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A New Eritrean Civil Procedure Code

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NEW ERITREAN CIVIL PROCEDURE CODE

Finalized draft, November 2001

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CHAPTER I BASIC PROVISIONS

PARAGRAPH 1 APPLICATION AND INTERPRETATION OF THE CIVIL PROCEDURE CODE

Art. 1 The scope of application

The Civil Procedure Code shall apply to all proceedings in civil and commercial disputes in the

- (a) Sub-Regional Courts
- (b) Regional Courts
- (c) High Court
- (d) Supreme Court

Art. 2 Interpretation of terms

(1) In this Code, unless the context otherwise requires, the following terms and expressions shall have the following meaning.:

- 'affidavit' shall mean a statement of facts in writing lawfully sworn or affirmed;
- 'court' shall mean a court established by law;
- 'decree' shall mean the formal expression of any preliminary or final adjudication which, so far as concerns the court expressing it, conclusively determines the rights of the parties concerning all or any of the matters in dispute in the suit;
- 'decree-holder' shall mean any person in whose favour a decree has been passed or an order capable of execution has been made and shall include the transferee of a decree;
- 'execution officer' shall mean any judge, officer of any court or any other person appointed by the Competent Authority to execute judgements;
- 'foreign court' shall mean a court outside Eritrea;
- 'foreign judgement' shall mean the judgment of a court outside Eritrea;

- 'government pleader' shall include:
 - a) any officer appointed by the government to perform all or any of the functions imposed by this Code on the government pleader; and
 - b) any pleader acting under the directions of the government pleader;
- 'judgement' shall mean the statement given by a court;
- 'judgement-debtor' shall mean any person against whom a judgment has been passed or an order capable of execution has been made;
- 'law' shall include proclamations, decrees, orders and any subsidiary legislation made thereunder;
- 'legal representative' shall mean any person who in law represents a person under disability or the estate of a deceased person;
- 'mesne profits' of property shall mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by such person;
- 'order' shall mean the formal expression of any decision of a court which is not a decree;
- 'person under disability' shall mean any person who is not capable under the law;
- 'pleader' shall mean an advocate and shall include any person entitled to appear and plead for someone else;
- 'prescribed' shall mean prescribed by regulations under this Code;
- 'process' shall mean any judicial writ or order issued at the beginning and during the whole course of the proceedings;
- 'registrar' shall mean the registrar or assistant registrar of a court and shall include any clerk of court assigned by the registrar to carry out all or part of the duties of a registrar;
- 'share in a corporation' shall be deemed to include stock, debenture stock, debentures or bonds.

(2) Terms in male gender includes the female gender and vice versa.

PARAGRAPH 2 RECUSAL AND SELF-RECUSAL OF THE JUDGE

Art. 3 Grounds for the recusal or self-recusal

A judge cannot consider the case and is subject to recusal:

- (a) if he is a relative of or otherwise strongly related to the parties, their representatives, the prosecutor or to one of the other judges of the full court in session;
- (b) if he has taken part in the previous examination of the given case, in the capacity of expert, interpreter, prosecutor, representative or witness;
- (c) if he has considered the same case in the court of another instance;
- (d) if he has a personal interest, direct or indirect, in the outcome of the case;
- (e) if there are other circumstances which call into question his impartiality.

Art. 4 Self-recusal

When one or more of the circumstances, listed in art. 3 of this Code, are present, the judge is obliged to announce his self-recusal.

Art. 5 Upon a party's request

- (1) Each party is entitled to request the recusal of the judge on the grounds, listed in art. 3 of this Code, at any stage before decision.
- (2) The request shall be made in writing or orally to the court in session. The party is obliged to explain his request.
- (3) The request shall be made as soon as the ground for the recusal has become known to the party. A request in the course of the examination of the case shall only be admitted if the grounds for the recusal have become known to the party after the start of the litigation and could not reasonably have become known before.
- (4) A subsequent request for recusal shall only be admitted if it is based on new grounds which the party could not reasonably have known before.

Art. 6 Suspension

As soon as a request for recusal of the judge has been submitted, the consideration of the case will be suspended until a decision for that matter is given.

