appeal:-

An appeal shall be submitted within a period of fifteen days from the date of the commencement of the time for objection specified in section 176.

192. Grounds which may be taken in Appeal:-

(1) The appellant shall not, except by leave of the Court, urge any ground of objection not set forth in the memorandum of appeal.

(2) Nevertheless, the Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum or taken by leave of the Court.

(3) Where the Court rests its decision in favour of the appellant on any grounds not urged in the memorandum, it shall give notice to the respondent and allow him to contents such grounds.

193. Reversal of Decree on a Ground Common to all the Parties:-

Where there are more plaintiffs or more defendants in a suit and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Court may reverse or vary the whole decree, in favour of all the plaintiffs or defendants, as the case may be.

194. Hearing of Appeal:-

If the appeal is not summarily dismissed under section 186, the Court may decide the appeal on written submissions and the parties are not entitled to address the Court in person or by counsel except with the leave of the Court.

195. Date of Hearing:-

If the appeal is not decided on written submissions, the Court shall fix a day for hearing to which the parties shall be summoned.

196. Hearing the Parties:-

On the day fixed the appellant shall be heard in support of the appeal and the respondent shall be heard in reply, and in such case the appellant shall be entitled to reply.

197. Non-Appearance of Appellant or Respondent:-

(1) Where on the day fixed for hearing, the appellant does not appear, the Court may make an order that the appeal be dismissed.

2) Where the appellant appears but the respondent does not, the appeal shall be heard in his absence.

198. Re-admission or Re-hearing of Appeal:-

(1) Where an appeal is dismissed under section 197 (1), the appellant may apply to the Court for re-admission of the appeal; and where it is proved that he was prevented by any sufficient cause from appearing, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

2) Where the appeal is heard in the absence of the respondent under section 197 (2) and judgement is pronounced against him, he may apply to the Court to re-hear the appeal; and was prevented by any sufficient cause from appearing the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit.

199. Court to Direct Interested Party be made Respondent:-

Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal was submitted but who has not been made a party to the appeal, is interested in the result of the appeal the Court may adjourn the hearing and direct that such person be made a respondent.

200. The Court may Frame the issues and refer them for Re-trial:-

1) Where the Court from whose decree the appeal is submitted has omitted to frame or try any issue or to determine any point of fact which appears to the Court essential to the right decision of the suit, the Court may, if necessary, frame issues and refer them for trial to the Court from whose decree the appeal is submitted and in such case shall direct such Court to take the additional evidence required.

(2) The Court to whom the new issues have been referred for trial, shall proceed to try such issues and shall return them to the appellate Court, accompanied with minutes of hearing, its decisions and its reasons therefore.

201. Objection to Findings:-

(1) Such evidence and findings as are referred to in section 199 (1) shall form part of the record of the suit, and either party may within a time to be fixed by the Court, present a memorandum of objections to any findings.

- (2) After the expiration of the period so fixed for presenting such memorandum, the Court shall proceed to determine the appeal.

202. Production of New Evidence:-

The parties to an appeal shall not be entitled to produce new evidence but the Court may allow the production of new evidence in the following cases:-

- (a) where the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted;
- (b) where the Court to which the appeal is preferred requires any evidence to be produced to enable it to pronounce judgment or for any other reasonable cause.

203. Mode of Taking New Evidence:-

Where new evidence is allowed to be produced the appellate Court may either take such evidence or direct any other Court to take it.

204. Judgement in Appeal:-

(1) The appellate Court shall have power:-

- (a) to confirm, amend, or set aside the decree appealed from against;
- (b) to make a new judgment;
- (c) to send back a case for retrial;
- (d) to frame issues and refer them for trial;
- (e) to resettle the issues and, if it is of opinion that the evidence on the record is sufficient to enable it to pronounce judgment, to determine the suit;
- (f) to take additional evidence or to require such evidence to be taken.

205. Application of the Provisions of this Chapter:-

The provisions of this Chapter shall apply to appeals submitted to the Court of Appeal, the High Court and the County Court of a Judge of the first grade.

CHAPTER 3.

CASSATION

206. Cases of Objection by way of Cassation:-

(1) Parties may object before the Court of Appeal against judgements made by the High Court in suits the value of which is not less than one thousand pounds in the following cases:-

- (a) where the judgment objected against is based upon inconsistency with the law or a mistake as to its application or interpretation;

- (b) where the judgment has been affected by the occurrence of an invalidity in the judgment or procedure; provided that, if the value of a suit is less than one thousand pounds, the appellant shall obtain the permission of the Chief Justice or such judge of the Court of Appeal as the Chief Justice may authorize and his decision shall be final.
- (2) If the objection relates to the ownership of any land, the parties may appeal before the Court of Appeal irrespective of the value of the suit, in respect of the cases included in paragraphs (a) and (b) above.
- (3) If the appeal in respect of cases provided for in paragraphs (a) and (b) of sub-section (1) relates to one of the personal suits the parties may appeal before the Court of Appeal irrespective of the value of the suit.
- (4) The Court shall cause notice of the objection to be served on all the parties to the suit who were not originally joined in the objection.

207. Determination of Objection:-

- (1) The Court shall determine the objection upon the record.
- (2) Nevertheless the Court may give leave to the parties to the supplementary submissions in support of or in reply to the objection or may summon them to make statements or give explanations.

208. Grounds which may not be urged on Cassation:-

- (1) No party shall urge, or be heard in support of, any grounds not set forth in the memorandum.
- (2) Nevertheless grounds of public policy may be urged at any stage by a party or the Court of its own motion.

209. Judgement of the Superior Court:-

Judgement of the Superior Court:-

Where the objection is allowed the Court may:-

- (a) set aside the decree ;
- (b) modify the decree;
- (c) give a fresh judgement; or
- (d) send back the case to the Court which passed the decree objected to or to the trial Court, for retrial.

210. Rejection of Objection:-

Where the decree is in conformity with law, the Court shall reject the objection.

211. Review of Judgements:-

Judgements of the Court of Appeal shall be subject to review, provided that a judgement shall be reviewed once only.

PART IX
REVIEW AND CORRECTION
CHAPTER I
REVIEW

212. Application of the Provisions of this Chapter:-

The provisions of this Chapter shall not apply to Payam and County Courts.

213. Grounds for Review:-

The parties to a suit may apply for the review of final judgement on any of the following grounds:-

- (a) if the judgement is affected by the fraud of the other party;
- (b) on the discovery of new and important evidence which affects the result of the judgement which, despite the exercise of due diligence, was not within the knowledge of or could not be produced by the applicant prior to the pronouncement of judgement;
- (c) on account of an error or mistake apparent on the face of the record;
- (d) for any other sufficient reason.

214. Time for Review:-

An application for review shall be made within thirty days from the date of the pronouncement of the judgment, nevertheless in the case provided for by section 2112 (a), time shall run from the date of discovery of such fraud.

215. Form of Application:-

The application for review shall be in writing and submitted to the same Court which passed the decree and shall set forth, in addition to the particulars required in the plaint, the decree, its date, and the grounds for the application.

216. Disposal of the Application:-

The Court in considering the application may:-

- (a) dismiss the application summarily; or
- (b) dispose of the application on written submissions or after a hearing on a date fixed and notified to the parties.

CHAPTER 2

CORRECTION

217. Form and Extent of Correction:-

(1) The Court may of its own motion or on the application of any party correct any clerical or arithmetical mistake.

(2) The Court shall notify the parties of the intended corrections if it deems it necessary and shall hear the party who appears.

(3) Corrections made shall be set in the margin to the judgment and notified to the party who did not appear.

218. Objection against Correction:-

Any correction is subject to objection independently by any one of the ways of objection available against the decree itself in a case where the Court exceeds its powers of correction. But a decision refusing to make such corrections is not subject to such objection independently.

PART X

EXECUTION

GENERAL PROVISIONS – ATTACHMENT – SALE-ARREST- DETENTION- DISTRIBUTION – EXECUTION OF FOREIGN JUDGMENT

CHAPTER 1

GENERAL PROVISIONS.

219. Application of the Provisions of this Chapter:-

The provisions of this Part shall not apply to Payam Courts, but the Chief Justice may provide otherwise in the warrant of establishment of any of the Payam Court.

220. Application for Execution:-

Decrees shall be executed on the application of the decree holders to the Court which passed the decree and the application shall contain the following particulars:-

- (a) The number of the suit, the names of the parties and the date of the decree;
- (b) Whether any payment or other adjustment of the matter in controversy has been made between the parties subsequent to the decree;
- (c) Sufficient particulars of the subject-matter of the execution;
- (d) The name of the person against whom execution of the decree is sought;
- (e) The mode in which it is sought to execute the decree. If the decree is for the delivery of specific property or where the application is for the attachment and sale of movable or immovable property, the application must contain a

description of the property sufficient to identify it, its place and the person in possession of it and if the property is immovable, an official certificate of registration.

