

Extraordinary



Federal Republic of Nigeria Official Gazette

No. 95

Lagos -31st December, 2013

Vol. 100

Government Notice No. 211

The following is published as supplement to this *Gazette* :

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Printed and Published by The Federal Government Printer, Lagos, Nigeria
FGP 33/122013/300 (OL 94)

Annual Subscription from 1st January, 2013 is Local : ₦25,000.00 Overseas : ₦37,500.00 [Surface Mail]
₦49,500.00 [Second Class Air Mail]. Present issue ₦2,500 per copy. Subscribers who wish to obtain *Gazette* after 1st
January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

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3. Location of Civil Aviation Registry.

S.I. No. 31 of 2013

CIVIL AVIATION (PROCEDURE) RULES 2013

IN EXERCISE OF THE POWERS CONFERRED ON ME BY SECTION 254 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999, S.44 OF THE FEDERAL HIGH COURT ACT, CAP. 134 AND OF ALL OTHER POWERS ENABLING ME IN THAT BEHALF, I, IBRAHIM NDAHI AUTA (OFR), CHIEF JUDGE, FEDERAL HIGH COURT, HEREBY MAKE THE FOLLOWING RULES :

PART A-CITATION, SAVINGS, ETC.

ORDER 1

1. These Rules may be cited as the Civil Aviation (Procedure) Rules 2013 and shall come into force on the 31st day of January, 2014.

Citation and Commencement.

2.—(1) These Rules shall apply to every Aviation proceeding or matter brought in the Court pursuant to the Act; and

Application of Rules.

(2) The Federal High Court (Civil Procedure) Rules shall apply subject to the provisions of these Rules.

3.—(1) These Rules shall not apply to any proceeding or matter which is part-heard on the date when these Rules come into operation.

Savings Part-head matters.

(2) Where an action is filed and no further step is taken other than the filing, other subsequent procedure shall be under these Rules.

(3) In all other cases where causes or matters are pending, the Court shall give such directions as may be necessary or expedient to ensure conformity with the requirements of these Rules.

(4) The Chief Judge may issue practice directions generally or in respect of a particular case, for carrying out any of the proceedings under these Rules.

(5) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

4.—(1) In these Rules, unless the context otherwise requires—

Interpretation.

“*Act*” means the Admiralty Jurisdiction Act 1991 and or the Civil Aviation Act 2006.

“*Aviation*” shall bear the same meaning as in the Act ;

“*Aviation Marshal or his substitute*” means the Chief Registrar or any of his authorized officers ;

“*Civil Aviation Registry*” means the Registry established by the Chief Judge for Aviation matters ;

“*Aircraft*” shall bear the same meaning as defined in the Civil Aviation Act No. 6 of 2006 or any statutory amendment or re-enactment thereof ;

"*aircraft engines*" means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and ;

(i) In the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent ; and

(ii) In the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horse power or its equivalent.

together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto ;

"*aircraft objects*" means airframes, aircraft engines and helicopters ;

"*aircraft register*" means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention ;

"*airframes*" means airframes (other than those used in military, custom or police services that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport :

(i) at least eight (8) persons including crew ; or

(ii) goods in excess of 2750 kilograms,

(iii) together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto ;

"*helicopters*" means heavier-than-air machines (other than those used in military, customs, or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport :

(i) at least five (5) persons including crew ; or

(ii) goods in excess of 450 kilograms.

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data manuals and records relating thereto ;

"*cargo*" means any property carried on an aircraft other than mail stores and accompanied or mishandled baggage ;

"*licence*" includes Air Transport Licence (ATL), Air Operators Permit (AOP), Air Travellers Organizers Licence (ATOL), Air Operators Certificate (AOC), Certificates of Airworthiness, Certificates of Registration, Personnel Licences and Ratings, Aerodrome Licence, Aviation Training Organizations Approvals/ Certificates, Aircraft Maintenance Organization Approvals/ Certificates and all other authorizations and approvals issued pursuant to this Act.

"*Amount claimed*" includes an amount in respect of interest and/or costs ;

"*Arrest*" means the detention of aircraft by judicial process to secure an aviation claim, but does not include the seizure of an aircraft in execution or satisfaction of a judgment ;

"*Arrestor*" means a party on whose application an aircraft, asset or other property was arrested ;

"*Asset*" shall include Engine/s, APU, Airframe and Avionics of an aircraft.

"*Attorney-General*" means the Attorney General of the Federation ;

"*Caveat*" means an undertaking filed in the Civil Aviation Registry by the owner of, or a person interested in, an aircraft or other property to appear to any action in rem filed against that aircraft or any other property and provide bail even though the aircraft or other property is not arrested ;

"*Caveator*" means the person by whom or on whose behalf the Caveat is filed ;

"*Chief Judge*" means the Chief Judge of the Federal High Court ;

"*Concurrent Writ*" has the same meaning as provided in Order 3 rules 9 and 10 of these Rules ;

"*Court*" means Federal High Court ;

"*Interested person*" in relation to a proceeding or in relation to an aircraft or other property that is under arrest, includes an underwriter or an insurer of the aircraft or other property or of a liability in relation to the aircraft or other property ;

"*Judge*" means Judge of the Federal High Court ;

"*Other property*" includes aircraft tools, spares, equipments, cargo on board, tyres, ground support equipments, power units, aircraft accessories, moveable properties, a Maintenance and Repair Organisation (MRO), an Approved Maintenance Organisation (AMO) an Original Equipment Manufacturer (OEM) an Airline Operating Certificate (AOC), any licence issued by the Ministry of Aviation, the Federal Airports Authority of Nigeria (FAAN) or the Nigerian Civil Aviation Authority (NCAA) ;

"*Out of Jurisdiction*" means out of the Federal Republic of Nigeria

"*Party*" means a party to a proceeding ;

"*Proceeding*" means an aviation action instituted at the Federal High Court ;

"*Property*" means an aircraft, asset and other property ;

"*Registrar*" means the Chief Registrar, Deputy Chief Registrar, Assistant Chief Registrar, Principal Registrar, Senior Registrar or any other officer acting or performing the functions of a Registrar ;

"*Warrant of arrest*" means a warrant for the arrest of an aircraft, asset or other property.

PART B—CIVIL AVIATION
ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

Actions in
rem.

1. An action in rem may be commenced in the Judicial Division of the Court in which the res may be found or is expected to arrive.

Other
actions.

2. All other actions shall be commenced and determined in the Judicial Division in which the Defendant resides or carries on substantial part of its or his/her business or in which the cause of action arose.

Suits
commenced
in wrong
Judicial
Division.

3. Where a suit is commenced in any other Judicial Division of the Court other than that in which it ought to have been commenced, it may, notwithstanding, be tried in the Judicial Division in which it has been commenced, unless the Court otherwise directs or the Defendants plead specially in objection to the jurisdiction before or at the time when he or she is required to state his answer or to plead in the proceeding.

ORDER 3

FORM AND COMMENCEMENT OF ACTIONS

Commencement of
Actions.

1. A Civil Aviation action filed in the Court shall be commenced by :

- (a) Writ of Summons ; or
- (b) Originating Summons.

Civil
Aviation
Marshal to
issue Writ of
summons.

2. Where an action is commenced by Writ of Summons, the Writ of Summons may be issued by the Aviation Marshal.

Actions in
rem.

3.—(1) All actions in rem shall be commenced by a Writ of Summons as in Form 1 in the Schedule to these Rules, which shall be accompanied by a Statement of Claim and a copy of every document to be relied on at the trial.

(2) The Plaintiff shall, within 7 days of filing the Writ of Summons, file written statements of his witnesses which shall be adopted on oath at the trial.

Actions in
personam.

4.—(1) An action in personam shall be commenced by Writ of Summons as in Form 2 in the Schedule to these Rules which shall be accompanied by :

- (a) A Statement of Claim ;
- (b) A copy of every document to be relied on at the trial ;
- (c) A list of non-documentary exhibits ;
- (d) A list of witnesses to be called at the trial ; and
- (e) Written Statements on oath of the witnesses ;

Provided that :

(i) The statement on oath of witnesses requiring subpoena from the Court need not be filed at the commencement of the action ; and

(ii) The witnesses who require subpoena or Summons shall at the instance of the party calling them be served with Form 3 in the Schedule to these Rules before the filing of the statement of such witnesses.

(2) Where a Plaintiff fails to comply with sub-rule 1, his originating processes shall not be accepted for filing by the Civil Aviation Registry.

5. A party who desires to call any witness whose written witness statement or statement on oath did not accompany his pleading shall apply to the Judge for leave to call such witness. Such application shall be accompanied by the statement on oath of the witness.

Additional witness.

6. A Writ of Summons to be served out of jurisdiction shall be as in Form 4 in the Schedule to these Rules with such modifications or variations as circumstances may require.

Form of writ of summons for service out of jurisdiction.