Art. 7 Considering the request

- (1) If the judge who is being recused voluntarily resigns, the request shall be admitted.
- (2) Unless paragraph (1) of this article is applicable, the request for recusal of the judge who is considering the case alone, shall be dealt with by the President of the court, the judge belongs to, or, if the President himself is being recused, by another judge of the same court, or, if that is not possible, by the President of a court of the same level, or, if that is not possible, by the President of a court of a higher level.
- (3) The request for recusal of the judge who is considering the case collegially, shall be dealt with by the President of the court and the two other judges of the full court in session. They shall consider the request in the absence of the judge who is being recused. If the President himself is being recused, he will be replaced by another judge of the same court, or, if that is not possible, by the President of another court of the same level, or, if that is not possible, by the President of the court of a higher level.
- (4) If the recusal of several or all judges of the full court is requested, that request shall be dealt with by the President and two other judges of the same court. In case the President himself is one of the judges being recused, paragraph (3) of this article, last sentence, is applicable. In case not enough judges of the same court are available to replace the judges being recused, the request will be dealt with by judges of a court of the same level or, if that is not possible, by judges of a higher court.
- (5) The single chamber or full court considering the request for recusal shall hear the arguments of the petitioner, the other party and the judge being recused, if one of them should wish to give explanations.
- (6) As soon as possible after the hearing, a decision will be passed. No appeal shall lie from such decision.

Art. 8 Consequences of (non-)admittance

- (1) If the recusal is dismissed, the consideration of the case shall be resumed by the same judge or by the same full court as before the request for recusal was made.
- (2) If the recusal is admitted, the consideration of the case shall be resumed by the same court, but by another judge of that court respectively by a new composed full court.
- (3) If as a result of admitting the recusal, it is impossible to find in the same court a judge to replace the recused judge or to compose a new full court to consider the case in the same court, the case shall be passed to another court of the same level or, if that is not possible, to a court of a higher level.
- (4) If a party requests a recusal of a judge due to malice or unfounded grounds, the court may levy a fine up to 500 Nakfa and additional costs as it may deem necessary.

PARAGRAPH 3 PUBLIC PROSECUTOR

Art. 9 The public prosecutor

When he has reason to believe that the public interest is affected, the public prosecutor may file a civil suit or intervene in any suit at any stage of the proceedings.

PARAGRAPH 4 TIME

Art. 10 Fixing and calculating time-limits

The period of time for doing anything that needs to or may be done in relation to the proceedings in court shall, if not fixed by law, be fixed by the court having regard to all the circumstances of the case.

Art. 11 Meaning of 'year', 'month' and 'day'

In this Code, in a judgement or in an order of the court 'year', 'month' or 'day' mean a calendar year, a calendar month and a calendar day respectively.

Art. 12 The end of the period of time

(1) The period of time, calculated in years, shall expire in the corresponding month and on the corresponding date of the last year of the period. Calculated in months, the period of time shall expire on the corresponding date of the last month of the period. If the expiry of the period of time, calculated in months, falls on a month that has no corresponding date, the expiry date shall be the last day of this month.

(2) The procedural act may be performed till twenty-four hours of the last day of the period of time.

Art. 13 Computing

(1) A period of time, calculated as a number of days, shall be computed in clear days.

(2) Clear days means that in computing the number of days the day on which the period begins and, if the end of the period is defined by reference to an event, the day on which that event occurs, are not included. Without reference to an event, the day on which the period ends is included.

(3) A specified period of 5 days or less does not include Saturdays, Sundays or legal holidays.

(4) When the specified period for doing any act at the court office ends on a day on which the office is closed, that act shall be done in time on the next day on which the court office is open. If the period ends on a day on which weather or other conditions have made the court office inaccessible, the act shall be done in time on the first day after the inaccessibility has stopped.

(5) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or paper, and the notice or paper is served upon him by mail, 7 days shall be added to the prescribed period.

Art. 14 Observance of time-limit

(1) A time-limit shall be deemed to be observed if the purpose for which such time-limit has been fixed, has been fulfilled prior to its expiration.

(2) When a dispute arises as to the observance of a time-limit, the party who alleges that such time-limit has been observed shall prove his allegation.

Art. 15 Extension of time-limit

(1) Unless otherwise expressly provided, a period of time fixed by law may neither be shortened nor extended. Nevertheless an extension may be granted by the court

- (a) to its discretion if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order;
- (b) upon request made after the expiration of the specified period permits the act to be done where the failure to act was excusable.