221. Satisfying Particulars and Admission of Application:-

(1) If an application is not drawn up in accordance with section 224, the Court may, then and there and with the assistance of the applicant amend it or order its amendment within a fixed time. If the applicant fails to amend it within the time fixed it shall be considered a nullity.

(2) Where the application is admitted, the Court shall itself execute the decree or send it for execution by any other Court in accordance with the provisions herein contained.

222. Notice to the Judgement Debtor:-

(1) The Court, on application, shall proceed with the execution without giving notice to the judgment debtor except in the following cases:-

- (a) Where the application for execution is made more than six months after the date of the decree or last measure taken in the execution; or
- (b) Where the execution is sought against the heirs or the legal representative of the judgement debtor.

(2) The notice referred to in sub-section (1) shall require the person against whom the execution is sought to show cause on a date to be fixed why the decree should not be executed against him. Notwithstanding the provisions of sub-section (1) the Court may issue any process in execution without notice if it is satisfied that the issue of such notice would cause unreasonable delay or defeat the ends of justice.

223. Procedure where a Decree is sent to another Court for Execution:-

Where a Court sends a decree for execution to another Court according to the provisions of section 221 (2) it shall send:-

- (a) a copy of the decree; and
- (b) a certificate setting forth the part of the decree which still remains unsatisfied and requires execution; and
- (c) all necessary particulars and documents.

224. Acceptance of Copies without Proof:-

The Court to which a decree is sent shall accept such copy and certificate without any further proof of the decree or order for execution, unless, the Court, for any special reasons to be recorded, requires such proof.

225. Result of Execution to be Communicated to the Competent Court:-

The Court to which a decree is sent for execution shall notify the Court which passed it of the steps taken in the execution and in case of failure the reasons thereof.

226. Enforcement of Liability of Surety:-

Where any person has become liable as a surety:-

- (a) for the performance of any decree or any part thereof; or
- (b) for the institution of any property taken in execution of a decree; or
- (c) for the payment of any money, or for the fulfillment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon;

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purpose of appeal, be deemed a party to the execution; provided that sufficient notice has been given to the surety.

227. Execution of Decrees against CANS:-

(1) Where the decree is against the CANS or a public servant in respect of any such act as aforesaid in Section 32(3) a time shall be specified in the decree within which it shall be satisfied and if the decree remained unsatisfied, at the expiration of such time the Court shall report the case to the Chief Justice.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for a period of three months from the date of such report.

228. Order of the Court in Execution:-

Where the conditions prescribed by law are satisfied, the Court shall order the execution of a decree by any of the following ways:-

- (a) By delivery of any property specifically decreed;
- (b) By attachment and sale of any property;
- (c) By arrest and detention in prison of the judgement debtor;
- (d) By appointing a receiver; or
- (e) In such other manner as the nature of the relief granted may require.

229. Payment into Court of Judgement Debt:-

(1) Any person whose property has been attached in execution, may apply at any stage of the proceeding before sale, for permission to deposit in Court a sum equal to the judgement debt, interest and costs for the satisfaction thereof and on such deposit the property attached shall be released and the attachment transferred to the sum deposited.

(2) Any subsequent attachment shall not affect the rights of the creditors in whose favour the deposit was made.

230. Execution to start with Movables:-

Execution shall first proceed against the movable property of the judgement debtor and shall not proceed against his immovable property unless the Court is satisfied that the proceeds of the movable property will not satisfy the judgement debt.

231. Disputes Relating to Execution:-

- (1) The Court executing a decree shall be competent to determine all disputes relating to the execution irrespective of the value and whether the dispute is between the parties to the execution themselves or between such parties and other persons.
- (2) Any dispute relating to the execution shall not stay execution unless the Court otherwise directs.

232. Stay of Execution:-

Subject to the provisions of sections 180 and 181 and the limitation laid down therein, the judgement debtor, if he has appealed against the decree or if the time of appeal has not yet expired, may apply to the Court conducting the execution to stay the execution for a reasonable period to enable him to obtain an order of stay from the Court which passed the decree or from the Court hearing the appeal as the case may be.

233. Death of Judgement Debtor:-

- (1) Where a judgement debtor dies before a decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute it against the legal representative of the deceased.
- (2) Where the decree is executed against such representative, he shall be liable only to the property of the deceased which has come into his hands and has not been duly disposed of and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree holder, compel such legal representative to produce such accounts as it thinks fit.

234. Enforcement of Decree against Legal Representative:-

- (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by attachment and sale of any such property.
- (2) Where no such property remains in the possession of such legal representative and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against such legal representative to the extent of the property in respect of which he has so failed to satisfy the Court in the same manner as if the decree has been against him personally.

235. Decree for Delivery of Specific Movable Property:-

Where the decree is for the delivery of any specific movable property, or for any share in a specific movable property, it may be executed by the seizure, if practicable, of the movable property or share, and by the delivery thereof to the party to whom it has been adjudged, or to his original office or job with regard to seniority and pay. Such person as he appoints to receive delivery on his behalf, or by the detention in prison of the judgement debtor, or by attachment of his property or by both.

236. Decree for Delivery of Immovable Property:-

(1) If, in any suit, a decree be made for the delivery of any immovable property, the Court, unless in the special case it deems it unnecessary, shall appoint an official to see that the boundaries of the property are marked out with permanent land marks at the cost of the owner or owners, and to deliver possession thereof to the person to whom it has been adjudged or to such person as he appoints to receive delivery on his behalf.

(2) If the immovable property is in the occupancy of a tenant or other person entitled to occupy it and not bound by the decree to relinquish such occupancy, a notice in writing containing the substance of the decree in regard to the property shall be served upon him if he can be found, and if he cannot be found a copy of the said notice shall be posted on or near the said property.

237. Decree for Specific Performance, Injunction ... etc.

(1) Where a decree orders any person to do any act other than the payment of money or to abstain from doing anything, and the person against whom the decree has been passed had an opportunity of obey the decree and has willfully failed to obey it, the decree may, save as otherwise expressly provided in this Act, be enforced by the detention of such person in prison or by the attachment of his property or by both.

(2) Where the person against whom such decree as mentioned in sub-section (1) has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or by the detention in prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the Court, at the cost of the judgement debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

238. Order to sell attached Property:-

(1) Where any attachment under section 234 or section 236 has remained in force for six months, if the judgement debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance, if any to the judgement debtor.

(2) Where the judgement debtor has obeyed the decree and paid all costs of executing it which he is bound to pay, or where at the end of six months from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

239. Arrest and Detention in Prison in Execution of Decree for Payment of Money:-

(1) where a decree for the payment of money remains wholly or in part unsatisfied the Court may upon the application of the decree holder summon the judgment debtor to be examined as to his ability to pay. The Court may for sufficient reasons instead of issuing a summon issue a warrant for the arrest of the judgement debtor.

(2) The Court may commit the judgment debtor to prison where it appears to it by the examination of the judgement debtor or other evidence:-

- (a) That the judgement debtor has refused or neglected to pay the amount of the decree or some part thereof when he had the means to pay; or
- (b) That he has, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors; or
- (c) That he has transferred, concealed or removed any part of his property after the date of the institution of the suit in bad faith with the object or effect of obstructing or delaying the decree holder in the execution of the decree.

240. Period of Detention and Release:-

(1) Where a judgement debtor is committed to prison in execution of a decree the order of commitment shall state the period during which he is to be detained in prison or shall state that he is to be detained until the decree is satisfied; provided that no person shall be so detained for a period exceeding six weeks if the decree is for the payment of a sum of money not exceeding LS50 or for a period not exceeding six months in any other case.

(2) Notwithstanding the provisions of sub-section (1), the Court shall order the release of a person so detained:-

- (a) On the amount mentioned in the order for his commitment being paid;
- (b) On the decree against him being otherwise satisfied.

(3) A judgement debtor released under sub-section (2) or on completion of the term stated in the order of commitment shall not by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested or re-committed to prison in execution of the same decree unless a further sum of money other than interest or costs has become payable under such decree after the date on which he was released from prison.

CHAPTER 2

ATTACHMENT

241. Attachment of Movable Property:-

(1) An order to attach the movable property of a judgment debtor shall be issued by the Court conducting the execution, and the property seized shall be kept in such custody as the Court may direct.

- (2) Where the property to be attached consists of any share or interest of the judgement debtor in movable property belonging to him and another as co-owners, the attachment shall be made by notice to the judgment debtor prohibiting him from transferring the share or interest or charging it in any way.

242. Attachment of Part of Property:-

- (1) Save as otherwise provided by this section, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in their capacities as partners.
- (2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge has been made in favour of the decree holder by such partner, or as the circumstances of the case may require.
- (3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase it.
- (4) Every application for an order under sub-section (2) shall be served on the judgment debtor and on his partners who are within the Sudan.
- (5) Every application made by any partner of the judgement debtor under the provisions of this section shall be served on the judgement debtor, and on the other partners who did not join the application and are within the Sudan.