7.—(1) Any action not required by these Rules to be commenced by Writ of Summons shall be commenced by Originating Summons and shall be in Form 5 in the Schedule to these Rules, with such modifications or variations as circumstances may require.

Form of originating summons.

(2) An originating summons shall be accompanied by :

(a) An affidavit setting out the facts relied upon ;

(b) Copies of all the exhibits to be relied upon ; and

(c) A written address.

8.—(1) A process filed in or issued out of the Court in an Aviation proceeding shall include as part of the heading, the words "*In Civil Aviation*".

Headings.

(2) Where the action is an action in rem, the process filed shall contain the heading "*Civil Aviation Action In Rem*"

9.—(1) The Aviation Marshal shall indicate the date and time of presentation for filing on every originating process presented for filing and shall arrange for service thereof to be effected.

Originating process to be tested by its date.

(2) The Aviation Marshal shall seal every originating process whereupon it shall be deemed to be issued.

Sealing of originating process.

(3) An originating process shall not be altered after it is sealed except upon application to a Judge in Chambers.

10. Where an originating process is lost after issue, a Judge upon being satisfied of the loss and of the correctness of the process may order a copy to be filed and sealed in place of the lost originating process.

Loss of originating process.

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Concurrent
originating
process.

11. A Plaintiff may at the issuance of an originating process or at any time during its life span, cause to be issued one or more concurrent originating processes each to bear the same date as the initial process marked "Concurrent" and have stated on it the date of issue.

Concurrent
originating
process for
service
within and
out of
jurisdiction.

12. An originating process for service within Jurisdiction may be issued and marked as a concurrent originating process with one for service out of Jurisdiction and an originating process for service out of Jurisdiction may be issued and marked as a concurrent originating process with one for service within jurisdiction.

Filing of
documents.

13. Where a party is required or authorized to file a document with the Court, the document may be filed by filing it in the Civil Aviation Registry personally, by mailing it or sending it by courier to the Civil Aviation Registry or by transmitting it to the registry by telex, facsimile or other electronic means of communication if the Civil Aviation registry has the necessary facilities for accepting transmission in such manner.

ORDER 4 PRELIMINARY ACT

Filing of
Preliminary
Act.

1. In an action to enforce a claim for damages arising from the loss of an aircraft or for damage done to or by an aircraft following a collision between two or more aircraft, each party shall file a Preliminary Act, unless the Court otherwise orders.

Contents of
Preliminary
Act.

2. The Preliminary Act shall contain the following particulars :

(a) The names and registration numbers of the aircraft which came into collision and their country of Registry ;

(b) The length, breadth, gross tonnage, at the material time of the collision and the nature and tonnage of any cargo carried by the aircraft ;

(c) The date and time (including the time zone of the collision) ;

(d) The place of the collision ;

(e) The direction and force of the wind ;

(f) The state of the weather ;

(g) The details of the marshaller who was marshalling the aircraft ;

(h) The position, the course steered and speed through the wind, of the aircraft when the other aircraft was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier ;

(i) The lights or shapes (if any) carried by the aircraft ;

(j) (i) The distance and bearing of the other aircraft when she was first observed by radar ;

(ii) The distance, bearing and approximate heading of the other aircraft when first seen ;

(k) The light or shape or combination of lights or shapes (if any) of the other aircraft when first seen ;

(l) Other lights or shapes or combination of lights or shapes (if any) of the other aircraft subsequently seen before the collision, and when ;

(m) The alterations (if any) made to the course and speed of the aircraft after the earlier of the two times referred to in Rule 2(h) of this order up to the time of the collision and when, and what measures of course or speed, taken to avoid the collision and when ; and

(n) The heading of the aircraft, parts of each aircraft which first came into contact and the approximate angle between the two aircraft at the moment of contact.

3. The contents of a Preliminary Act shall be set out in parallel columns and where ever possible, as stated in numerical values as in Form 6 in the Schedule to these Rules.

Form of
Preliminary
Act.

4. The Plaintiff shall File his Preliminary Act within 7 days after the commencement of the proceedings and the other Party shall file their Preliminary Act before filing any pleading.

Time for
filing
Preliminary
Act.

5. A Preliminary Act shall be filed in a closed envelope that has been sealed with the seal of the Court and bears the date of filing.

Preliminary
Act to be
sealed.

6.—(1) Where the Plaintiff fails to file a Preliminary Act, the Court may, on application, dismiss the proceedings or make such order on terms as it thinks just.

Default in
filing.

(2) Where a Defendant fails to file a Preliminary Act, the Plaintiff may take the same step in the proceeding as may be taken in relation to a Defendant who has failed to file a defence under the Federal High Court (Civil Procedure) Rules.

(3) In proving his case in pursuance of sub-rule (2) of this Rule, the Plaintiff's evidence may, unless the Court otherwise order, be given by affidavit.

7. The Court may at any stage of the proceeding after pleadings have been closed, on application or of its own motion, order that the Registrar opens the envelope containing the Preliminary Act and may make such further order or orders as are appropriate.

Opening of
Preliminary
Act.

8. On the opening of an envelope containing a Preliminary Act, the Registrar shall endorse the Preliminary Act with the date on which it is filed, the date on which the envelope was opened and the date on which any order was made, or consent filed, pursuant to which the envelope was opened.

Endorsement
of
Preliminary
Act.

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Preliminary
Act deemed
part of
Statement of
Claim or
Defence.

9. A Preliminary Act shall be read with and form a part of the Statement of Claim or Statement of Defence, as the case may be, as though it were a schedule thereto.

ORDER 5

PARTIES IN ACTIONS IN REM

Actions in
Rem.

1. The Writ of Summons in a proceeding commenced as an action in rem shall specify a relevant person in relation to the aviation claim concerned as a Defendant, and shall be in Form 1 in the schedule to these Rules.

Nature of
specification.

2. The specification may be by reference to ownership of, or other relevant relationship with the aircraft, asset or other property concerned.

Actions
against
Aircraft or
other
property.

3. The Writ of Summons in a proceeding commenced as an action in rem against an aircraft, asset or other property shall identify the aircraft, asset or other property.

Sister
Aircraft.

4.—(1) Where the action is commenced against a sister aircraft, the aircraft in relation to which it is a sister aircraft shall also be identified in the initiating process.

(2) A Writ of Summons may identify more than one aircraft as a sister aircraft.

Amendment.

5. The power of the Court in relation to amendment of processes and joinder of parties shall extend to :

- (a) making an order, on such terms as are just ;
- (b) substituting for a Defendant identified in rule 2 of this Order some other person ;
- (c) substituting for an aircraft some other aircraft ; and
- (d) adding a co-Plaintiff or a co-Defendant.

ORDER 6

SERVICE OF PROCESS

A-ACTIONS IN REM

Service on
aircraft or
other
property on
an aircraft.

1. The Writ of Summons in a proceeding commenced as an action in rem against an aircraft, asset or other property that is at the time of service on board an aircraft, shall be served by securely affixing a sealed copy of the process to the door or some other conspicuous part of the aircraft, or delivering the same to the captain of the aircraft.

2. The Writ of Summons in a proceeding commenced as an action in rem against any property that is not, at the time of service, on board an aircraft shall be served by securely affixing a sealed copy of the process to the asset or property or to a package or container or storage facility containing the asset or property.
- Service on property not on aircraft.
3. If access to the aircraft or property cannot reasonably be obtained, the process may be served on the aircraft, asset or other property :
- Service where access impossible.
- (a) By handing a sealed copy of the process to or leaving it with a person apparently in charge of the aircraft, asset or other property ; or
- (b) If that person refuses to accept service, by placing a sealed copy of the process down in the person's presence and telling the person what the document is.
4. In the case of every arrest of an aircraft, asset or other property, the appropriate officer of the Nigerian Civil Aviation Authority, the Federal Airports Authority of Nigeria, the Nigerian Airspace Management Agencies, and the Control Tower and or such persons in whose custody the asset or other property is shall be served with a copy of the Court order.
- Nigerian Civil Aviation Authority etc to be notified.
5. The Writ of Summons in a proceeding commenced as an action in rem against the proceeds of sale of an aircraft, asset or other property that has been paid into Court shall be served by filing a sealed copy of the process in the Court in which the proceeds are held.
- Service of writ on proceeds
6. The Writ in a proceeding commenced as an action in rem against freight shall be served in the following manner :
- Service of writ on Freight.
- (a) If the cargo in respect of which the freight is owing is on board an aircraft, by attaching a sealed copy of the Writ of Summons and Statement of Claim in the suit to a conspicuous part of the aircraft ; and or such persons in whose custody the asset or property is.
- (b) If the cargo in respect of which the freight is owing is not on board an aircraft, by attaching a sealed copy of the Writ of Summons and Statement of Claim to the cargo or ; through the Nigerian Customs Service and either Nigerian Aviation and Cargo Handling Co. Plc (NACHO) or Skyway Aviation Handling Company Limited (SAHCOL);
- (c) If monies payable for the freight are in possession of a person, by personal service of the Writ of Summons and Statement of Claim on that person.
7. The Writ of Summons in a proceeding commenced as an action in rem against a fund shall be served by handing a copy of the writ to the Aviation Marshal.
- Service of writ on Funds.