(2) A time-limit fixed by the court may for good cause be extended by the court upon an application to this effect filed prior to the expiration of that time-limit.

(3) Save in exceptional circumstances, the same time-limit may not be extended more than twice.

Art. 16 Lateness

Without prejudice to the provisions of art. 17, anything that ought to have, but has not been done prior to the expiry of a time-limit may not be done thereafter and, if done thereafter, shall be of no effect.

Art. 17 Fresh time-limit

- (1) Anything that ought to have, but has not been done prior to the expiry of a time-limit, may be done thereafter when, upon application, the court fixes a fresh time-limit.
- (2) A fresh time-limit may not be fixed under paragraph (1) unless:
 - (a) the applicant satisfies the court that he was prevented from observing the time-limit by circumstances by force majeure; and
 - (b) the application is made within fifteen days from the moment those events of force majeure have ceased to prevent him from observing the time-limit.
- (3) A fresh time-limit may not be fixed where an application alleges mistake, forgetfulness, burden of business or similar circumstances not amounting force majeure.

Art. 18 The court may grant time and adjourn hearing

- (1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them and adjourn the hearing of the suit for such time as is necessary for the purpose of the adjournment.
- (2) The hearing shall be adjourned where the making of the decision is conditional upon the completion of other proceedings, civil or criminal.
- (3) On adjourning the hearing the court shall fix a day for the further hearing of the suit and may make such order as it thinks fit with respect to the costs occasioned by the adjournment: Provided that, when the hearing of evidence has once begun, the hearing of the suit shall, as far as possible, be continued from day to day until all the witnesses in attendance have been examined.
- (4) No adjournment shall be granted when any of the pleaders of the parties fail to appear.
- (5) Where a hearing has been adjourned sine die, the court shall issue new summonses to the parties and the witnesses.

Art. 19 Effect of adjournment

- (1) On adjourning the hearing, the court shall make such order as is necessary to ensure the purpose for which the adjournment was granted, is carried out.
- (2) During the suspension of the proceedings, time-limits prescribed by law or fixed by the court shall not run, provided that such suspension shall be deemed not to have, taken place if, due to the claimant not having diligently pursued his claim in the court, a case remained dormant for a period of two years.

Art. 20 Purpose of adjournment not carried out

- (1) When the purpose for which the adjournment was granted has not been carried out because of a reason attributable to the default of either party, the court may, notwithstanding such failure, proceed to decide the suit immediately on the proceedings being resumed.
- (2) When the purpose for which the adjournment was granted has not been carried out because of a reason not attributable to the default of either party, a further adjournment shall be granted.

PARAGRAPH 5 INQUIRING FOREIGN LAW

Art. 31 Principle

- (1) In case foreign substantive law is applicable, the court shall determine the existence and contents of this foreign law in conformity with its interpretation and the practice of its application in the corresponding foreign state.
- (2) The court, in determining substantive foreign law, may consider any relevant materials or sources, including testimony, whether or not submitted by a party or admissible under the rules of evidence.
- (3) For the purposes of determining substantive foreign law, the court may invoke

- (a) the assistance of the authoritative bodies of the Eritrean State and of the concerning foreign state;
 - (b) the collaboration of the parties;
 - (c) the services of specialists.
- (4) If, despite the above-mentioned measures, the existence or the contents of the substantive foreign law cannot be determined or ascertained, Eritrean substantive law applies unless, within the restrictions of Eritrean international private law, the parties express their choice for another ascertainable foreign law or for International Uniform Private Law Provisions or for certain General Principles of (parts of) Private Law.

PARAGRAPH 6 PENDENCY, PRIORITY, RES JUDICATA

Art. 31a Pendency

- (1) No court shall try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted civil suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such civil suit is pending in the same court or any other court in Eritrea having jurisdiction to grant the relief claimed.
- (2) If a lawsuit on the same causes of action between the same parties is already pending abroad, an Eritrean court may stay the proceedings if it is to be expected that the foreign court will render a decision recognizable in the State of Eritrea within a reasonable time.

Art. 31b Priority

- (1) One and the same civil suit may not be instituted in more than one civil court.

- (2) Where a suit may be instituted in any one of the several courts, the court in which the statement of claim was first filed shall have jurisdiction and the suit shall be pending in that court.