243. Attachment of Property not in the Possession of Judgement Debtor:-

- (1) Where the property to be attached is:-

- (a) A debt not secured by a negotiable instrument;
- (b) A share in the capital of a corporation;
- (c) Other movable property not in the possession of judgement debtor, except property deposited in or in the custody of any Court;

The attachment shall be made by a written order prohibiting:-

- i) In the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof, until further order of the Court;
- ii) In the case of the share, the person in whose name the share may be standing from transferring it or receiving any dividend thereon;
- iii) In the case of the other movable property, except as aforesaid, the person in possession of it from disposing of it until further order of the Court:-

- (2) A copy of such order shall be sent in the case of the debt, to the debtor, in the case of the share, to the appropriate officer of the corporation, and in the case of any other movable property except as aforesaid, to the person in possession of it.
- (3) A debtor prohibited under sub-section (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive it.

244. Property Liable to Attachment Sale:-

(1) The following property is liable to attachment and sale in execution of a decree namely: lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, promissory notes, government's securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgement debtor, or over which, or the profits of which, he has a power of disposal which he may exercise for his own benefit, whether the same be held in the name of the judgement debtor or by another person in trust for him or on his behalf.

(2) The following things shall not be liable to such attachment or sale, namely:-

- (a) The necessary wearing, apparel, cooking vessels, beds, bedding, food stuffs necessary for one month's feeding of the judgement debtor, his wife and children and his relatives whether by blood or marriage who are legally dependent on and resident with him;
- (b) Such tools, implements and stock of the judgement debtor's trade or calling as in the opinion of the Court is necessary to enable him to earn his livelihood unless the attachment is for the satisfaction of the price of the same or their maintenance;
- (c) Books of account; a mere right to sue for damages;
- (d) A mere right to sue for damages;
- (e) Any right of personal service;
- (f) The wages of labourers and domestic servants whether payable in money or in kind;
- (g) A right to further maintenance;
- (h) Any pay, salary, allowance, sum of money or any thing expressly exempted from liability to attachment or sale by any enactment for the time being in force, save as provided by such enactment;
- (i) The installations, machinery or other instrument specified or meant for the use of public utilities is undertaken by the management itself or entrusted to any person natural or corporate.

245. Move Courts Attachments:-

(1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court of the highest grade or, where there is no difference in grade between such Courts, the Court by whose decree the property was first attached shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court under this Section for the execution of any one of such decrees.

246. Warrant of Attachment:-

(1) The warrant of attachment shall contain, in addition to the general information as to the names of the parties, their description, and place of residence, the following particulars:-

- (a) The place where the attachment was made and the action taken and the difficulties and opposition encountered by the bailiff and the steps taken to overcome such difficulties;
 - (b) A detailed inventory of the property attached, its kind, description, quantity or weight or measure, and a statement of its approximate value.
- (2) The warrant shall be signed by the bailiff and the person in whose possession the property was attached if he was present.
- (3) The valuation of precious articles such as gold, silver, jewels, and precious stones shall be undertaken by an expert appointed by the Court.

247. Restriction on Attachment:-

No attachment shall be carried out in the presence of the person applying for execution save in case of necessity and by permission of the Court.

248. Breaking Open of Locks and Doors:-

The bailiff shall not break open any lock or door for the purpose of attachment except in the presence of a policeman or the Chief who must sign the warrant.

249. Attachment of Growing Crops:-

- (1) Where the property to be attached is a growing crop the attachment shall be made in the manner provided by section 250.
- (2) Subject to such condition as may be imposed by the Court either in the order of attachment or in any subsequent order the judgement debtor may tend out, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgement debtor fails to do all or any of such acts, the decree holder may, with the permission of the Court and subject to the like conditions do all or any of them either by himself or by any person appointed by him in his behalf, and the costs incurred by the decree holder shall be recoverable from the judgement debtor as if they were included in and formed part of the decree.
- (3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment merely because it has been severed from the soil.

250. Attachment of Currency:-

Where the property attached is currency the bailiff shall specify in the record its description and value and deposit the same in Court within 24 hours at the most from the time of attachment.

251. Attachment of Immovable Property:-

(1) Attachment of immovable property shall be made by an order of the competent Court, on the application of the decree holder, prohibiting the judgement debtor from transferring or charging the property in any way, and all persons from receiving it from him by purchase, gift or otherwise.

(2) A copy of the order shall be fixed up in a conspicuous place or near the property and on the Court notice board.

252. Content of Warrant of Attachment of Immovable Property:-

The warrant for the attachment of immovable property shall contain in addition to general information as to the names of the parties, description and place of residence, the following particulars:-

- (a) The amount of the execution debt;
- (b) A detailed description of the immovable property, and its position, area, and boundaries;
- (c) Notice to the judgement debtor to the effect that unless he pays the execution debt, the property will be sold in satisfaction thereof.

253. Registration of Warrant:-

A warrant of attachment of immovable property shall be registered in the Land Registration Office.

254. Custody of Attached Property:-

(1) Where the judgement debtor is present, he shall be appointed a custodian of such property unless there are reasonable grounds to be recorded in writing, for apprehension that the property will be wasted and in such case the Court will appoint any other person or make any such orders as it thinks fit for the custody of the property.

(2) Where the custodian is not the judgement debtor or the person in possession of the property, he shall be entitled to such remuneration as is fixed by the Court.

255. Restrictions on Property Attachment:-

(1) Where an attachment has been made, any transfer or delivery of the property attached or of any interest therein and any payment to the judgement debtor of any debt, dividend or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment.

(2) For the purpose of sub-section (1), claims enforceable under an attachment include claims for the rate able distribution of assets.

CHAPTER 3.

SALE OF ATTACHED MOVABLE PROPERTY

256. Order for Sale:-

(1) An order for the sale of the attached movable property shall be issued by the Court conducting the execution on the application of the judgement creditor.

(2) The judgement debtor shall be given notice of the order and the time and place of sale.

257. Conduct of Sale:-

Sales in execution of decrees shall be made by public auction and shall be conducted by the bailiff or by any other person whom the Court may appoint and the immediate payment of the price shall be a condition of such sales.

258. Restriction on Bidding:-

No official or other person having any duty to perform in connection with any sale shall bid for the property sold.

259. Notice of Sale:-

Any sale of property in execution shall be preceded by notice. Such notice shall contain the following particulars:-

- (a) The time and place of sale;
- (b) The property to be sold;
- (c) The amount for the recovery of which the sale is ordered;
- (d) Any other thing which the Court considers material for the proper evaluation of the property offered for sale.

260. Advertisement of Sale:-

(1) An advertisement of a sale shall be made by posting up a copy of the notice of sale on the spot where the property offered for sale is kept and on the notice board of the Court.

(2) The Court may order the posting up of notices in the market area and other public places and the publication thereof in the press.

261. Time and Place of Sale:-

(1) The sale shall take place on the spot where the attached property is kept or in the nearest market or at any place to be decided by the Court, on the application of the interested parties.

- (2) No sale shall take place before the expiry of at least fifteen days from the date of the posting up or publication of the notice of sale; provided that the Court may order an earlier sale if the judgement debtor consents or where the property offered for sale is perishable or liable to fluctuation of price.

262. Adjournment of Sale:-

(1) The court may adjourn any sale, and the official conducting the sale may adjourn such a sale for a reason to be recorded and he shall in such event present the matter to the Court to make such order as it thinks fit.

- (2) Where a sale is adjourned for a longer period than one month a fresh notice shall be posted up or published.

263. Resale:-

(1) Where the person to whom the property is sold fails to pay the price forthwith, the property shall be resold at his peril at any price and in the manner provided in this Chapter and the record of sale shall have the force of a Court decree with respect to the deficiency in price and the cost of resale.

- (2) The deficiency in price and cost of resale shall be recoverable from the defaulting purchaser at the instance of either the judgement creditor or judgement debtor in accordance with the provisions of this Part.

264. Bidding by Decree Holder:-

(1) The decree holder shall not bid for nor purchase the property without the permission of the Court.

- (2) Where no reasonable bid is made at the auction the Court shall inform the decree holder and ask him to make an offer.
- (3) If the decree holder makes a reasonable offer, the Court shall order the property to be put up for sale again. If no higher bid is received, the property, subject to the approval of the Court, shall be knocked down to the decree holder at his offer.
- (4) Where a decree holder purchases the property without such permission, the Court may, on the application of any interested party, by order, set aside the sale, and the costs, expenses and any deficiency in price on resale shall be paid by the decree holder.

265. Stoppage of Sale:-

The bailiff shall stop the sale in any of the following cases:-

- (a) if the judgment debtor pays the amount and costs for which the sale is ordered;
- (b) if the bailiff is satisfied that such amount has been deposited in Court.
- (c) if the sale realizes an amount sufficient to satisfy the judgement debt.