Service upon
Caveator.

8. Where :

(a) A proceeding is commenced as an action in rem against an aircraft, asset or other property ; and

(b) A caveat against the arrest of an aircraft, asset or other property is in force or is filed after the proceeding is commenced,

A sealed copy of the Writ of Summons shall be served on the caveator as soon as practicable after the person on whose behalf it was issued becomes aware of the existence of the caveat :

Service by
Civil
Aviation
Marshal.

9. The Aviation Marshal shall effect the service of a Writ of Summons in a proceeding commenced as an action in rem against an aircraft, asset or other property.

No
substituted
Service.

10. In a proceeding commenced as an action in rem, the Court shall not order substituted service of the Writ of Summons that is to be served on an aircraft, asset or other property.

Service on
any Day.

11. An originating process in a proceeding commenced as an action in rem may be served on any day.

Service of
amended
process.

12.—(1) Where a Writ of Summons in a proceeding commenced as an action in rem has been amended, the amended Writ of Summons shall, unless the Court otherwise orders be served on each person on whom, and on each aircraft, asset or on the other property on which the Writ of Summons was issued.

(2) Where a Writ of Summons in an action in rem has been amended by joining or adding a person or an aircraft, asset or other property as a party to the suit, the amended Court process in the suit shall be served on the joined or added person, and the owner or the Captain or any person apparently in charge of the aircraft, asset or other property.

Acceptance
of service by
Solicitor.

13. Where in a proceeding commenced as an action in rem against an aircraft, asset or other property, a solicitor acting for a Defendant in the proceeding or the owner of the aircraft, asset or other property undertakes in writing to accept service of the Writ of Summons, or any other process, in relation to the proceeding, the process may be served on the solicitor in any way in which other process of the Court may be served on the solicitor instead of being served as elsewhere provided or as the case may be.

Service in
certain
Circums-
tances.

14. Where :

(a) An action in rem is commenced against an aircraft, asset or other property which has been abandoned in Nigeria ; or

(b) An action in *personam* is filed against a Defendant who does not reside in or carry on business in Nigeria through an agent, the Court may order

service on such Defendant or the owner of such aircraft, asset or other property at the address of his last known place of business by a reputable courier company operating a courier service between Nigeria and the country of the place of business.

15.—(1) Where the bailiff, sheriff, officer of Court or any person charged with the service of any Writ of Summons or document on any person is prevented by the violence or threats of such persons, or any other person in concert with him, from personally serving the Writ of Summons or documents, it shall be sufficient to inform the person to be served of the nature of the Writ of Summons or documents and drop the same as near that person as practicable.

Where
violence
threatened.

(2) Where a time limit prescribed by or pursuant to the Act or these Rules falls on a Saturday, Sunday or public holiday, the time limit is extended to the next following business day.

B-SERVICE OUT OF JURISDICTION

16. The Court or Judge, in giving leave to serve a Court process or document out of jurisdiction under these Rules, may in an appropriate case direct that courier service shall be used by the party effecting service.

Service by
Courier.

17. An order giving leave to effect service out of jurisdiction shall prescribe the mode of service, and shall limit a time after service within which the Defendant is to enter appearance, such time to depend on the place or country where or within which the Writ of Summons is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as prima facie evidence thereof.

Mode of
Service to be
prescribed
and order
thereon.

18. The costs of and incidental to the execution of any process in a suit shall be paid in the first place by the party requiring the execution, and the Sherriff shall not (except by order at the Court) be bound to serve or execute any process unless the fees and reasonable expenses thereof shall have been previously paid or tendered to him.

Expenses of
Service.

19. A book shall be kept at every Court for recording service of process, in such form as the Chief Judge may direct, in which shall be entered by the officer serving the process, or by the Aviation Marshal, the name of the Plaintiff or Complainant and the Defendant, the particular Court issuing the process, the method, whether personal or otherwise, of the Service, and manner in which the person serving ascertained that he served the process on the right person, and where any process is not duly served, then the cause of failure shall be stated and every entry in the book or an office copy of any entry shall be prima facie evidence of the several matters therein stated.

Recording of
Service.

ORDER 7
ARREST OF AIRCRAFT, ASSET AND OTHER PROPERTY

Application.

1. —(1) A party to a proceeding commenced as an action in rem may by a motion *ex-parte*, apply for a warrant of arrest in respect of the aircraft, asset or other property against which the proceeding was commenced, *Provided* that at the time of the application, the aircraft, asset or other property is within Nigerian airspace or is expected to arrive within three days.

(2) Before a warrant to arrest any aircraft, asset or other property is issued, the party applying shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that aircraft, asset or other property.

(3) A warrant of arrest shall not be issued until the party applying has, filed an affidavit sworn to by him or his agent containing the particulars required by sub-rule (6) of this rule.

(4) A warrant of arrest may not be issued in the case of an aircraft, asset or other property whose beneficial ownership has, since the issuance of the Writ of Summons, changed as a result of a sale or disposal by any Court exercising Aviation jurisdiction.

Warrant of
Arrest.

(5) A warrant of arrest shall be signed by the Judge and shall be as in Form 7 in the schedule to these Rules.

(6) An Affidavit required by sub-rule (3) of this rule shall state :

Verification of Service

(a) In every case :

(i) The nature of the claim or counter-claim and that it has not been satisfied and, if it arises in connection with an aircraft, the name of that aircraft; and

(ii) The nature of the property to be arrested and, if the property is an aircraft, the name of the aircraft, serial number and her country of registry, if known.

(b) In the case of a claim against an aircraft by virtue of the Act :

(i) The name of the person who would be liable on the claim in an action in personam (the relevant person) ; and

(ii) That the relevant person was when the cause of action arose the owner, lessor or charterer of, or in possession or in control of the aircraft in connection with which the claim arose ; and

(iii) That at the time of the issuance of the Writ the relevant person was either the beneficial owner of all the shares in the aircraft in respect of which the warrant is required or, (where appropriate) the charterer of it under a charter by demise ;

(c) Where, pursuant to the Act, the warrant is sought against an aircraft that is not the subject of the action, that the deponent has reasonable grounds to believe that the aircraft against which the warrant is sought is beneficially owned by the person who is the owner of the aircraft that is the subject of the action.

(d) In the case of a claim for possession of an aircraft or for wages, the nationality of the aircraft in respect of which the warrant is required ;

(e) In the case of a claim in respect of a liability incurred under the Act, the facts relied upon as establishing that the Court is not prevented from entertaining the action ; and

(f) That the applicant has complied with the provisions of Order 7 Rule 1 (2) of these Rules.

2. A warrant of arrest shall be issued by the Judge and shall be as in Form 7 in the Schedule to these Rules.

Issuance of
warrant of
arrest.

3. A warrant of arrest shall be valid for a period of 6 months from the date of its issue and may be renewed for another period of 6 months.

Period of
validity.

4.—(1) A warrant of arrest shall be executed by the Aviation Marshal or his or her Substitute.

Execution of
warrant of
arrest.

(2) A warrant of arrest shall not be executed on an aircraft, asset or other property unless the Writ of Summons in the proceeding concerned has previously been served or is to be served concurrently with the execution of the warrant.

(3) An aircraft, asset or other property may be arrested in a proceeding after judgment has been delivered in the proceeding.

(4) The Aviation Marshal shall not execute a warrant of arrest if the applicant so requests in writing or the Court so orders.

(5) Where a warrant of arrest specifies that an aircraft, asset or other property has been issued, the Court may on the application of :

(a) The Caveator if a caveat against the arrest of the aircraft, asset or other property is, at the time of the application, in force ; or

(b) In any other case, an interested person in relation to the aircraft, asset or other property, and on such terms are just; order that the warrant of arrest :

(i) be discharged ; or

(ii) be not executed ; or

(iii) be not executed within a specified period.

5. An aircraft or other property specified in a warrant of arrest as in Form 7 in the Schedule to these Rules shall be under arrest from the time when the warrant is executed until it is lawfully released from arrest or sold by order of Court.

Duration of
arrest.

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**Verification
of Service.**

6. Execution of a warrant of arrest shall be verified by an affidavit.

**Execution on
any day.**

7. A warrant of arrest may be executed on any day and at any time.

**ORDER 8
CAVEATS**

**Caveat
against
arrest.**

1. A caveat against the arrest of an aircraft, asset or other property may be filed in the Civil Aviation Registry as in Form 8 in the Schedule to these Rules.

**Civil
Aviation
Marshal to
be satisfied.**

2.—(1) The caveat shall not be filed unless the Aviation Marshal is satisfied (whether because of an undertaking in writing given by the caveator or by a solicitor in addition to the undertaking specified in Rule 3 of this Order, or for other sufficient reason) that the Caveator will, in any proceeding of the kind specified in the caveat that is commenced as an action in rem against the aircraft or other property :

(a) Appear to the suit within 3 days of being served ; and

(b) Provide bail or pay the amount claimed into Court in the name of the Aviation Marshal.