Art. 31c Res Judicata

- (1) No court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, and has been heard and finally decided.
- (2) Any matter which might and ought to have been made a ground of defence or attack in the former suit shall be deemed to have been directly and substantially in issue in such suit.
- (3) Any relief claimed in the former suit which has not been expressly granted by the judgement passed in such suit shall, for the purposes of this article, be deemed to have been refused.
- (4) Where persons litigate in good faith in respect of public or private rights claimed in common for themselves and others, all persons interested in those rights shall, for the purposes of this article, be deemed to claim under the persons so litigating.

**CHAPTER II PRINCIPLES OF THE ADMINISTRATION OF JUSTICE
IN CIVIL LITIGATION**

Art. 32 Objective of the Civil Procedure Code

(1) The objective of the Code is to enable the court and the parties to advance substantive and procedural justice and to secure a just, speedy, and inexpensive determination of civil and commercial disputes.

(2) Striving to give effect to the objective of the Code is the shared responsibility of the court and the parties.

(3) The shared responsibility includes among others that cases are dealt with

(a) in conformity with the principles stated below in art. 33-42 of this Code;

(b) in a way which is proportionate to the importance of the case, to the complexity of the issues, to the amount of money involved, to the financial position of each party and to the need of allotting a share of the court's resources to other cases.

Art. 34 Access to justice

The provisions of this Code shall not detract from everyone's right to have access to a court for the protection and enforcement of his violated or disputed substantive rights and lawful interests.

Art. 35 Independence and impartiality of the judge

In administering justice, the judge shall be independent and impartial. Where the impartiality of the judge is questioned, each party is entitled to request the recusal of the judge according to the provisions of art. 3-8 of this Code.

Art. 36 Equality before the court

The proceedings before the court shall be conducted on the basis of equality of the parties. The court shall secure that all parties equally enjoy the rights and equally observe the duties, established in this Code, regardless of their race, nationality, language, sex, ethnic origin,

colour, property, official position, social or economic status, place of residence, religion, political belief and opinions, or of other circumstances.

Art. 37 Right to be heard

- (1) Each party shall have the right to be heard before a court of law.
- (2) The right to be heard includes
 - (a) the right of each party to present and explain the case;
 - (b) the right of each party to have access to all statements, documents and other information submitted to the court regarding the case by the opposing parties or otherwise;
 - (c) the right to contradict the statements, documents and other information submitted to the court by the opposing parties in the case or otherwise.
- (3) When evidence is to be given in a language other than Amharic, it shall be interpreted by the official interpreter or by any such other person as the court may appoint for the purpose, which person shall before interpreting the evidence, take the oath or affirmation in the form provided for by the Third Schedule to this Code.
- (4) The court ensures that no decision shall be taken until the requirements of the right of each party to be heard are fully met.

Art. 38 Public hearing

- (1) The general rule is that all court sessions are held in public.
- (2) The public nature of the court sessions does not require the court to make special arrangements for accomodating members of the public.
- (3) The court on its own motion or at the request of the parties may order a session, or any part of it, in camera if
 - (a) publicity would defeat the object of the session;
 - (b) the session concerns matters of national security of Eritrea;

- (c) confidential information is involved and publicity would damage that confidentiality;
 - (d) a session in camera is necessary to protect the interests of the private lives of the parties or of other persons, such as children and patients;
 - (e) the court considers this to be necessary in the interests of morals, public order or the administration of justice.
- (4) The session, or any part of it, in camera shall be conducted in compliance with the civil procedure rules of this Code.

Art. 39 Duty to tell the truth

- (1) A party presentation of facts shall be truthful. A presentation is truthful when the party sincerely believes and may believe that the presented facts are true.
- (2) A party who states or alleges a fact knowing positively that it does not correspond with the truth, will either be held in contempt of court, or make himself subject to other sanctions, such as paying the costs of the procedure;

Art. 40 The court's duty to clarify issues of fact and of law

- (1) The court has the duty to try clarify unclear or incorrect statements and allegations of fact and law. On its request parties are bound to explain their position and to submit to the court relevant documents or other information. With a view to that the court, at any stage of the proceedings, may require the personal appearance of the parties or, in case the party is the Government or a corporate body, the personal appearance of any person on the part of the Government resp. the corporate body who may be able to answer material questions relating to the suit.
- (2) It is the official duty of the court to frame the relevant issues. If the court's framing differs from that of the parties, the court shall draw their attention to this point and give them the opportunity to complement or adjust their statements and allegations on any point which appears appropriate to the court.