266. Record of Sale:-

The bailiff shall prepare a record which shall show the procedure followed and the difficulties encountered in the conduct of the sale. It shall also specify the name of the purchase price and the mode of its payment, and the presence or absence of the judgement debtor at the place of sale.

267. Sale of Shares and Other Stocks:-

Shares and other stocks shall be sold through a bank or a stockbroker or by such other mode as the Court thinks fit.

**CHAPTER 4.
SALE OF ATTACHED IMMOVABLE PROPERTY**

268. Warrant of Sale:-

(1) The warrant for the sale of the immovable property attached shall be issued by the Court conducting the execution on the application of the judgement creditor.

(2) Notice of the order of sale and of the time and place of sale shall be given to the judgement debtor, the person in possession of the attached property and to all holders of registered charges.

269. Content of Warrant of Sale:-

A warrant of sale shall contain, in addition to the general information in respect of the names, descriptions and place of residence of the parties, the following particulars:-

- (a) a detailed description of the immovable property to be sold;
- (b) the amount for the recovery of which the sale is ordered;
- (c) the conditions of the sale and the reserve price;
- (d) the rates and taxes due and the encumbrances to which the property is liable;
- (e) the time and place of sale;
- (f) any other particulars which the Court considers material.

270. Advertisement of Sale:-

(1) Any sale shall be advertised by posting up copies of the warrant of sale in a conspicuous place of the immovable property or a place nearby and on the Court notice board and in such other public places as the Court may direct.

(2) The sale may be published in the press on the application of the interested parties.

271. Time of Sale:-

No sale of immovable property shall take place until the expiry of at least thirty days from the date of the publication of the notice of sale except with the judgement debtor's written consent.

272. Place of Sale:-

The Court shall exercise its discretion as to the place of sale with a view to obtaining the best price.

273. Adjournment of Sale:-

The Court may for sufficient reasons and on the application of any interested party adjourn the sale.

274. Postponement of Sale:-

(1) The Court may, in the circumstances specified hereunder and on the application of the judgment debtor, postpone the sale for such period as it thinks fit to enable him to raise the amount for the recovery of which the sale was ordered:-

- (a) if the Court is satisfied that the net income from the property offered for sale in one year is sufficient to satisfy all the claims of the parties to the execution;
- (b) if the Court is satisfied that the judgement debtor can raise an amount sufficient to satisfy the claims of the parties to the execution referred to in paragraph (a) by the mortgage of the property or part thereof; such a mortgage shall require a certificate from the Court authorizing the judgement debtor to mortgage the property and to deposit the proceeds in its custody and shall not become absolute until it has been confirmed by the Court;
- (c) if the Court is satisfied that the judgement debtor can raise the amount of the execution debt by the private sale of such property; such sale shall require a certificate from the Court authorizing the sale and deposit of the proceeds in its custody and shall not become absolute until it has been confirmed by the Court.

(2) The Court shall fix the date on which the sale shall take place in case of failure to raise the amount required, taking into consideration the time necessary to enable the judgement debtor to raise the amount.

275. Auction:-

- 1) The auction begins on the declaration of the reserve price and costs by the bailiff or the person appointed by the Court for that purpose.
- 2) Where several bids are received the judge or the person conducting the sale shall accept the highest bid, nonetheless the Court may, for sufficient reasons, refuse to accept the highest bid.

276. When no Bids Received:-

If no bid is received for the reserve price or more, the sale shall be adjourned to a date to be published. On such date the property shall be offered without its reserve price but the Court in such case shall not be bound to accept the highest bid.

277. Deposit by the Purchaser:-

- 1) The person declared to be the purchaser shall pay immediately by way of a deposit at least twenty per cent of the purchase price.
- 2) If the purchaser defaults, the property shall be resold forthwith at his peril.
- 3) Where the decree holder is the purchaser the Court may dispense with the deposit.

278. Payment of Price in Full:-

- 1) The full amount of purchase money payable shall be paid within fifteen days from the date of sale.
- 2) Where the decree holder is the purchaser the Court may allow him to take into account any amount which is due to him in execution.

279. Default of Payment:-

In default of payment of the purchase money within the time fixed, the Court may order the forfeiture of the deposit and the resale of the property after publication at the defaulting purchaser's peril and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

280. Bid of Co-Owner:-

Where the property sold is a share in an undivided immovable property, and two or more persons, of whom one is a co-owner, respectively bid the same sum for such property, the bid shall be deemed to be the bid of the co-owner.

281. Setting Aside the Sale on Deposit:-

- 1) where immovable property has been sold in execution, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply within thirty days of the date of sale to set aside the sale on his depositing in Court:-
 - (a) for payment to the purchaser a sum equal to 15% percent of the purchase price; and
 - (b) for payment to the decree holder the amount for the recovery of which the sale was ordered and the costs.
- 2) Where a person applies under this section to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this section.
- 3) Nothing in this section shall relieve the judgement debtor from any liability he may be under in respect of costs and interest not covered by the notice of sale.

282. Setting aside Sale on Ground of Irregularity or Fraud:-

Where any immovable property is sold in execution, the judgement creditor or the judgement debtor or any other person whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of fraud of material irregularity in conducting it and which has caused grievous loss to his rights.

283. Confirmation of Sale:

- 1) Where thirty days have passed since the date of sale and no application is made to set it aside under Section 281 or 282 or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.
- 2) Where an application under section 282 is made and allowed or where the deposit is made under section 281 within thirty days from the date of sale, the Court shall make an order setting aside the sale; provided that no order shall be made unless notice of the application has been given to all persons affected thereby.
- 3) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

284. Return of Purchase Price:-

Where a sale of immovable property is set aside under section 282, the purchaser may apply to the Court to order repayment of his purchase money, with or without interest as the Court may direct, against any person to whom it has been paid.

285. Certificate of Sale:-

Where a sale of immovable property has become absolute the Court shall grant a certificate specifying the property sold and the name of the purchaser. Such certificate shall bear the date of the day on which the sale became absolute.

286. Delivery of the Property Sold:-

- 1) The Court after making out the boundaries, if necessary, shall deliver the possession of the immovable property sold to the purchaser.
- 2) If the immovable property is in the occupancy of a person not bound by the decree to relinquish such occupancy, a notice in writing containing the substance of the decree in regards to the property shall be served upon him.

CHAPTER 5.

DISTRIBUTION OF ASSETS

287. The Method of Distribution of Assets:-

- 1) where the assets are insufficient to satisfy the claims of all judgement creditors, the assets shall be distributed in accordance with the following rules:-

- (a) Where an order for sale of any property has been made by a Court in execution, the proceeds of the sale, after the deduction of the expenses of sale, shall be distributed rate-ably amongst all judgement creditors who have applied for execution at any time before the date on which the order for sale of such property was made;
 - (b) Where money is received by a Court in satisfaction of execution, otherwise than by way of sale, it shall be distributed rate-ably amongst all judgement creditors who have applied for execution before the money was received by the Court;
 - (c) Where any property is sold subject to a mortgage or charge, the mortgager or encumbrance shall not be entitled to share in any not be entitled to share in any surplus arising from such sale;
 - (d) Where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgager or encumbrancer, order that the property be sold free from the mortgager or charge, giving to the mortgager or encumbrance the same interest in the proceeds of the sale as he had in the property sold;
 - (e) Where any immovable property is sold in execution of a decree ordering its sale for the discharge of an encumbrance thereon, the proceeds of sale shall be applied:-
 - (i) in defraying the expenses of the sale;
 - (ii) in discharging the amount due under the decree;
 - (iii) in discharging the interest and principal moneys due on subsequent encumbrances (if any); and
 - (iv) rate-ably among the holders of decrees for the payment of money against the judgement debtor in accordance with the provisions of paragraph (a).
- 2) Where all or any of the assets liable to be rate-ably distributed under this section are paid to a person not entitled to receive them, any person so entitled may sue such person to compel him to refund the assets.
- 3) Nothing in this section affects any rights of the CANS or any person who by any law has a right to be paid in priority to other creditors.

288. Payment by Installments:-

- 1) The Court which is carrying out the execution may on the application of the judgement debtor and with the consent of the decree holder after attachment of the property of the judgment debtor has been made or before such attachment upon the judgement debtor furnishing such security as the Court thinks fit, order that payment of the amount decreed shall be made by installments upon such terms as it thinks fit.
- 2) Where the Court has made an order under sub-section (1) and default is made in execution of the order, the Court shall set aside the order for payment by installments and shall on the application of the decree holder issue process for the recovery of the whole amount of the judgement debt remaining unpaid.

289. Execution Deemed Satisfied:-

Where no application is made to the Court within six months of the date of the last order made in an execution, the execution shall be deemed to have been satisfied and the records thereof shall be closed; provided that the judgement creditor shall be entitled to apply on payment of the prescribed fee to have the execution re-opened.