(2) The Aviation Marshal may in addition to the requirements under sub-rule 1 of this rule demand that the undertaking, guarantee or bond to be produced or to secure the amount claimed or to satisfy any judgment in the amount claimed shall be by :

(a) a protection and indemnity association that is a member of the International Group of Protection and Indemnity Associations ; or

(b) a bank within the meaning of same in the Banks and Other Financial Institutions Act carrying on banking business in Nigeria ; or

(c) an insurance company of repute registered under the Insurance Act carrying on insurance business in Nigeria.

**Undertaking
by caveators.**

3.—(1) The filing of a caveat constitutes an undertaking by the Caveator:

(a) to appear in any proceeding of a kind specified in the caveat that is commenced as an action in rem against the aircraft, asset or other property specified in the caveat; and

(b) to provide bail or pay the amount claimed into Court in the name of the Aviation Marshal.

(2) The undertaking shall be enforceable by the Court in which the proceeding is commenced.

**Caveator to
give bail.**

4.—(1) This rule applies where :

(a) A caveat against the arrest of an aircraft, asset or other property is in force :

(b) Under these Rules, a Writ of Summons has been served on the Caveator ;

- (a) Register of Caveats Against Arrest.
- (b) Register of Caveats Against Release.

(2) Any Register established under sub-rule (1) of this Rule may be inspected by any person, upon payment of a prescribed fee.

ORDER 9

CUSTODY AND SALE OF AIRCRAFT, ASSET AND OTHER PROPERTY UNDER ARREST

Liability for
Aviation
Marshal's
Expenses.

1. An application for a warrant of arrest shall constitute an undertaking to the Court to pay to the Aviation Marshal, on demand, an amount equal to the expenses of the Aviation Marshal in relation to the arrest.

Funds to be
deposited
with
Aviation
Marshal.

2. —(1) The documented expenses of the Aviation Marshal including bank charges shall be paid by the arresting party.

(2) Where a person is liable to pay for the expense incurred, the Aviation Marshal may :

(a) Accept an amount of money not less than ₦100,000.00 and not more than ₦500,000.00 as deposit towards discharging the liability; and

(b) Make more demand as the need arises for payment on account of those expenses ;

(c) Where another party arrests the arrested aircraft, asset or other property, or files a caveat against release, he shall be jointly and severally liable with the first arrestor to pay the Aviation Marshal's expenses.

(d) Within 7 working days of the release of the aircraft, asset or other property, the Aviation Marshal shall file return of receipts and expenditures to the Court.

Custody of
arrested
aircraft, asset
and other
property.

3.—(1) The Aviation Marshal after executing the order of arrest of an aircraft, asset or other property shall have the custody of the aircraft, asset or other property.

(2) The Aviation Marshal shall, unless the Court otherwise orders, take all appropriate steps to retain custody and control of, and preserve the aircraft, asset or other property, including :

(a) Removing from the aircraft, asset or other property or storing place, cargo that is under arrest ;

(b) Removing cargo from aircraft, asset or other property that is under arrest and storing it ;

(c) Removing, storing or disposing of perishable goods that are under arrest or are in an aircraft that is under arrest ; and

(d) Moving the Aircraft, Asset or other Property that is under arrest.

(c) The proceeding is a proceeding of a kind specified in the caveat ; and

(d) The caveat specifies an amount not less than the amount claimed.

(2) Within 3 working days after having been so served, the Caveator shall, unless otherwise agreed in writing between the Caveator and the Plaintiff :—

(a) Pay into Court an amount equal to-

(i) the amount claimed ; or

(ii) The amount specified in the caveat, or

(b) Cause a bail bond to be executed by a bank and an insurance company or Protection and Indemnity Club as in Form 9 in the schedule to these Rules.

(3) A Caveator who fails to comply with sub-rule 2 of this rule shall be taken to have failed to appear in the proceedings within the time limited for appearing.

5. The Court shall have power to set aside a caveat against the arrest of an aircraft, asset or other property.

Caveats may be set aside.

6. Where an aircraft, asset or other property is under arrest in a proceeding, a person may, on providing an undertaking in damages, file in the Court a caveat against the release from arrest of the aircraft, asset or other property in lieu of obtaining a further arrest of that aircraft, asset or other property. The Caveat shall be as in Form 10 in the Schedules to these Rules.

Caveats against release.

7. Where any aircraft, asset or other property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court for an order under this rule, and on the hearing of the application, the Court unless it is satisfied that the party procuring the arrest of the aircraft, asset or other property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the party at whose instance the aircraft, asset or other property was arrested to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

Payment of damages for insufficient reason.

8.—(1) A caveat expires twelve (12) months after the day on which it was filed except it is withdrawn or set aside.

Expiration of caveat

(2) A new caveat may be filed before or after the expiration of an existing caveat.

Filing of new caveats.

9. A Caveator may withdraw a caveat by filing an instrument of withdrawal of the caveat as in Form 11 in the Schedule of these Rules and same shall be withdrawn from the Register of Caveats.

Withdrawal of caveat.

10.—(1) The Aviation Marshal shall establish and maintain two Registers, to be known as-

Registers.

4.—(1) Where the Aviation Marshal has custody of an aircraft, asset or other property, he or a party interested may at any time apply to the Court or a Judge in Chambers for directions with respect to other property, and such directions may include steps to be taken where an arrestor defaults in payment of the expenses of the Aviation Marshal after a demand has been made for same.

-Application concerning arrested aircraft, asset or property.

(2) Notice of an application (not being an application for the release from arrest of an aircraft, asset or other property) made by a person other than the Aviation Marshal shall be served on the Aviation Marshal.

(3) The Court may order the applicant :

(a) To give notice of the application ; and

(b) To give notice of the directions, to such persons as are specified in the order.

(4) The Court may make such orders as seems to it just, including an order for the immediate and unconditional release of any aircraft, asset or other property under arrest in the proceedings.

5.—(1) Where :

(a) Cargo on board an aircraft is under arrest but the aircraft is not ; or

(b) An aircraft is under arrest but its cargo is not, a person who is entitled to immediate possession of the aircraft or the cargo, respectively, may apply to the Court to discharge the cargo from the aircraft.

Discharge of aircraft, asset or cargo not under Arrest.

(2) Where :

(a) The Court is satisfied that the applicant is entitled to immediate possession of the aircraft or the cargo, as the case may be ; and

(b) the applicant gives an undertaking in writing satisfactory to the Aviation Marshal to pay on demand to the Aviation Marshal any fees and expenses of the Aviation Marshal in connection with the discharge; and

(c) The Court so requires, that the applicant indemnifies the Aviation Marshal, in form satisfactory to the Aviation Marshal in respect of any claim against the Aviation Marshal arising from the discharge, the Court may order a discharge.

(3) Where:

(a) Any asset or other property on board an aircraft is under arrest but the aircraft is not ; or

(b) An aircraft is under arrest but any asset, or other property on board the aircraft is not under arrest, the Court may, on application of the Plaintiff and subject to such terms and conditions as are just, order the discharge of the asset or other property from the aircraft.

6.—(1) The Court may, at any stage of a proceeding, make appropriate orders with respect to the preservation, management or control of an aircraft, asset or other property that is under arrest in the proceeding.

Preservation, Management and power of sale.

(2) Where an aircraft, asset or other property has been arrested and the owners thereof have failed to provide bail for the release of same for a period of not less than three months from the date of the arrest, the Court may, on the application of the arrestor or other interested party order that the aircraft or other property be sold by the Aviation Marshal and the proceeds of the sale paid into an interest-yielding account in the name of the Aviation Marshal pending further orders of the Court.

ORDER 10 RELEASE FROM ARREST

Release
Generally.

1.—(1) A party to a proceeding may apply to the Court for the release of an aircraft, asset or other property that is under arrest in the proceeding.

(2) On an application under sub-rule (1) of this Rule, the Court may order the release from arrest of the aircraft, asset or other property on such terms as are just.

(3) An order of release shall be as in Form 12 of the Schedules to this Rules.

Release by
Consent.

2. Where, in a proceeding, the party on whose application an aircraft, asset or other property was arrested consents in writing to the release from arrest, the aircraft, asset or other property shall be released from arrest upon an application made to a Judge in Chambers.

Release
where
proceedings
ended.

3. Where :

- (a) An aircraft, asset or other property has been arrested in a proceeding ; and
- (b) The action has been discontinued, struck out or dismissed, the Court shall forthwith release the aircraft, asset or other property from arrest.

Release at
request of
interested
Person.

4.—(1) Where the Writ of Summons is served simultaneously with an order for the arrest of any aircraft, asset or other property, an interested person may apply for the release of the arrested aircraft, asset or other property and the Court shall, within two (2) days of the filing and service of the application for release of the said aircraft, asset or other property entertain the said application.

