

GOVERNMENT NOTICE No. 136 published on 1/4/2011

THE CIVIL PROCEDURE CODE
(CAP. 33)

ORDER

(Made under section 81)

THE CIVIL PROCEDURE CODE (AMENDMENT OF THE FIRST SCHEDULE)
RULES, 2011

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|---|-------------------------------------|
| 1. This Order may be cited as the Civil Procedure Code (Amendment) Order, 2011 and shall be read as one with the First Schedule to the Civil Procedure Code, hereinafter referred to as the "principal Order". | Citation |
| 2. This Order shall be deemed to apply to all judgements, decisions decrees and orders of the court delivered, passed or issued before and after the coming into operation of this Order. | Applica-
tion |
| 3. The principal Order is amended in Order XX by—
(a) re-designating Rule 7(1) as Rule 7; and
(b) deleting sub-rule (2). | Amend-
ment of
Order XX |
| 4. The principal Order is amended in Order XXXIX rule 35 by deleting sub-rule (5) and "substituting for it the following new sub-rule;
"(5) Where a judge has vacated office after pronouncing judgement without signing the decree, the Registrar, Deputy Registrar or the District Registrar of the High Court shall sign the decree." | Amend-
ment of
Order
XXXIX |
| 5. The principal Order is amended in Order XLIII rule 1 by deleting paragraph (m) and substituting for it the following new paragraph:
"(m) to exercise the powers and duties of a judge or of a magistrate and may pronounce judgements and sign decrees and make orders and transact the business of the High Court or the court of a magistrate." | Amend-
ment of
Order
XLIII |

Dar es Salaam,
21st March, 2011

MOHAMED C. OTHMAN,
Chief Justice

I CONSENT

Dar es Salaam,
28th March, 2011

HON. CELINA KOMBANI (MP),
Minister for Constitutional Affairs and Justice

(2) The costs of every affidavit which unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall (unless the court otherwise directs) be paid by the party filing the same.

ORDER XX JUDGMENT AND DECREE

1. Judgment, when pronounced

The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

2. Power to pronounce judgment written by judge's or magistrate's predecessor

A Judge or magistrate may pronounce a judgment written but not pronounced by his predecessor.

3. Judgment to be signed

The judgment shall be written by, or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall be dated and signed by such presiding judge or magistrate as of the date on which it is pronounced in open court and, when once signed, shall not afterwards be altered or added to, save as provided by section 96 or on review.

3A. Judgment in the Commercial Division of the High Court

In the Commercial Division of the High Court the court shall, after the case has been heard, sum up the evidence for each side and then require each assessor to state his or her opinion orally as to the case generally and to any specific question of fact, and thereafter the judge shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

3B. Opinion of assessors

In the Commercial Division of the High Court the judge shall, in the judgment, take into account the opinion of the assessors but shall not be bound by it, provided that the judge shall give reasons for disagreeing with such opinion.

4. Contents of judgments

A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

5. Court to state its decision on each issue

In suits in which issues have been framed, the court shall state its finding or decision, with

the reason therefor, upon each separate issue unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

6. Contents of decree

(1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid.

(3) The court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

7. Date of decree

The decree shall bear the date of the day on which the judgment was pronounced and, when the Judge or magistrate has satisfied himself that the decree has been drawn up in accordance with the judgment he shall sign the decree.

@ Re-designating Rule 70 as Rule:
⑤ deleting s - rule (2)!

8. Procedure where judge or magistrate has vacated office before signing decree

Where a judge or magistrate has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor.

9. Decree for recovery of immovable property

Where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by a title number under the Land Registration Act *(13), the decree shall specify such title number.

10. 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 had.

11. Decree may direct payment by instalments

(1) Where and in so far as a decree is for the payment of money the court may, for any sufficient reason, at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalment, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

- (a) fails to submit his accounts at such periods and in such form as the court directs;
- (b) fails to pay the amount due from him as the court directs; or
- (c) occasions loss to the property by his wilful default or gross negligence,

the court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

ORDER XXXIX APPEALS FROM ORIGINAL DECREES

1. Form of appeal, contents of memorandum and attachments

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the Court dispenses therewith) of the judgment on which it is founded.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

2. Grounds which may be taken on appeal

The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. Rejection or amendment of memorandum

(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where

it proceeds on ground common to all

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from 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 decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of Proceedings and of Execution

5. Stay by Appellate Court or by court which passed the decree

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree but the Court may, for sufficient cause, order the stay of execution of such decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the court which passed the decree may, on sufficient cause shown, order the execution to be stayed.

(3) No order for stay of execution shall be made under subrule (1) or subrule (2) unless the High Court or the court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in subrule (3), the court may make an *ex parte* order for stay of execution pending the hearing of the application.