290. Decrees of Other Courts:-

The provisions of this Part shall apply to the decrees and orders of other Courts sent to the Civil Courts for execution.

PART XI

**MISCELLANEOUS PROVISIONS, RULES
COMMITTEE**

CHAPTER 1.

MISCELLANEOUS PROVISIONS

291. Payment to an Agent:-

The Court shall not deliver to an agent or an advocate any sum of money unless he produces an authenticated authority which empowers him to receive such payment.

292. General Authority:-

An authority to represent another person as agent in any legal proceedings does not of itself authorize the agent to receive payment of money on behalf of his principal.

293. Authority made Outside the New Sudan:-

Where the authority is made in a foreign country, it shall conform to the authentication proceedings of that country and shall be certified by the New Sudan Representative in that country if there is one.

294. Costs of Proceedings:-

- 1) Where any expense is incurred by an official of the Court in the execution of any process ordered by the Court, such expense shall be borne in the first instance by the party on whose behalf the process is carried out, unless the Court otherwise directs.
- 2) The Court may before issuing any process, require the deposit of a sum of money sufficient to cover the expense of the execution of the process.

295. Sale of Perishable Property:-

- 1) The Court may on such terms as it thinks fit, order the sale of any movable property being the subject matter of a suit or subject of an attachment or in the execution of a decree which is perishable or which, for any other reason, it may be desirable to have it sold.

- (2) Before such order is made, notice of the application, if any, shall be given to any party who may be affected by the order, unless the Court otherwise directs.

296. Inter-Pleader Suit:-

Where two or more persons claim adversely to one another the same debt, sum of money or other property movable or immovable, from another person who claims no interest therein other than for charges and costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of inter-pleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself, and may pay such sum of money into Court or place such property at the disposal of the Court; provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of inter-pleader shall be instituted.

297. Power of Court to Inspect:-

The Court may at any stage of a suit inspect any property or thing which is in dispute before it.

298. Proceedings Other Than Suit:-

Subject to the provisions of Part VIII, the Court before which the objection lies shall have the same powers as the Court of original jurisdiction in respect of suits instituted before it.

299. Saving of the Inherent Power of the Court:-

- 1) The Court may at any time correct any procedural error, take any measures or make any amendments as may be reasonable for the purpose of the determination of any question in controversy between the parties.
- 2) Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary, for the ends of justice, or to prevent abuse of the process of the Court.

CHAPTER 2

RULES COMMITTEE

300. Formation and Powers of Rules Committee:-

- 1) A committee to be known as the “Rule Committee”, shall be established consisting of the Chief Justice, the Attorney-General and the deputies to the Chief Justice and two of Appeal Court Judges to be nominated by the Chief Justice;
- 2) The Rules Committee may from time to time make rules regulating the procedure of the Courts.

- 3) The Rules Committee may from time to time make any procedural rules not provided for in this Act if the ends of justice so demand.
- 4) Rules relating to the assessment and payment of fees shall require the consent of the Commissioner for Finance and Economic Planning.

301. Matters for Which Rules May Provide:-

- 1) Rules shall not be inconsistent with the provisions of this Act.
- 2) Without prejudice to the generality of the powers conferred upon it by sub-section (1), the Rules Committee may regulate all or any of the following matters, namely:-
 - (a) The serving of summons, notices and other processes by post or in any other manner and the proof of such service;
 - (b) Security for costs;
 - (c) The valuation of suits, appeals and other proceedings for the purposes of this Act;
 - (d) The taking of evidence on oath in proceedings before arbitrators;
 - (e) The assessment and payment of fees payable with reference to any suit, proceeding, appeal, order, notice or others or any business conducted by or before the Court or an official of the Court;
 - (f) The costs, charges, and expenses to be allowed to parties, witnesses, experts, arbitrators, agents, advocates and others;
 - (g) The administration of oaths, legal notification, certification, attestation and record by or before a Court or an official of the Court
 - (h) The proof of any matter by affidavit;
 - (i) All forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

PART XII

SPECIAL PROCEEDINGS

FOREIGN JUDGEMENTS, OBJECTIONS AGAINST ADMINISTRATIVE DECISIONS, CONFLICT OF JURISDICTION, INTERPRETATION OF THE CONSTITUTION AND OTHER STATUTORY LAW, OBJECTION AS TO THE CONSTITUTIONALITY OF LAWS

CHAPTER 1

FOREIGN JUDGEMENTS

302. Effect of Foreign Judgement:-

A foreign decree or order shall not be executed unless it satisfies the following conditions:-

- (a) The decree or order is made by a competent judicial tribunal in accordance with the rules of international law relating to jurisdiction which are applicable in the country where the judgement or order was made and which became final in accordance with that law;
- (b) The parties to the suit were duly summoned and duly represented;
- (c) The decree or order does not conflict with a prior decree or order made by Courts of the New Sudan;
- (d) The decree or order is not contrary to public order or morality in the New Sudan;
- (e) The decree or order has not been obtained by fraud;
- (f) The decree or order does not contain a claim founded on a breach of any law in force in the New Sudan.

303. Presumption as to Foreign Judgement:-

The Court shall presume, on the production any document purporting to be a certified copy of a foreign judgement, that such judgement was pronounced by a foreign Court of competent jurisdiction, unless the contrary appears on the face of the record, but such presumption may be rebutted by proving want of jurisdiction.

304. Action on a Foreign Judgment:-

Where a person is entitled to the benefit of a foreign judgement as against any other person who is resident in the New Sudan or has property therein, he may, if such judgment is executory in the country in which it was given, institute a suit for the enforcement of such judgement.

CHAPTER 2.

JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

305. Procedure on Application:-

- 1) An application to review an administrative decision shall lie to the High Court and shall be in the form of a petition which includes, in addition to the general particulars required in the plaint, a statement of the nature of the decision subject to review and the grounds thereof.
- 2) Where the decision required to be reviewed is appeal-able to a competent administrative authority the application shall specify the result of such appeal and the date thereof.
- 3) The application shall be accompanied by a copy of the decision required to be reviewed.

306. Time for Review:-

- 1) An application for review shall be made within 60 days from the publication of the decision in the Gazette or in departmental circulars, or from the date of communication of the decision to the interested parties whichever is earlier.
- 2) Where the decision is appeal-able to a competent administrative authority , time commences from the date of final disposal of the appeal.
- 3) The time specified in sub-sections (1) and (2) shall not begin to run where a notice under section 32 (3) was given to the Attorney General.

307. Stay of Execution:-

- 1) The submission of an appeal to the Court shall not operate to stay the execution of the decision appealed against; provided that the Court may, on application of the parties concerned, order the stay of execution if it is of opinion that the results of the execution may be irreparable.
- 2) Notwithstanding the provisions of sub-section (1) no stay of execution shall be made in respect of any decision or order made under any legislation aiming at the protection of public morality.

308. Conditions for Accepting the Application:-

An application for review shall not be accepted:-

- (a) Where the applicant has no personal-interest;
- (b) Where the applicant has not exhausted all the modes of redress available to him by law;
- (c) Unless the application is based on incompetence of the body issuing it or is based on an abuse of authority or a defect in form or a departure from the law or a mistake in the application or interpretation of law.

309. Claims for Compensation:-

The High Courts are competent to decide upon claims for compensation for damages arising out of administrative decisions without limit as to value and whether the claim was submitted as an original claim or incidental to a claim for setting aside the administrative decision.

310. Procedure in Hearing the Application:-

In the submission, hearing and disposal of the application, the same rules and procedure shall apply as in a civil suit except the sections provided for in Part VII.

311. Execution of the Decree:-

No decree setting aside an administrative decision or the award of damages arising out of it shall be executed until it becomes final in exhaustion of available modes of objection or where the time for such objection has expired.

CHAPTER 3.

CONFLICT OF JURISDICTION.

312. Cases of Conflict of Jurisdiction:-

The Court of Appeal shall be competent to determine the issue of jurisdiction where a conflict arises between two judicial tribunals or where such tribunals refuse to assume jurisdiction.

313. Procedure on Application:-

An application under section 312 shall be made to the Court of Appeal which shall include in addition to the general particulars required in the plaint, a statement of the subject-matter, and sufficient particulars as to the suit in respect of which conflict of jurisdiction or the refusal to assume jurisdiction has taken place.

314. Effect of Application:-

On the presentation of the application to the Court of Appeal the suit in respect of which the conflict of jurisdiction has arisen, shall be stayed.

315. Disposal of the Application:-

- 1) The Court shall dispose of the application on the documents contained in the record of the application.
- 2) Nevertheless, the Court may give leave to the parties to file written statements or may summon them to make statements or give explanations.

CHAPTER 4.