(2) An application for the release of the aircraft, asset or other property shall be heard by the Judge who ordered the arrest or in his absence, by any available Judge.

Release
where
security is in
force.

5. —(1) Where an aircraft, asset or other property is under arrest in a proceeding and the Court is satisfied that :

- (a) An amount equal to :
 - (i) the amount claimed ; or
 - (ii) the value of the aircraft, asset or other property, whichever is less, has been paid into Court ; or
- (b) A bail bond for an amount equal to :

(i) the amount claimed ; and

(ii) the value of the aircraft, asset or other property whichever is less, has been filed in the proceedings, the Aviation Marshal may, on written application by the relevant person obtain the authorization of a Judge to release the aircraft, asset or other property from arrest.

(2) Release shall not be made under sub-rule (1) of this Rule in relation to an aircraft, asset or other property that has been arrested in a proceeding concerning a claim for salvage unless the value of the aircraft, asset or other property that is under arrest has been :

(a) agreed between the parties : or

(b) determined by the Court.

6. Where a caveat against the release of an aircraft, asset or other property is in force, a copy of the application for release shall be served on the Caveator.

Release
where caveat
against
release is in
force.

ORDER 11 REPARATION FOR NEEDLESS ARREST

1. In any case in which an arrest order under Order 7 has been made :

(a) If it afterwards appears to the Court that the arrest of any aircraft or any order of attachment, sale, or injunction, or any warrant to stop the sale of an aircraft, asset or other property or was applied for on insufficient grounds; or

(b) If the suit in which any such application was made is dismissed, or judgment is given against the Plaintiff, by default or otherwise, and it appears to the Court that there was no probable ground for instituting such suit, the Court may (on the application of the Defendant made at any time before the expiration of three months from the termination of the Suit) award against the Plaintiff such amount, as it may deem a reasonable compensation to the Defendant for any loss, injury, or expenses which he may have sustained by reason of such arrest as aforesaid.

Cases in
which
Compensation
may be
awarded.

2.—(1) The provisions of the preceding rules shall not take away any right of action or other right which would otherwise have existed but no action shall be commenced or continued in respect of the same grounds on which the Court may have made an award of compensation.

(2) Further to sub-rule (1), the Defendant shall be at liberty to institute an action for wrongful arrest against a Plaintiff and the Court shall award cost, damages, and expenses against the Plaintiff where it is satisfied that the arrest was occasioned unreasonably and without good cause.

No action for
damages
where
compensation
awarded.

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Application
for damages
for wrongful
arrest may
be taken
summarily.

3. Where an oral application is made immediately after the judgment of the Court, or an order earlier made is vacated, the Court shall where possible proceed to hearing arguments on the issue of wrongful arrest and shall in an appropriate case, make an order granting damages.

ORDER 12 PAYMENT OF BAIL

Payment
into Court
and
obligations
of the
Aviation
Marshal.

1.—(1) Where a sum is paid into Court by way of bail or other security, the said sum shall be paid by the Aviation Marshal into a fixed deposit account with a bank at the best available rate of interest;

(2) The Aviation marshal shall place the moneys on a 30 day roll-over fixed deposit with the said bank.

(3) Payment out of the said account together with any accrued interest shall be made forthwith by the Aviation Marshal not later than seven (7) working days after a proper request for the same shall have been made ;

Provided that in the event of the termination of a deposit before the due date, the Bank's normal policies on early termination will apply.

Aviation
Marshal to
file. Evidence
of deposit.

2. Evidence of every payment into an interest yielding account as provided for in rule 1 of this Order shall be filed in Court by the Aviation Marshal within 2 days of such payment.

Court may
vary bail.

3. The Court may by order vary the amount in respect of which bail has been provided.

ORDER 13 SECURITY FOR COSTS A—ACTIONS IN REM

Court may
order
security for
Costs.

1.—(a) In every action in rem, the Court shall on the application of an interested person, if it sees fit, require the Plaintiff at whose instance an aircraft, asset or other property has been arrested either at the commencement of the suit or at any time in the course of the proceedings, to give security for costs.

(b) Where the Plaintiff's claim is in excess of five million naira or its foreign currency equivalent or where the Plaintiff has no assets in Nigeria, and the Court is so satisfied, security for costs shall be ordered by the Court.

(c) In assessing the quantum of such security, the Court shall have regard to the interest rate, if any, payable by the Defendant to a bank or other financial institution providing the security.

Form of
security.

2. The security shall take the form of :

(a) A deposit of the sum specified by the Court ; or

(b) A guarantee or undertaking supplied by a Protection and Indemnity Club, an Insurance company of repute or a Bank.

3. In determining the quantum of security to be provided, the Court shall have regard to all the circumstances of the case.

Quantum of security.

4. The Court shall specify the time within which the Plaintiff shall furnish security and upon the expiration of the time specified, if no security is provided, the arrested aircraft, asset or other property shall be released from arrest.

Time within which Security to be furnished.

5.—(1) A Plaintiff shall be at liberty to withdraw any security provided to the Aviation Marshall upon obtaining judgment against the Defendant in the action or upon discontinuance of the suit.

Security to be withdrawn upon conclusion of Action.

(2) In the event of the Plaintiff failing in the action, the Defendant or Defendants shall be entitled to the costs of the proceeding out of the security provided by the Plaintiff and the balance of the security shall be returned to the Plaintiff.

6. The Captain or a crew member of an aircraft, who is a Plaintiff in a proceeding for his wages or for loss of goods, clothes or personal effects in the case of an accident, a collision between two or more aircraft or any other object or structure, or an incident shall not be required to give security for costs.

Security for costs in wages and collision matters.

7. Where in relation to aviation claims arising out of a collision between two or more aircraft, or in the case of a collision between an aircraft and any other property, object to wit : avion bridge, fuel bowser, etc.

Stay pending security in collision proceeding.

(a) A proceeding has been commenced as an action in rem and

(i) A counter-claim has been made ; or

(ii) A cross action has been commenced, whether as an action in personam or an action in rem ;

(b) An aircraft has been arrested, or security has been given to avoid arrest, by one of the parties; and

(c) The other party has not arrested the aircraft, asset or other property or given such security, the Court may on application, order that the proceedings be stayed until appropriate security has been given to satisfy a judgment given in favour of the other party on the cross-action or counter-claim.

B—ACTIONS IN PERSONAM

8.—(1) When on the application of the Plaintiff or Defendant, as the case may be, it appears to the Court either at commencement or at any stage of the proceedings :

Security for costs by the plaintiff or defendant.

(a) That the Plaintiff or Defendant is ordinarily resident out of jurisdiction ; or

(b) That the Plaintiff (not being a Plaintiff who is suing in a representative capacity) is a nominal Plaintiff who is suing for the benefit of some other

person and that there is reason to believe that he will be unable to pay the costs of the Defendant if ordered to do so ; or

(c) Subject to sub-rule (2) of this rule, that the Plaintiff's address is not stated in the writ of summons or other originating process or it is incorrectly stated therein ; or

(d) That the Plaintiff or the Defendant has changed his address during the course of the proceedings with a view to evading the consequences of the litigation, then if having regard to all the circumstances of the case, the Court thinks it is just to do so, it may order the Plaintiff or the Defendant to give such security for the Plaintiff's costs or Defendant's costs of the action or other proceedings as it thinks just.

(2) The Court shall not require the Plaintiff to give security by reason only of sub-rule (1) (c) of this rule if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

Principle to be observed in fixing costs.

9.—(1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been unnecessarily put in the proceedings as well as compensated for his time and effort in coming to Court. The Judge may take into account all the circumstances of the case.

(2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of delivering the judgment or making the order.

(3) When the Judge has adjudged costs to be paid but he is unable to determine the quantum therefore, all questions relating thereto shall be referred to a taxing officer for taxation.

Security for costs.

10. In any proceeding or matter in which security for costs is required, the security shall be of such amount and be given at such time and in such manner and form as the Judge shall direct.

Security for costs by Plaintiff temporarily resident within Jurisdiction.

11. A Plaintiff ordinarily resident out of jurisdiction may be ordered to give security for costs though he may be temporarily resident within the jurisdiction.

Action founded on judgement or bill of exchange.

12. In actions brought by persons resident out of jurisdiction, when the Plaintiffs claim is founded on a judgment or order or on a bill of exchange or other negotiable instrument, the power to require the Plaintiff to give security for costs shall be exercised at the Judge's discretion.

13. Where a bond is to be given as security for costs, it shall, unless the Judge otherwise directs, be issued in favour of the party or person requiring the security and filed in the Court.

Bond as security for costs.

C—COSTS GENERALLY

14. Subject to the provisions of any applicable law and these Rules, the costs of and incidental to all proceedings in the Court, shall be at the discretion of the Judge, and the Judge shall have full power to determine by whom and to what extent the costs are to be paid.