(3) The court shall secure that all issues in dispute are completely determined. In its decision the court shall neither take into account facts which are not presented by one of the parties, nor sustain or reject any claim, or part thereof, that was not filed by one of the parties.

Art. 41 Friendly settlements

To the end of reaching a friendly settlement between the parties, the court, at any stage of the proceedings, may require the personal appearance of the parties or, in case the party is the Government or a corporate body, the personal appearance of any person on the part of the Government resp. the corporate body who has the authority to bind the party to a friendly settlement.

Art. 42 Reasonable time

(1) The court ensures that, so far as is practicable and in harmony with the requirement of doing justice, the case is dealt with expeditiously. Upon request or on its own motion the court shall order a party to abstain from causing unreasonable delay of the proceedings. A party who fails to comply with the orders of the court in this respect, will either be held to be in contempt of court, or make himself subject to other sanctions, such as the preclusion of the belated arguments.

(2) Each party is entitled to a decision of the court within a reasonable time.

Art. 43 Majority vote in full court

(1) The issues, arising out of a case being considered in full court, shall be resolved by the majority vote. None of the judges is permitted to abstain from voting. The judge presiding over the full court shall be the last to cast his vote.

(2) The judge who disagrees with the decision passed by the majority shall not be obliged to sign the judgement, but shall have the right to write his dissenting or concurring opinion, which shall be announced as well.

Art. 43a Delegation

(1) Where this Code provides for the full court to perform any act, then that act may be performed by one of the judges of the court. If the full court grants one of its judges to perform certain acts, the judge shall act on behalf of the court.

(2) Where this Code, a judgement, decree or order of the court requires or permits the court to perform an act of a formal or administrative character, that act may be performed by a court officer. The court officer may consult the judge before performing the act

BOOK I CIVIL PROCEDURE IN GENERAL**CHAPTER I JURISDICTION OF THE COURT****PARAGRAPH 1 INTERNATIONAL JURISDICTION****Art. 44 Scope of application**

Unless otherwise provided by an international convention or a treaty to which the State of Eritrea is a party, the jurisdiction of the Eritrean courts in international civil and commercial matters is regulated by the following provisions of this Paragraph.

Art. 45 Defendant's forum

(1) Apart from jurisdiction derived from other, more specific, provisions of domestic law, jurisdiction lies with the Eritrean courts if the defendant has his habitual residence in the State of Eritrea.

(2) In case the defendant is a company or other legal person jurisdiction lies with the Eritrean courts if the defendant has its principal seat of business in the State of Eritrea, which shall be the head office designated in its articles of association unless it is shown that the principal seat of its business is elsewhere.

Art. 46 Jurisdiction agreement

(1) If the parties have agreed that a court of the State of Eritrea shall have jurisdiction to settle any dispute which has arisen or may arise in connection with a particular legal relationship concerning monetary claims, that court shall have exclusive jurisdiction.

(2) If the parties have agreed that a court of a foreign state shall have jurisdiction to settle any dispute which has arisen or may arise in connection with a particular legal relationship concerning monetary claims, that court shall have exclusive jurisdiction.

- (3) A jurisdiction agreement shall be valid as to form, if it was entered into or confirmed
- (a) in writing;
 - (b) by any other means of communication which renders information accessible so as to be usable for subsequent reference;
 - (c) in accordance with a usage which is regularly observed by the parties;
 - (d) in accordance with a usage of which the parties were or ought to have been aware and which is regularly observed by parties to contracts of the same nature in the particular trade or commerce concerned.

(4) In matters relating to contracts as expressed by article 48 (d) and 48 (e) of this Paragraph, an agreement conferring jurisdiction to a court shall have legal force only if it is entered into after the dispute has arisen.

(5) Jurisdiction agreements shall be considered and decided upon as a separate agreement. Therefore the chosen court shall have the power to decide on the validity of the contract in which the jurisdiction agreement is related.

Art. 47 Appearance by the defendant

- (1) An Eritrean court shall have jurisdiction if the defendant proceeds on the merits without contesting jurisdiction.
- (2) The defendant has the right to contest jurisdiction not later than at the time of the first defence on the merits.