6. Security in case of order for execution of decree appealed from

(1) Where an order is made for the execution of a decree from which an appeal is pending, the court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the court or the Court may, for like cause, direct the court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment debtor to the court which made the order, be stayed on such terms as to giving

security or otherwise as the court thinks fit until the appeal is disposed of.

7. No security to be required from the Government or a public officer in certain cases

No such security as is mentioned in rules 5 and 6 shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

8. Exercise of powers in appeal from order made in execution of decree

The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on Admission of Appeal

9. Registration of memorandum of appeal and register of appeals

Where a memorandum of appeal is admitted, the Court or the proper officer of the Court shall endorse thereon the date of presentation and shall register the appeal in a book, to be known as the Register of Appeal, and kept for the purpose.

10. Appellate Court may require appellant to furnish security for costs

(1) The Court may in its direction, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of Tanzania, and is not possessed of any sufficient immovable property within Tanzania other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11. Power to dismiss appeal without sending notice to lower court

(1) The Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his advocate and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the court from whose decree the appeal is preferred and without serving notice on the respondent or his advocate.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the court from whose decree the appeal is preferred.

12. Day for hearing appeal

(1) Unless the Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. High Court to give notice to court whose decree appealed from; and other requirements

(1) Where the appeal is not dismissed under rule 11, the Court shall send notice of the appeal to the court from whose decree the appeal is preferred.

(2) The court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Court.

(3) Either party may apply in writing to the court from whose decree the appeal is preferred, specifying any of the papers in such court of which he requires copies to be made and copies of such papers shall be made at the expense of, and given to, the applicant.

14. Publication and service of notice of day for hearing of appeal

(1) Notice of the day fixed under rule 12 shall be fixed in the Court, and a like notice shall be sent by the Court to the court from whose decree the appeal is preferred, and shall be served on the respondent or on his advocate acting for him in the Court in the manner provided for the service on a defendant of a summons; and all the provisions applicable to summons and to proceedings with reference to the service thereof shall apply to the service of such notice.

(2) Instead of sending the notice to the court from whose decree the appeal is preferred, the Court may itself cause the notice to be served on the respondent or his advocate; and the provisions of subrule (1) shall apply to such service.

15. Contents of notice

The notice to the respondent shall declare that if he does not appear in the Court on the day so affixed, the appeal will be heard *ex parte*.

Procedure on Hearing

16. Right to begin

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent

against the appeal, and in such case the appellant shall be entitled to reply.

17. Dismissal of appeal for appellant's default and hearing of appeal *ex parte*

(1) Where on the day fixed or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs

Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed:

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19. Re-admission of appeal dismissed for default

Where an appeal is dismissed under subrule (2), of rule 11 or rule 17 or rule 18, the appellant may apply to the Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

20. Power to adjourn hearing and direct persons appearing interested to be made respondents

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 is preferred, 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 to a future day to be fixed by the Court and direct that such person be made a respondent.

21. Re-hearing on application of respondent against whom *ex parte* decree made

Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Court within one month from the date of service on him or his advocate of notice of the day fixed for hearing the appeal, or within such further time as the Court may see fit to allow.

(2) The cross-objection shall be in the form of a memorandum and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection or his advocate, of having received a copy thereof, the Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his advocate at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

23. Remand of case by High Court

Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Court may, if it thinks fit, by order remand the case and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

24. Where evidence on record sufficient, High Court may determine case finally

Where the evidence upon the record is sufficient to enable the Court to pronounce judgment, the Court may, after re-settling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Court proceeds.

25. Where High Court may frame issues and refer them for trial to court whose decree appealed from

Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Court essential to the right

decision of the suit upon the merits, the Court may, if necessary, frame issues and refer the same for trial to the court from whose decree the appeal is preferred, and in such case shall direct such court to take the additional evidence required; and such court shall proceed to try such issues and shall return the evidence to the Court together with its findings thereon and the reasons therefor.

26. Findings and evidence to be put on record, objections to finding and determination of appeal

(1) The evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Court, present a memorandum of objections to any finding.

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

27. Production of additional evidence in High Court

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Court, but if—

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

the Court may allow such evidence or document to be produced, or the witness to be examined.

(2) Wherever additional evidence is allowed to be produced by the Court, the Court shall record the reason for its admission.

28. Mode of taking additional evidence

Wherever additional evidence is allowed to be produced, the Court may either take such evidence or direct the court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it, when taken, to the court.

29. Points to be defined and recorded

Where additional evidence is directed or allowed to be taken, the Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in Appeal

30. Judgment, when and where pronounced

The Court, after hearing the parties or their advocates and referring to any part of the

(2) The decree shall, contain the number of the appeal, the names and descriptions of the appellant and respondent and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportion such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the judge or judges who passed it:

(5) Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any judge dissenting from the judgment of the Court to sign the decree.