Cost at discretion of Court.

15. The Judge may order any cost to be paid out of any fund or property to which a suit or proceeding relates.

Costs out of fund or property.

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

Stay of proceedings until costs paid.

17.—(1) Costs may be dealt with by the Judge at any stage of the proceedings.

Stage of proceedings at which costs to be dealt with.

(2) Costs when ordered become payable forthwith and shall be paid within seven days of the order, otherwise the defaulting party or his legal practitioner may be denied further audience in the proceedings.

18. In addition to any penalty payable for default under these Rules, the costs occasioned as a result of any application to extend the time fixed by the Rules or any direction or order thereunder for delivering or filing any document or doing any other act, including the costs of any order made on the application shall be borne by the party making the application unless the Judge otherwise orders.

Costs to follow the event.

19. The Judge in exercising his discretion as to costs, shall take into account any offer or contribution made by any of the parties and any payment into Court and the amount of such payment.

Matters to be taken into account in exercising discretion.

20.—(1) Where in any proceeding or matter, anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the Judge may direct that any costs to the party in respect of it shall not be allowed and any costs occasioned by it to other party shall be paid by him to them.

Costs arising from misconduct or neglect.

(2) Without prejudice to the generality to sub-rule (1) of this Rule, the Judge shall, for the purpose of that sub-rule, have regard, in particular to the following matters:

- (a) The omission to do anything the doing of which would have been calculated to save costs ;
- (b) The doing of anything calculated to occasion in any manner or at any time, unnecessary costs ; and
- (c) Any unnecessary delay in the proceedings.

(3) The Judge may instead of giving directions under sub-rule (1) of this Rule in relation to anything done or any omission made, direct the taxing officer to inquire into the issue and if it appears to him that such direction as aforesaid should have been given in relation to it to act as if the appropriate direction had been given.

Personal
Liability or
Legal
Practitioner
for costs.

21.—(1) Subject to the following provisions of this rule, where in any proceeding costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Judge may make an appropriate order against the Legal practitioner whom the Judge considers to be responsible whether personally or through a servant or agent :

- (a) disallowing the costs as between the legal practitioner and the legal practitioner's client ; and
- (b) directing the legal practitioner to pay the client's costs which the client has been ordered to pay to other parties to the proceeding ; or
- (c) directing the legal practitioner personally to indemnify such other parties against cost payable by them.

(2) The provisions of rule 20 sub-rule (1) of this Order shall apply where proceedings in Court cannot conveniently proceed or fail or are adjourned without useful progress being made :

- (a) Because of the failure of the legal practitioner to attend in person or by a proper representative ; or
- (b) Because of the failure of the legal practitioner to file any Court process or document for the use of the Court which ought to have been filed, delivered or to be prepared with any proper evidence or account or is otherwise required to proceed.

ORDER 14 LIMITATION PROCEEDINGS

Limitation
Proceedings.

1.—(1) A limitation proceeding shall be commenced as an action in personam.

(2) At least one of the respondents shall be named respondent to the originating summons.

(3) Other respondents need not be so named but may be identified as respondents to the originating summons by reference to their being members of a specified class of persons.

(4) The originating summons need not to be served on respondents so identified .

2.—(1) Applicant in a limitation proceeding shall not apply.

(a) to have the proceeding set down for hearing ; or

(b) for judgement in default of appearance, unless at least one of the persons named as respondent to the originating summons has been served.

Service on at least one respondent.

(2) The application shall be supported by an affidavit setting out the name and, if known to the applicant, the address of each other person who, to the knowledge of the applicant, has or may have a maritime claim against the applicant arising out of or connected with the matter in respect of which liability is to be limited.

3.—(1) In a limitation proceeding, where persons are identified as respondent in the originating summon by reference to their being members of specified class of persons, the Court shall, after determining whether the liability of the applicant may be limited and the extent of that liability, make orders.

Advertisement of determination.

(a) specifying how the determination is to be advertised ; and

(b) Fixing a period, not less than one month after the last day allowed for the advertisement of the determination, as the period within which a person who claims to have a maritime claim against the applicant in respect of which the applicant's liability is determined may :

(i) Prosecute that claim ; or

(ii) Apply under rule 5 of this Order.

(2) The Court may not make an order under sub-rule (1) of this rule if it is satisfied that all the persons included within the class of person concerned have been served.

4. Where a determination in a limitation proceeding has not been advertised under rule 3 of this Order, the determination shall bind only persons identified as Respondents/Defendants in the originating process who have been served.

Effect of determination.

5.—(1) Where a limitation proceeding, the determination of the limit of the applicant's liability has been advertised as required under rule 2 of this Order, the Court may on application by a person who has not been served with the writ, and on such terms and conditions as are just, vary or set aside the determination.

Proceeding to set aside determination.

(2) The application may not be made after the end of the period fixed under rule 2(1)(b) of this Order.

(3) The application and the affidavit in support shall be served on :

(a) The applicant in the limitation proceeding ; and

(b) each respondent to that proceeding who has appeared in the proceeding, not less than 2 days before the application is to be determined.

Cost to give
direction.

6. Where a person claims to be entitled to a limitation of liability under the conventions applicable by virtue of sections 48 and 73 of the Act, the Court may give such directions as it deems fit with regard to the procedure in any such claim, the staying of any other proceedings and the conditions for the consideration of any such claim, which may include a condition that such amount as the Court may order be paid into Court to abide the result of the consideration of the said claim, or that the claimant be required to admit liability for all or any claims made against him or her, or any other condition which the Court deems fit.

ORDER 15 VALUATION AND SALE

Order for
valuation and
sale.

1.—(1) The Court may, on application by a party either before or after final judgment in a proceeding, order that an aircraft, asset or other property that is under arrest in the proceeding—

- (a) be valued ; or
- (b) be valued and sold.

(2) An application under sub-rule (1) of this order constitutes an undertaking by the party who made it to pay on demand to the Aviation Marshal an amount equal to the expenses in complying with the order.

(3) If the aircraft, asset or other property is deteriorating in value, the Court may at any stage of the proceeding, on notice to the parties order it to be sold subject to valuation, which valuation must be conducted by an independent entity specializing in matters of such nature.

Sale.

2. — (1) The sale of an aircraft, asset or other property ordered to be sold under rule 1 of this Order, shall be conducted by the Aviation Marshal.

(2) Unless the Court otherwise orders, the sale shall be by auction not less than 14 days after an advertisement shall have been placed in any two national daily newspapers by the Aviation Marshal.

Return of
sale.

3. The Aviation Marshal shall within 2 working days after the sale of the aircraft, asset or other property :

- (a) File a return of the sale ;
- (b) Pay into Court the proceeds of sale ; and
- (c) File an account of sale and the vouchers of the account.

Aviation
Marshal's
Expenses.

4.— (1) The expenses of the Aviation Marshal in connection with the valuation and sale of an aircraft, asset or other property ordered to be sold shall be computed and filed.

(2) The Aviation Marshal shall deduct such verified cost from the proceeds of sale of an aircraft, asset or other property to cover the expenses including bank charges.

(3) A person who is interested in relation to the proceeds of the sale may apply to the Court for taxation of the expenses of the Aviation Marshal.

ORDER 16 PRIORITIES

1.—(1) Where an aircraft, asset or other property has been arrested in a proceeding, a person who has obtained a judgment or an order of sale in any Court (including judgment or order, in a Court of a foreign country) against the aircraft, asset or other property, being a judgment or order enforceable in the Court for the determination of the order of priority of claims against the aircraft, asset or other property, may apply to the Court by a motion on notice for priority.

Application
to determine
Priorities.

(2) The Court may on such application, order that notice of the application, specifying the period within which the claim may be notified, be given or published as the Court directs.

(3) The determination shall not be made until after the end of the period specified in the notice.

(4) The Aviation Marshal shall file a copy of the relevant part of each publication in which the notice appeared.

2. The expenses of the Aviation Marshal in complying with any order of the Court under this Order, shall be part of the expenditure of the sale of the aircraft, asset or other property.

Aviation
Marshal's
Expenses.

ORDER 17 INTERVENERS

1.—(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a Defendant to the action may, with the leave of the Court, intervene in the action.

Interveners
in an action
in rem.

(2) An application for the grant of leave under this rule may be made *ex parte* supported by an affidavit showing the interest of the applicant in the property against which the action is brought or in the money in Court.

(3) A person to whom leave is granted under this rule shall thereupon become a party to the action.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and such pleading as may be so specified.

ORDER 18

PRESERVATION OF AIRCRAFT, ASSET OR OTHER PROPERTY

Preservation
of aircraft,
asset or
other
property
under arrest.