INTERPRETATION OF THE CONSTITUTION AND OTHER STATUTORY LAWS

316. The Application for Interpretation:-

- 1) The Court of Appeal is competent to interpret the Constitution and any laws on the application of the Attorney - General.
- 2) The Attorney - General may, of his own motion or on the application of the interested parties, submit an application for interpretation, if he is satisfied that the nature and importance of the provisions submitted require such interpretation to ensure consistency in their application.

317. Contents of the Application:-

The application shall contain a statement as to the provisions submitted for interpretation and the grounds which necessitate such interpretation.

318. Disposal of the Application:-

- 1) The Court shall hear and determine the application on the documents contained in the record.
- 2) Nevertheless, the Court may call on the Attorney general to file further statements or explanations.

CHAPTER 5:

**OBJECTION AGAINST THE
CONSTITUTIONALITY OF LAWS, CONSTITUTIONAL
REMEDIES**

319. Objection Against the Constitutionality:-

A suit to determine the constitutionality of any law or legislative provision may be instituted in the Court of Appeal by a petition which shall include in addition to the general particulars required in the plaint a statement of the law or legislative provision the subject matter of the petition, the grounds for alleging its contravention of the Constitution and the right or interest of the petitioner which is directly affected thereby.

320. The Plea of Unconstitutionality:-

- 1) If a plea of the unconstitutionality of any law or legislative provision is raised before any Court, and such Court is satisfied of the genuineness of the plea, it shall fix a time within which the party interested may institute a suit in the Court of Appeal.
- 2) If a suit is instituted within the time so fixed, the Court before which the plea is raised shall stay the proceedings pending the final disposal of the suit in the Court of Appeal and if no suit is instituted within the time so fixed the plea shall be considered as nugatory.

321. Constitutional Remedy:-

An application for a constitutional remedy shall lie to the Court of appeal and shall be in the form of a petition which includes in addition to the general particulars required in the plaint the following:-

- (a) A statement of the right alleged to have been infringed and of the facts alleged to constitute the infringement;
- (b) A statement as to the time and place of such facts;
- (c) A declaration that the applicant to the best of his knowledge and belief, has no other sufficient remedy whether by way of appeal or other civil or criminal proceedings and a short statement of the grounds for such belief;
- (d) A statement of the value of the relief claimed.

322. Amendment and Rejection of Petition:-

- 1) Where the petition is not drawn up in the manner prescribed, the Court may reject or return it for amendment within such time as may be fixed by the Court.

- 2) If the petition is not amended within the time fixed by the Court in accordance with sub-section (1), the petition shall be rejected.

323. Dismissal of Petition:-

The Court shall dismiss the application and record the reasons for such dismissal, where it appears to it:-

- (a) that the applicant has no right or direct interest in instituting the suit;
- (b) that the petition does not contain any justifiable issue to be decided;
- (c) that the petition does not disclose any clear infringement of any constitutional right or that the applicant has not exhausted all the remedies available to him.

324. Admitting the Suit:-

Where the petition is presented in the proper form, the Court shall make an order allowing it and directing payment of the prescribed fees unless the applicant is excused from payment by a Court order.

325. Notices:-

The CANS shall be regarded as an interested party in any constitutional suit or petition and the Attorney General.

326. Joinder of Other Persons:-

Where it appears to the Court that any person has a right or a direct interest in the result of the suit or petition, the Court may, at any stage of the suit or petition, direct that such person be joined as a defendant.

327. Procedure:-

In a suit for a declaration of the unconstitutionality or for the protection of constitutional rights, the same procedure as provided in this Act for hearing and determining a civil suit, shall be followed except the notice provided for in section 32 (3).

328. Disposal of the Suit:-

Where it appears to the Court that the matter in issue can be determined on the written submissions of the parties, the Court may decide it according to such submissions unless one of the parties applies to be heard in person or by an advocate.

329. Reference of Questions of Facts to Trial Courts:-

- 1) If a suit is instituted under section 320 (2) and it appears to the Court that the parties are at issue upon any question of fact which can be determined in the trial Court it may refer such question to such Court for hearing and determination.
- 2) The Court to which any question of fact has been referred under sub-section (1) shall hear and determine such question and return the record to the Court of Appeal.

- 3) On receiving the proceedings, the Court of Appeal shall proceed to hear and determine the constitutional question and any other questions not referred to the trial Court.

330. Judgement:-

The judgement shall contain the decision of the Court on the constitutional question, the relief awarded, if any, and other orders made by the Court.

331. Effect of Judgement:-

The judgment of the Court of Appeal on questions of constitutionality of laws shall be published and shall be binding.

332. Procedure for Determination of Some Objections:-

The procedure set out in this Chapter, save the exception provided for in section 331, shall be adopted to such extent as may be appropriate in determining objections based on the allegation that subsidiary legislations are ultra vires.

Given under my hand this day of year 2003 A.D.

.....
Dr. John Garang deMabior
Chairman
SPLM/CANS

THE RULES SCHEDULE:

Affidavits

Order 1:

1. Admission of affidavit.
2. Matters to which affidavits should be confined.
3. Procedure in case of oath or affirmation.
4. Certificate to be endorsed by Judge.
5. Special form for use abroad.
6. Appointment and powers of commissioners for oaths.

Commissions.

Order 2.

1. Power of Court to issue commission.
2. Where Court may issue commission to examine witnesses.
3. Commission to make local investigations.
4. Commission to examine or adjust accounts.
5. Court to give commissioner necessary instructions.
6. Commission to make partition.
7. Weight of evidence taken by commission.
8. Power to appoint more than one commissioner.
9. Expenses of commission.
10. Parties to appear before commissioner.

Attestation of Documents. Order 3.

- (1)
 - (a) The attestation of a document shall be made by the judge in the presence of two witnesses who shall be adult males, resident in the New Sudan, having no interest in the document and neither of them being the father, son or husband of any party to the
 - (b) Where the judge does not know the person whose signature is to be attested such person shall be accompanied by the Chief or other credible witness for the purpose of establishing his identity.
 - (c) The same person may be a witness of identity and a witness of the attestation.
 - (d) The judge shall satisfy himself that the person whose signature is attested fully understands the purpose of the document.
 - (e) Where any person desires to have a certificate that any document is an exact copy of another document he shall produce the two documents to the Courts, and the judge shall satisfy himself that the two documents are exact copies of one another, and shall write upon each, a certificate to that effect under his signature; and one of the copies shall be filed in the Court and the other shall be returned to the person producing the document.

Protest Order 4:

1. Appointment of protest clerk.
1. Application for protest
2. Manner and place of presentment.
3. Time at which protest to be made.
4. Where bills to be protested.
5. Contents of instrument of protest.
6. Copy to be handed to holder.
7. Procedure where the person cannot be found.
8. Application to promissory notes.

Order 5.

1. Notice to admit documents.
2. Notice to admit facts.
3. Submission of interrogatories.
4. Affidavit in answer.
5. Using answers to interrogatories.
6. Application for discovery of documents.
7. Inspection of documents.
8. Premature discovery
9. Non-compliance with order for discovery, etc.
10. Documentary evidence.
11. Impounding of documents.
12. Return of document.
13. Material objects other than documents.

Order 6.

1. Where application to be rejected.
2. Disappearing. Payment of fees.
3. Scale percentage.
4. Valuation of suits, appeals and other proceedings.
5. Fees in suits where no hearing.
6. Fees in suits where part of claim is abandoned or admitted.
7. Where value of decree exceeds valuation.
8. By who fees payable.
9. Receipts to be given.
10. Power to remit or postpone payment of fees.
11. Power to return fees.
12. Fraction of a piastre to be treated as a piastre.
13. Enforcement of payment.
14. Maximum fee in suits or objections.
15. Suits and objections by pauper.
16. Contents of application.
17. Rejection of application.
18. Examination of petitioner and defendant.

19. Decision on application.
20. Dispaupering.
21. Time for payment of fees.
22. Objection by pauper.
23. Inquiry into pauperism.

THE SCHEDULE . THE RULES

ORDER 1: AFFIDAVIT

1. (1) Any Court may at any time for sufficient reasons to be recorded in the trial of the suit, order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be admitted at the hearing.
(2) Where it appears to the Court that either party desires the production of a witness for cross-examination and that such witness can be produced, an order may not be made authorizing the evidence of such witness by affidavit;
(3) Where an evidence is given by affidavit, the Court may, at the instance of either party, order the attendance for cross-examination of the witness.
2. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except in interlocutory application, in which case statement of his belief may be admitted; provided that the grounds thereof are stated.
3. (1) Where any person desires to swear or affirm any matter he shall produce to the Court such matter in writing.
(2) The form of oath or affirmation shall be that in use in the Court
(3) After the oath has been taken or the affirmation made the writing shall be read through by the person producing it or in his hearing and shall be signed by him.
4. The Judge shall endorse upon the writing a certificate under his hand and the seal of the Court that the matter therein was sworn to or affirmed, as the case may be, in his presence and subscribed by the person taking the oath or making the affirmation upon the date of such oath or affirmation.
5. Where the certificate is required to be made in special form for use abroad, the Judge may make the certificate in that form.
6. (1) The Chief Justice may from time to time by commission signed by him appoint any person being a practicing advocate to be a Commissioner for Oaths and may revoke any such appointment.