Deleting sub rule (5) and substituting sub rule (5)

36. Copies of judgment and decree to be furnished to parties

Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

37. Certified copy of decree to be sent to court whose decree appealed from

A copy of the judgment and of the decree, certified by the Court or such officer as it appoints in this behalf, shall be sent to the court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Court shall be made in the register of civil suits.

ORDER XL APPEALS FROM ORDERS

1. Appeals from orders

An appeal shall lie from the following orders under the provisions of section 74, namely—

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper court;
- (b) an order under rule 14 of Order VIII pronouncing judgment against a party;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejection an application (in a case open to appeal) for an order to set aside a decree or judgment passed *ex parte*;
- (e) an order under rule 4 or Order X pronouncing judgment against a party;
- (f) an order under rule 18 of Order XI;

- (g) an order under rule 10 of Order XVI for the attachment of property;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement of dismissal of a suit;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV rejecting an application for an order to set aside the dismissal of a suit;
- (o) an order under rule 3 or rule 8 of Order XXXII refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXIII;
- (q) an order under rule 3, rule 4 or rule 7 of Order XXXVI;
- (r) an order under rule 1, rule 2, rule 4 or rule 9 of Order XXXVII;
- (s) an order under rule 1 or rule 4 of Order XXXVIII;
- (t) an order of refusal under rule 19 of Order XXXIX to re-admit, or under rule 21 of Order XXXIX to re-hear, an appeal;
- (u) an order under rule 23 of Order XXXIX remanding a case, where an appeal would lie from the decree of the High Court;
- (v) an order under rule 4 of Order XLII granting an application for review.

2. Procedure

The rules of Order XXXIX shall apply, so far as may be, to appeals from orders.

ORDER XLI REFERENCE

1. Reference of question to High Court

enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Application for review in court consisting of two or more judges

(1) Where the judge or judges, or any one of the judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such judge or judges or any of them shall hear the application, and no other judge or judges of the court shall hear the same.

(2) For the purposes of this rule and rule 6, "judge" includes a magistrate.

6. Decision where application heard by more than one judge

(1) Where the application for a review is heard by more than one judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable and objections to order granting application

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

- (a) in contravention of the provisions of rule 2;
- (b) in contravention of the provisions of rule 4;
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause,

and such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file and where it is proved to the satisfaction of the court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for hearing the same.

(3) No order shall be made under subrule (2) unless notice of the application has been served on the opposite party.

8. Registration of application granted, and order for re-hearing

When an application for review is granted, a note thereof shall be made in the register and the court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. Bar of certain applications

No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLIII MISCELLANEOUS PROVISIONS

1. Powers of Registrars

Subject to any general or special direction of the Chief Justice, the following powers may be exercised by the Registrar or any Deputy or District Registrar of the High Court in any proceeding before the High Court—

- (a) to appoint and extend the time for filing the written statement of defence, to give leave to file a reply thereto and to appoint and extend the time for filing such reply under Order VIII, rule 1, 11, and 13;
- (b) to order that a suit be dismissed under Order IX, rules 2, 3 and 5;
- (c) to make an order or give judgment on admissions under order XII, rule 4;
- (d) to sign decrees under Order XX, rule 7;
- (e) to admit, reject or allow the amendment of an application for execution of a decree under Order XXI, rule 15;
- (f) to issue notice under Order XXI, rule 20;
- (g) to order that a decree be executed under Order XXI, rule 21;
- (h) to issue process for execution of a decree under Order XXI, rule 22;
- (i) to stay execution, restore property, discharge judgment-debtors and require and take security under Order XXI, rule 24;
- (j) if there is no judge at the place of registry, to issue a notice to show cause and to issue a warrant of arrest under Order XXI, rule 35;

(k) if there is no judge at the place of registry, to order attendance, examination and production under Order XXI, rule 40; and

(l) to order that an agreement, compromise or satisfaction be recorded under Order XXIII,

rule 3.

(m) *substituting*

2. Applications to be by chamber summons supported by affidavit

Every application to the Court made under this Code shall, unless otherwise provided, be made by a chamber summons supported by affidavit:

Provided that the Court may where it considers fit to do so, entertain an application made orally or, where all the parties to a suit consent to the order applied for being made, by a memorandum in writing signed by all the parties or their advocates, or in such other mode as may be appropriate having regard to all the circumstances under which the application is made.

3. Process to be served at expense of party issuing and costs of service

(1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the court otherwise directs.

(2) The court fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

4. Orders and notices, how served

All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

5. Directions of High Court may be notified by telegram

(1) The Registrar of the High Court may by telegram, notify any officer of the court of any order made by the High Court and direct him to take such steps as may be necessary to give effect to the order.

(2) A telegram sent under the provisions of subrule (1) shall state—

(a) the number and title of the proceeding;

(b) the substance of the order; and

(c) the action required to be taken.

(3) On receipt of a telegram sent in accordance with the provisions of this rule the officer to whom it is addressed shall act in accordance with the directions given to him.