1.—(1) If an order of the Court is made, arresting an aircraft, asset or other property, or an order of injunction is granted preventing an aircraft, asset or other property from being taken out of the jurisdiction of the Court, or in the case of a Nigerian registered aircraft, asset or other property, which aircraft, asset or other property are prevented from being put into operation, on an application made by either party to the proceeding at any stage of the proceeding, the Court can order that the aircraft, asset or other property that is under arrest or prevented from being operated be preserved by any of the following means :

(a) The aircraft to be hangered in an aircraft hangar with a reputable independent Aviation Company whereat the necessary checks, lubrication and engine runs etc are carried out as prescribed by the aircraft manufacturer for the aircraft, asset or other property ;

(b) The asset or other property to be stored on a secured storage condition with a reputable independent Aviation Company; in the alternative ;

(c) With the assistance of reputable independent Aviation Company agreeable to the parties in the proceedings, to lease the aircraft, engine or other property on either an Aircraft, Crew, Maintenance and Insurance (ACMI) lease, or an Aircraft, Maintenance Insurance lease (AMI) or a dry lease for such lengths of time or period as may be agreed upon by the parties ; and

(d) With the assistance of reputable independent aviation company agreeable to the parties in the proceedings, to lease the asset or other property for such lengths of time or period as may be agreed upon by the parties.

(2) Where after 48hours, the parties are unable to arrive at an agreement from the various options above regarding the preservation of the aircraft, asset or other property, the Aviation Marshal shall decide on the mode of preservation of the aircraft, asset or other property in line with the options above and the parties shall abide by the Aviation Marshal's decision.

Undertaking
to pay
Aviation
Expenses.

2. An application under sub-rule (1) of this rule shall constitute an undertaking by the party who applied for same to pay on demand to the Aviation Marshal an amount equal to the expenses incurred in complying with the order.

Duties of
Aviation
Marshal in
relation to
lease.

3. The Aviation Marshal shall within 7 days after the lease of the aircraft, asset or property :

(1) File a return of the Lease ;

(2) Pay into Court the proceeds of lease ; and

(3) File an account of lease and the vouchers of the account.

Expenses of
Aviation
Marshal.

4.— (1) The expenses of the Aviation Marshal in connection with the valuation and lease of aircraft, asset or other property ordered to be sold shall be computed and filed.

(2) The Aviation Marshal shall deduct such verified expenses from the proceeds of lease of the aircraft, asset or other property to cover the expenses including bank charges provided where the aircraft, asset or other property earlier leased herein is later sold, the Aviation Marshal shall not be entitled to any fees.

(3) A person who is interested in relation to the proceeds of the lease may apply to the Court for taxation of the expenses of the Aviation Marshal.

5.— (1) The Aviation Marshal after executing the order of arrest or injunction relating to an aircraft, asset or other property, shall have full custody and control of the aircraft, asset or other property.

Custody of aircraft, asset or other property.

(2) The Aviation Marshal shall, unless the Court otherwise orders, take all appropriate steps to retain custody and control of, and preserve the aircraft, asset or other property, including :

- (a) removing from the aircraft or storing place, cargo that is under arrest ;
- (b) removing cargo from an aircraft that is under arrest and storing it ;
- (c) removing, storing or disposing of perishable goods that are under arrest or are in an aircraft that is under arrest ; and
- (d) moving for safety and convenience, the aircraft that is under arrest.

PART D—GENERAL

ORDER 19

MISCELLANEOUS PROVISIONS

1. Subject to particular rules, the Court may in all causes and matters make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

Order to be made.

2. All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of both movable and immovable property of the person making default in payment.

Recovery of penalties and costs.

3. In all cases in which the publication of any notice is required, the same may be made by advertisement in the Federal Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.

Notices.

4. A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing and whether filed by Plaintiff or Defendant, and on being filed, the endorsement shall be initialled by the Registrar.

Filing

5. The fees set out in Appendix 2 to the Federal High Court (Civil Procedure) Rules and any subsequent amendment may be charged in respect of the duties of a notary public or of notarial act and other duties therein mentioned.

Fees :
Appendix 2
of Federal
High Court
(Civil
Procedure)
Rule.

Committal of
solicitor
failing to
comply with
undertaking.

6. Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to acknowledge issue of service of the writ in the action, give bail or pay money into Court in lieu of bail, he shall be liable to committal.

Effect of
non-
compliance.

7.—(1) Where in beginning or purporting to begin any proceeding or at any stage in the course, of or in connection with any proceeding, there has by reason of anything done or left undone, been failure to comply with the requirement of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, judgment or order therein.

(2) The Court may on the ground that there has been such a failure as mentioned in sub - rule (1) of this rule and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein, or it may exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

Application
to set aside
for
irregularity.

8.—(1) An application to set aside for irregularity any proceeding, or any step taken in any proceeding or any document, judgment or order therein, shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step in the proceedings.

(2) Any application under sub-rule (1) of this rule may be made by Summons or Motion on notice, and the grounds of objection shall be stated in the Summons or Motion on notice.

Where no
rule or
provision
exist.

9. Where a matter arises in respect of which no provision or adequate provisions are made in these Rules or in the Federal High Court (Civil Procedure) Rules, the Court shall adopt such similar procedure in other Rules as will in its view do substantial justice between the parties concerned.

ORDER 20 GENERAL POWERS OF THE COURT

Court may
give
directions,
abridge or
extend time.

1. The Court may, on application or of its own motion and on such terms as are just :

(a) give any appropriate direction with respect to a proceeding; and

(b) extend or abridge any time prescribed by or pursuant to these Rules or by the Federal High Court (Civil Procedure) Rules applicable to a proceeding for performing any act or doing anything on such terms, if any, as seem just, whether or not the time has ended.

2. The Court may, orally or in writing, direct that the parties appear before the Court at a specified date, time and place for a conference, or consult each other and submit suggestions in writing to the Court, for the purpose of assisting it in the consideration of :

Court may
issue
directions.

1. The admission or proof of certain facts ;
2. Any procedural matter ;
3. The exchange between the parties of documents and exhibits proposed to be submitted during a proceeding ;
4. The need to call particular witness ; and
5. Any other matter that may aid in the simplification of the evidence and disposition or the proceeding.

3. A party to a proceeding may apply to the Court for the review of a decision or other act or acts of the Aviation Marshal in the proceeding.

Review of
Aviation
Marshal's
actions.

ORDER 21

POWERS OF THE CHIEF JUDGE TO AMEND RULES AND ISSUE PRACTICE DIRECTIONS

1. The Chief Judge shall have the power to issue practice directions, protocol, directives and guidance towards the realization of speedy, just and effective administration of justice.

Powers of
Chief Judge
over these
Rules.

2. Whenever the Chief Judge makes amendment or modification to these Rules, it shall be sufficient to publish same as supplemental provisions.

Publication
of new
Supplemental
provisions.

ORDER 22

ESTABLISHMENT OF CIVIL AVIATION REGISTRY

1. The Chief Judge may issue directions to establish the Civil Aviation Registry for the Court.

Chief Judge
to establish
Civil
Aviation
Registry.

2. The Chief Judge shall make such further Rules to guide the operation of the Aviation Registry.

Further
Rules.

3. The Chief Judge shall designate the Divisions of the Court where the Civil Aviation Registry shall be located.

Location of
Civil
Aviation
Registry.

SCHEDULE
CIVIL AVIATION PROCEDURE FORMS
FORM 1
(Order 3 Rule 3 (1))
WRIT OF SUMMONS IN ACTION IN REM
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE.....JUDICIAL DIVISION

Suit No......

AVIATION ACTION IN REM

BETWEEN :

AND

To the Defendant (Name) of.....

(Address)

Aviation Action in Rem against: (The Aircraft "X" or as the case may be describing the property against which action is brought).

Between the Owners of the Aircraft "A" or as the case may be describing the Plaintiff (or Name) Plaintiffs.

And the Owners of the Aircraft "X" or as the case may be describing the property against which action is broughtDefendants.

To the Defendants and other Persons interested in the Aircraft "X" (detailing registration of aircraft if known).

This writ of summons has been issued by the plaintiffs against the property described above in respect of the claim set out on the back.

Within Thirty (30) days after service of this Writ counting the day of service, you must either satisfy the claim or lodge in the Registry of this Court mentioned below an acknowledgement of service or file a memorandum of appearance.

If you fail to satisfy the claim or lodge an acknowledgment within the time stated, the plaintiff may proceed with the action and judgment may be given without further notice to you and if the property described in this Writ is under arrest of the Court it may be sold by Order of the Court.

Issued from the Civil Aviation Registry of the Federal High Court
this..... Day of20.....

(Statement of Claim to be affixed to the back)

The Plaintiff's Claim is for etc. (b).....

The Writ was issued by G.H. ofwhose address for service is

..... agent for..... of legal practitioner
for the said Plaintiff.

Who resides at (d) (mention the city/town or district
and also the name of the street and number of the house of the Plaintiff's
residence, if any).

Endorsement to be made on copy of writ forthwith after service.