Note: Oath includes customary evidential oath.

- (2) Every Commissioner for Oaths shall, by virtue of his commission be deemed for all purposes of administration of oath, taking of affidavits and attestation of documents to be an official of the Court and for such purpose may exercise all the powers of any Court in the same manner as a Judge thereof; provided that:-
 - (a) a Commissioner for Oaths shall not affix the seal of any Court but shall instead where necessary affix a seal approved by the Chief Justice;
 - (b) the fees prescribed for the administration of an oath, taking of an affidavit or attestation of documents shall be paid to and be retainable by a Commissioner for Oaths in respect of any oath administered, affidavit taken or document attested by him.

ORDER 2: COMMISSIONS

- 1. Subject to such conditions and limitations as may be prescribed, the Court may issue a commission:-
 - (a) to examine any person;
 - (b) to make local investigations and valuation;
 - (c) to examine or adjust accounts;
 - (d) to make partitions.
- 2. (1) The Court may at any time before passing a decree issue a commission for the examination of:-
 - (a) any person resident within the local limits of its jurisdiction who is from sickness or infirmity unable to attend;
 - (b) any person resident beyond such local limits;
 - (c) any public servant who cannot in the opinion of the Court attend without detriment to the public service.
- (2) A commission for the examination of any person may be issued to any Court having jurisdiction in the place in which the person to be examined resides and the Court receiving a commission for the examination of any person shall examine him or cause him to be examined and when the commission has been duly executed it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the commission otherwise directs.
- (3) Where on the application of any party evidence is taken on commission the opposite party shall, if it is practicable, be afforded an opportunity of cross-examining the witness giving the evidence, and such evidence shall subject to all just exceptions, be read as evidence in the suit and shall form part of the record.
- (4) When such party has not had the opportunity of cross-examining the witness, the evidence shall not, except for any special reasons to be recorded by the Court, be read as evidence in the suit or form part of the record.
- (5) In lieu of issuing a commission, the Court may issue a letter of request to examine a witness not within the New Sudan.

3. (1) In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property or the amount of any profits or damages, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.
4. In any suit in which an examination or adjustment of accounts is necessary⁶, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.
5. The Court shall give to the Commissioner such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report to the Court his own opinion on the point referred for his examination.
6. (1) Where a preliminary decree for partition of immovable property has been passed the Court may issue a commission to such person as it thinks fit to report to the best method of effecting a partition and what sum of money, if any, ought to be paid for equality of partition by a co-owner to any other co-owner.
 - (2) The Commissioner shall, after considering the proposals for partition, if any, made by the parties, submit his report in writing to the Court.
 - (3) The Court after hearing any objections which the parties may make to the report, shall confirm, vary or set aside the report.
 - (4) Where the Court confirms or varies the report it shall pass a decree in accordance with the report as confirmed or varied; where the Court sets aside the report it shall either issue a new commission or make such other order as it thinks fit.
7. (1) If a commission is issued under rule 3, 4 or 6 the proceedings and report of the Commissioner shall be evidence in the suit and shall form part of the record but if the Court has reason to be dissatisfied with them, it may direct further inquiry as it thinks fit.
 - (2) The Court either of its own motion or on the application of any of the parties may examine the Commissioner in a closed Court, touching any of the matters mentioned in his report or as to the manner in which he has made the investigation.
8. The Court may, in the cases provided for in rule 3, 4 or 6, issue a commission to more than one person, and in that event, if the Commissioner cannot agree, they shall prepare and sign separate reports.
9. Before issuing any commission under this order, the Court may order such sum as it thinks reasonable towards the expenses of the commission and the remuneration of the Commissioner to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

10. (1) Where a commission is issued, the Court shall direct that the parties to the suit shall appear before the Commissioner and, subject to the provisions of this Act, may direct that a summons be issued to any person to appear as a witness or to produce any document before the Commissioner.
- (2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

Explanation - In this order, the term “Commissioner” means the person to whom a Commission is issued by a Court.

ORDER 3. ATTESTATION OF DOCUMENTS

1. (1) The attestation of a document shall be made by the judge in the presence of two witnesses who shall be adult males, resident in the New Sudan, having no interest in the document and neither of them being the father, son or husband of any party to the document.
- (2) Where the judge does not know the person whose signature is to be attested such person shall be accompanied by the Chief, or other credible witness for the purpose of establishing his identity.
- (3) The same person may be a witness of identity and a witness of the attestation.
- (4) The judge shall satisfy himself that the person whose signature is attested fully understands the purpose of the document.
- (5) Where any person desires to have a certificate that any document is an exact copy of another document he shall produce the two documents to the Court, and the judge shall satisfy himself that the two documents are exact copies of one another, and shall write upon each, a certificate to that effect under his signature; and one of the copies shall be filed in the Court and the other shall be returned to the person producing the document.

ORDER 4: PROTESTS

1. The High Court judge shall appoint in such Courts of the Circuit as he thinks necessary a person to act as protest clerk for the purpose of presenting, protesting and registering protests of bills.
2. Where the holder desires to protest a bill for non-acceptance or non-payment he shall deliver it to the Court within whose local limits of jurisdiction is the place where the bill is payable to the person against whom the protest is to be made has a dwelling place or a place of business and the Court shall not, if the prescribed formalities have been complied with, refuse to make the protest, except where the holder applies for protest for non-payment when the bill is not then due.
3. (1) Presentment for protest for non-acceptance shall be made at the dwelling place or place of business of the drawer or other person against whom the protest is to be made.
- (2) Presentment for protest for non-payment shall be made:-

- (a) At the place of payment specified in the bill; or
 - (b) Where no such place is specified or, where such place is specified but the person against whom the protest is to be made cannot there be found at the dwelling place or place of business of the drawer, acceptor for honour or other person charged with the duty of payment.
- (3) If the person against whom the protest is to be made is not found at his dwelling place or place of business the protest clerk shall take appropriate measures to find him.
- (4)
 - (a) The protest clerk shall present the bill to the person against whom the protest is to be made within twenty-four hours against of the delivery of the bill to the Court, exclusive of any non-business day or part of a non-business day.
 - (b) Where the presentment for protest is required to be made at a place outside the town in which the Court is situated the judge shall allow such further time as is necessary for the journey to such place and may appoint some person other than the protest clerk to present and protest the bill. Where such other person is so appointed his appointment shall be recorded in the instrument of protest under the hand of the judge and seal of the Court.
 - (c) The presentment for protest shall be made at a reasonable time on a business day.
- 5.
 - (1) Protest shall be made only in consequence of refusal to accept or pay by the person to whom the presentment is made.
 - (2) If such person consents to accept or tenders payment but refuses to pay the protest fees, the bill shall be protested only after reference to the holder and on the holder's directions, and if the protest is made the offer to accept or the tender of payment shall be noted by the protest clerk in the instrument of protest.
- 6. The instrument of protest shall contain a literal transcript of the bill, of the acceptance, of the endorsement and of the directions, if any, thereon and summons to accept or pay. It shall set forth the presence or the absence of the party to whom the bill was presented, the grounds of refusal to accept or pay, the inability or refusal to sign and the declaration of protest by the protest clerk.
- 7. The instrument of protest shall be made in duplicate; one copy shall be handed to the holder, and the other filed in the Court.
- 8. Where the person against whom protest is to be made cannot be found, and neither his dwelling place nor place of business is known, the bill shall be treated as dishonoured and a copy of the instrument of protest shall be posted on the Court notice-board for thirty consecutive days.
- 9. The provisions of this Order shall apply so far as possible to the protest of promissory notes for non-payment

ORDER 5: DOCUMENTS

1. Either party with the consent of the Court may by notice in writing call upon the other party to admit any document other than those excepted by law and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs,
2. (1) Any party with the consent of the Court may by notice in writing call upon any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned within a time fixed in such notice, and in case of refusal or neglect to admit within such time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs.

(2) The admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit.
3. (1) In any suit the plaintiff or defendant may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties.
(2) No party shall delivery more than one set of interrogatories to the same party without an order for the purpose.
(3) Interrogatories which do not relate to any matter in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the cross-examination of a witness.
(4) Interrogatories proposed to be delivered shall be submitted to the Court for leave, and leave shall be given only consider necessary either for disposing fairly of the suit or for saving of costs.
4. (1) Interrogatories shall be answered by affidavit to be filed within fourteen days or within such other period as the Court may allow.
(2) Any objection to answering any interrogatory may be taken in the affidavit in answer.
5. Any party may, at the trial of the suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer. If answers not put in are so connected with those put in that the last mentioned answers ought not to be used without them, the Court may direct them to be put in.
6. (1) Any party may apply to the Court for an order directing any other party to any suit to make discovery on oath of all the documents which are or have been in his possession or power relating to any matters in question therein, where necessary either for disposing of the suit or for saving costs.