This Writ was served by me at on the Defendant (here insert
mode of service)

On the day of 20

Endorsed the..... day of 20

(Signed)

Address

Note :

(a) Endorsement of claim - if the plaintiff sues, or the defendant is sued, in
a representative capacity, the endorsement must state in what capacity the
plaintiff sues or the defendant is sued. If the claim is for a debt or liquidated
demand only, the endorsement, even though not special, must strictly comply
with the provisions of the Act including a claim for four days' costs.

(b) Address for service - the address must be within the Jurisdiction.

(c) Address of plaintiff - in the case of a Company in liquidation, the
plaintiff's address should run "Plaintiff's, who are a company in liquidation.
The liquidator is (name of liquidator, address of liquidator).

In the case of a foreign corporation within the meaning of the Companies
and Allied Matters Act, the plaintiffs' address should run thus :

" Plaintiffs; who are
a foreign corporation within the meaning of Companies and Allied Matters Act,
the registered name and address of the person to be served are (here add Registered
Name and Address)".

Endorsement of Service—

Before the writ is issued the following certificate must be endorsed on it.

The Registry, Federal High Court

In the..... Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to
authorize the sealing thereof has been produced to me this day
of 20

.....
(Signature of Registrar)

B508

FORM 2

(Order 3 Rule 4 (1))

WRIT OF SUMMONS IN ACTION IN PERSONAM
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE.....JUDICIAL DIVISION

IN CIVIL AVIATION

Suit No.....

A.B Plaintiff

AND

C.D. Defendant

To C.D of in theof

You are hereby commanded that within thirty days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the Suit of A.B., And take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

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

.....
Registrar

MEMORANDUM TO BE SUBSCRIBED ON THE WRIT.

N.B : This writ is to be served within twelve Calendar months from the date thereof or, if renewed, within six Calendar months from the date of the last renewal including the day of such date, and not afterwards. The Defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms duly completed at the Civil Aviation Registry of the Federal High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post.

Endorsement to be made on the writ before issue thereof

FORM 3
(ORDER 3 RULE 4 (1) (ii))

SUMMONS TO WITNESS REQUIRING SUBPOENA
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE.....JUDICIAL DIVISION

IN CIVIL AVIATION

Suit No.....

BETWEEN :

.....Plaintiff (s)

AND

.....Defendant (s)

Whereas the plaintiff/defendant has listed your name as a prospective witness in this case and has indicated that a subpoena will be needed to get to you to testify at the trial ; whereas the rules of practice and procedure of this Court require every witness to reduce his intended testimony in writing under oath for same to be filed in the Registry of the Court by the party calling the witness, for service on the opposite party ; Now therefore, you are hereby ordered to deliver to the above-named plaintiff(s)/defendant(s) or his/her legal practitioner at the address indicated below, on or before the day of20..... your written statement (i.e. your intended testimony) on oath, concerning the case.

TAKE NOTICE that if you fail to deliver the Statement as aforesaid, you will be guilty of contempt of the Court and a Bench Warrant for arrest and/or committal to prison may be issued against you.

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

Address at which the statement is to be delivered :

To plaintiff(s)/defendant(s) :

c/o

.....
Registrar

Note : (a) This summons is to be served with the pleadings of the party calling the witness.

(b) The witness will still be required to attend Court when duly notified, or a formal adoption of the written statement on oath and to tender exhibits if need be, and be cross-examined.

FORM 4
(ORDER 3 RULE 6)
WRIT FOR SERVICE OUT OF JURISDICTION
CIVIL AVIATION ACTIONS IN PERSONAM
IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE...JUDICIAL DIVISION

To C.D.of

You are hereby commanded that within
(here insert the number of days directed by the Court or Judge ordering the
service or notice) days after service of this writ (or notice of writ, as the case
may be) on you, inclusive of the day of such service, you do cause an appearance
to be entered for you in the
Judicial Division of the Federal High Court in an action at the Suit of A.B., and
take notice that in default of you so doing, the plaintiff may proceed therein and
judgment may be given in your absence.

DATED thisday of 20

By Order of the Court.

.....
Registrar

MEMORANDUM TO BE SUBSCRIBED ON WRIT

N.B : This writ is to be served within twelve Calendar months from the
date thereof, or if renewed within six Calendar months from the date of the last
renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering appearance
(or appearances) either personally or by legal practitioner at the Registry of the
Judicial Division in which the writ is issued.

This writ was served, *e.t.c.* (as in Form 1)

Endorsement to be made on the writ before the issue thereof :

NB : This writ is to be used where the defendant or all defendants or one
or more defendants is or are out of jurisdiction

FORM 5
(ORDER 3 RULE 7 (1))
GENERAL FORM OF ORIGINATING SUMMONS
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE.....JUDICIAL DIVISION

IN CIVIL AVIATION

Suit No :

A.B Plaintiff(s)

AND

C.D - Defendant(s)

To C.D. of in the of

Let.....of
.....in.....

..... within thirty days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of of who claim the following reliefs (state the nature of the claim), for the determination of the following questions : (state the questions).

DATED this day of 20

This summons was taken out by legal practitioners for the above named

The defendant may appear hereunto by entering appearance personally or by a legal practitioner either by filing the appropriate processes in response at the Registry of the Court where the summons was issued or by sending them to that office by any of the methods allowed by these Rules.

Note : If the defendant does not respond within the time at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

FORM 6
(ORDER 4 RULE 2)

PRELIMINARY ACT
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE.....JUDICIAL DIVISION

IN CIVIL AVIATION

Suit No.....

A.B Plaintiff(s)

AND

C.D Defendant(s)

Preliminary Act on Behalf of

PART 1

Content of
Preliminary
Act.

2. The Preliminary act shall contain the following particulars :

(a) The names of the aircrafts which came into collision and their ports of registry ;

(b) The length, breadth, gross tonnage, beam, horse power and draught at the material time of the collision and the nature and tonnage of any cargo carried by the aircraft ;

(c) The date and time (including the time zone of the collision) ;

(d) The place of the collision ;

(e) The direction and force of the wind ;

(f) The state of the weather ;

(g) The state, direction and force of the tidal or other current ;

(h) The position, the course steered and speed through the air, of the aircraft when the other aircraft was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier ;

(i) The lights or shapes (if any) carried by the aircraft ;

(j)—(i) The distance and bearing of the other aircraft if and when her echo was first observed by radar ;

(ii) The distance, bearing and approximate heading of the other aircraft when first seen ;

(k) The light or shape or combination of lights or shapes (if any) of the other aircraft when first seen ;

(l) Other lights or shapes or combination of lights or shapes (if any) of the other aircraft subsequently seen before the collision, and when ;

(m) The alterations of (if any) made to the course and speed of the aircraft after the earlier of the two times referred to in Rule 2 (h) of this order up to the time of the collision and when, and what measures of course or speed, taken to avoid the collision and when ;

(n) The heading of the aircraft, parts of each aircraft which first came into contact and the approximate angle between the two aircraft at the moment

FORM 7
(ORDER 7 RULE 1 (5))
IN THE FEDERAL HIGH COURT
HOLDEN AT.....NIGERIA

Suit No:.....

CIVIL AVIATION ACTION IN REM AGAINST : (a).....

BETWEEN :

..... *Plaintiff (s)*

AND

..... *Defendant (s)*

Warrant of Arrest and Detention ofPresently at

To the Chief Registrar of the Federal High Court and to all his authorized officers

WHEREAS it appears that the presently at is about to leave Nigeria.

The Plaintiff's claim is as per the writ of summons being served along with this warrant of arrest.

This is therefore to require and order you forthwith to arrest and detain the said and to keep same under detention until you shall receive further order(s) from the Court.

Made by the Presiding Judge and under the SEAL of the Court, the day of20

.....
Presiding Judge

FORM 8
(ORDER 8 RULE-1)
PRAECIPE FOR CAVEAT AGAINST ARREST

(Description of Property or name of aircraft)

IN CIVIL AVIATION

Weof (Solicitors for)

Request a caveat against the arrest of (description of property giving name, if an aircraft) and hereby undertake to acknowledge issue or service of the writ in any action that may be begun in the Federal High Court against the said..... and within 3 working days after receiving notice that such an action has begun, to give bail in the action in the sum not exceeding N..... or to pay that sum into Court. We consent that the writ of summons and any other document in the action may be left for us at
.....

DATED the..... day of 20

.....
(Signed)

FORM 10
(Order 8 RULE 6)
PRAECIPE FOR CAVEAT AGAINST RELEASE
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE JUDICIAL DIVISION

Suit No:.....

CIVIL AVIATION ACTION IN REM

BETWEEN :

A.B *Plaintiff*

AND

C.D AND E.F *Defendants*

(Description of property or name of Aircraft)

We,Solicitor/Agent
for..... of request the entry of a Caveat with
respect to the above-mentioned property pursuant to Order 8 Rule 6.

The intending Caveator claims to have a right of action in rem against the
above mentioned property for [state nature of claim, e.g. salvage, collision damage
and the approximate amount claimed if known].

DATED the..... day of 20

(Signed).....