- (2) If the party from whom production of any document is sought objects, the objection may be taken with the reasons relied upon.
8. Where the party from whom discovery of any document or inspection is sought objects the Court may, if satisfied that the decision on the objection depends on the determination of any issue or question in dispute in the suit, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.
9. Where any party fails to comply with the order to answer interrogatories, or for discovery or inspection of documents the Court may on the application of the other party:-
- (a) dismiss the suit for want of prosecution where the defaulting party is the plaintiff;
 - (b) strike out the defense where the defaulting party is the defendant.
10. (1) Every document admitted in evidence shall be in the record and read and given a distinguishing number or mark, endorsed with the number of the suit, name of the person producing it, and the date on which it was produced and shall be signed by the judge.
- (2) Where a document relied on as evidence is considered by the Court to be inadmissible in evidence there shall be endorsed thereon the particulars mentioned in sub-rule (1) together with a statement of the reasons relied upon for rejection.
11. The Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in custody of the Court for such period and subject to such conditions as it thinks fit.
12. Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit shall, unless the document is impounded under rule 11, be entitled to receive back such document where a judgment which is not appeal-able is delivered or where the period during which an appeal ought to be lodged has lapsed.
13. The provisions of rules 10, 11, and 12 shall, so far as may be, apply to all other material objects producible as evidence.

ORDER 6: FEES

1. (1) In suits and proceedings before Civil Courts the fees set out in the schedule of fees shall be payable.
- (2) In suits such part of the fee as is specified in the aforesaid schedule shall be paid upon the admission of the plaint and the balance shall be paid on hearing provided that the total fees payable on plaint and hearing shall not exceed 10% of the value.

2. (1) For application of the provisions of this Act the value of a suit shall be calculated as follows:-
 - (a) in suits for money, the amount claimed;
 - (b) in suits for maintenance, the total amount claimed if the period for which maintenance is claimed is less than one year and, the amount of twelve months' maintenance in any other case;
 - (c) in suits to establish the right to payment of a periodical sum other than maintenance, ten times the amount claimed to be payable in one year;
 - (d) in suits for the partition of immovable property the value of the property sought to be partitioned at the date of the presentation of the plaint;
 - (e) in suits for pre-emption, the amount at which the plaintiff claims pre-empt;
 - (f) in suits for the possession of immovable property by reason of breach of the contract of tenancy; the amount of six month's rent of the premises;
 - (g) in suits for property other than suits above expressly provided for, the market value of such property at the date of the presentation of the plaint;
 - (h) in suits relating to the appointment or removal of a guardian (other than a guardian ad litem) or a trustee, the value of the property subject to the guardianship or trust;
 - (i) in all other suits the value of the relief claimed as assessed by the plaintiff and the provisions of section 37 of the Civil Procedure Act, 2003, shall apply.
4. Where part of the claim falls within one heading of sub-rule (1) and part falls within another, the value of each part shall be calculated according to sub-rule (1) and the value assets are not sufficient to pay preferential creditors in full shall be reckoned as the amount of the dividend the plaintiff is estimated to receive if he succeeded in this claim.
5. Where the amount of the value of suit contains a fraction of a pound such fraction shall be treated as a pound.
6. The provisions of this rule shall apply so far as may be to the valuation of other proceedings under this Act or referred to in this Order; provided that in appeals and reviews the amount of any costs adjudged shall not be taken into consideration.
7. Where the claim is not disputed and there is no formal hearing no fee shall be charged other than the fee upon plaint.
 - (1) Where in any suit part of the claim is abandoned or admitted after the fee payable upon plaint has been paid but before the fee payable on hearing has been paid, the total fee payable in the suit shall be the aggregate of half the percentage fee on the value of the original claim and half the percentage fee on the value of that part of the suit which is disputed; provided that in suits for the sale or foreclosure of immovable property, the total fee payable shall be the scale percentage on the value of that party of the suit which is disputed and not as above stated in this rule.

- (2) Where in any suit or appeal the value of the decree calculated in accordance with rule 2 exceeds the amount claimed or the amount that at which the relief was valued the further fees payable in accordance with this Order shall be paid by the plaintiff or appellant as the case may be and the decree shall not be executed until such fees have been paid.
 - (3) (1) The fees payable upon any proceeding shall, unless the Court otherwise directs, be paid in the first instance by the person on whose behalf the proceedings are taken; provided that:-
 - (a) where an application under section 60 (3) of the Civil Procedure Act, 2002, to set aside a decree has been granted the Court shall direct whether the plaintiff or the defendant shall pay the balance of the fees (if any) payable on hearing;
 - (b) in a suit of inter-pleader the person instituting the suit shall pay the fee upon plaint, and the Court shall decide by which of the parties the balance of the fees (if any) shall be paid;
 - (c) in bankruptcy and winding-up proceedings the Court may direct that payment of fees other than the fees payable on a petition for adjudication or winding-up shall be postponed until there are assets available in the hands of the receiver or liquidator for the payment of such fees.
 - (2) Fees paid in issues in bankruptcy and winding-up proceedings and fees paid by a creditor on whose petition an order of adjudication or winding-up is made shall, unless the Court otherwise directs, form part of the cost of administration.
7.
 - (1) A receipt shall be given for every fee paid;
 - (2) Where a fee is paid in respect of any document a note shall be endorsed on the document stating that such fee has been paid quoting the receipt number.
 - (3) Where a fee is paid in respect of any suit, appeal, or execution a statement to that effect shall be endorsed on the record.
8. Subject to the provisions of this Act the Court may remit or postpone the payment of any fees upon proof of indigence of the person by whom such fees are payable.
9. The appellate Court may, if it considers that the objection was occasioned by the mistake of the Court from which the objection was made, in its discretion order a return of all or part of the fee paid upon such objection.
10. The payment of any fee may be enforced in like manner as a decree for the payment of money.
11. The maximum fee payable in any suit or objection shall be 10% of the value.
12. (1) Subject to the following rules any suit or objection may be brought by a pauper.

- (2) For the purposes of this Order, a pauper is a person who is not possessed of sufficient means to enable him to pay the fees prescribed for the hearing of the suit or objection as the case may be.
13. (1) The application for permission to sue as a pauper shall be in writing and shall be accompanied by:-
- (a) a list of any movable or immovable property belonging to the petitioner with its estimated value;
 - (b) a certificate signed by two persons and authenticated in such manner as the Court may require that the petitioner is a pauper; and
 - (c) his plaint or memorandum of objection as the case may be.
- (2) The Court may require the petitioner to make a declaration on oath or an affirmation as to the property which he possesses or as to his inability to pay the prescribed fees.
- (3) If the Court is satisfied that the petitioner is not a pauper it shall reject the application.
14. Where the application is in the proper form and is not rejected under rule 13 (3) the Court shall summon the defendant to appear and show cause why the petitioner should not be allowed to sue as a pauper.
15. Upon the day fixed for the defendant to appear and show cause, the Court shall examine the petitioner and the defendant (if he appears) with regard to the application and as to the prospect of success in the suit.
16. After examination mentioned in rule 15 is concluded, the Court shall make its order allowing or rejecting the application.
17. The Court shall reject the application:-
- (a) where the applicant is not a pauper; or
 - (b) where he has been guilty of any act of bad faith in the matter of the application; or
 - (c) where his allegations do not show that he has a reasonable prospect of success in the suit.
18. The Court may on the application of the defendant or of its own motion after giving notice to the plaintiff order the plaintiff to be dispaupered:-
- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
 - (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject matter of the suit under which any other person has obtained an interest in such subject matter.

19. Where the Court orders the plaintiff to be dispaupered it shall fix a time within which the plaintiff shall pay the prescribed fees, and if such fees are not paid within such time, the Court shall dismiss the suit.
20. Any person entitled to prefer an appeal may present an application to the appellate Court for permission to appeal as a pauper, and the foregoing rules of this Order shall, so far as may be, apply; provided that the Court shall reject the application, if, upon a perusal thereof and of the judgement and decree appealed from, it sees reasons to think that the decree is contrary to law or is otherwise erroneous or unjust.
21. When there is an application to object as a pauper, the inquiry into the pauperism of the applicant may be made either by the appellate Court or under the order of the appellate Court by the Court from whose decision the objection is preferred; provided that, if the applicant was allowed to sue as a pauper in the Court from whose decree the objection is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the appellate Court otherwise directs.

Note:-

Where the fee payable is stated to be percentage, such percentage shall be calculated on the value of the suit or proceeding unless it is otherwise stated.