Art. 48 Special fora

A plaintiff may also bring an action for the Eritrean court in matters relating to:

- (a) a contract for the supply of goods, if Eritrea is the place where the goods were or ought to be supplied in whole or in part;
- (b) a contract for the provision of services, if Eritrea is the place where the services were or ought to be provided in whole or in part;

- (c) a contract for the supply of goods and the provision of services, if Eritrea is the place where the performance of the principal obligation took or ought to take place in whole or in part;
- (d) a contract for the supply of goods or/and for the provision of services concluded by a natural person for a purpose which can be regarded as being outside his trade or profession, if Eritrea is both the place where that natural person has his habitual residence and the place where that natural person took the necessary steps for the closing of the contract;
- (e) an individual contract of employment, if Eritrea is the place where the employee habitually carries out his work;
- (f) a tort or delict, if Eritrea is the place where the harmful event occurred or threatens to occur;
- (g) real rights in immovable property or tenancies of immovable property, if Eritrea is the place in which the immovable property is situated.

Art. 49 Branches

The Eritrean courts shall have jurisdiction if a branch, agency or any other establishment of the defendant is situated in the State of Eritrea, provided that the dispute relates directly to the activity of that branch, agency or establishment.

Art. 50 Multiplicity of defendants

An Eritrean court with jurisdiction based upon one of the preceding articles of this Paragraph shall also have jurisdiction over the co-defendant if the connection between the several claims at the time they are instituted is so close, that justice requires a combined trial.

Art. 51 Counter-claims

Without prejudicing art. 76, the Eritrean court before which the original claim is pending shall also have jurisdiction over an accessory claim and a counterclaim, over an action on a warranty or guarantee or in any other third party proceedings.

Art. 53 Forum necessitatis

If the law of the State of Eritrea does not provide for international jurisdiction in Eritrea, and proceedings abroad are impossible or would be unreasonable, international jurisdiction lies with the Eritrean courts if the case is sufficiently linked with the Eritrean legal sphere.

Art. 54 Provisional and protective measures

An Eritrean court may order any provisional or protective measures to protect on an interim basis a claim, accessory claim or counterclaim even if it has no jurisdiction to render a decision on the merits.

PARAGRAPH 2 NATIONAL JURISDICTION: MATERIAL JURISDICTION

Art. 59 Principle

Every suit shall be tried by the court competent to try it under the provisions of this Paragraph and shall, unless otherwise provided, be instituted in the court of the lowest grade competent to try it.

(2) Every appeal shall be tried by the court competent to try it under the provisions of Book V.

Art. 60 Jurisdiction of Sub-Regional Courts

Without prejudice to the provisions of art. 62 (2) and (3) and art. 65, Sub-Regional Courts shall have jurisdiction to try:

- (a) all suits not regarding immovable property where the amount involved does not exceed E \$ 500; and
- (b) all suits regarding immovable property where the amount involved does not exceed E \$ 1000.

Art. 61 Jurisdiction of Regional Courts

Without prejudice to the provisions of art. 62 (2) and (3) and art. 65, Regional Courts shall have jurisdiction to try:

- (a) all suits not regarding immovable property where the amount involved does not exceed E \$ 5,000,-; and
- (b) all suits regarding immovable property where the amount involved does not exceed E \$ 10,000,-.

Art. 62 Jurisdiction of High Court

- (1) The High Court shall have jurisdiction to try:
 - (a) all suits not regarding immovable property where the amount involved exceeds E \$ 5,000; and
 - (b) all suits regarding immovable property where the amount involved exceeds E \$ 10,000.

- (2) The High Court shall have exclusive jurisdiction to try suits regarding:
 - (a) the formation, dissolution and liquidation of bodies corporate;
 - (b) negotiable instruments, bankruptcy and maritime law;
 - (c) insurance policies;
 - (d) rademarks, patents and copyright;
 - (e) expropriation and property;
 - (f) the liability of public servants for acts done in the discharge of official duties;
 - (g) nationality;
 - (h) filiation.

- (3) In accordance to the provisions of Book VI, Chapter ??, Paragraph ??, and of Book VII, Chapter VIII, the High Court shall decide applications for the enforcement of foreign judgments resp. arbitral awards.

Art. 63 Pecuniary jurisdiction

- (1) A court shall have pecuniary jurisdiction when the amount or value of the subject-matter of the suit as on the day of the institution of the suit does not exceed the limits laid down in this Paragraph for the court concerned.

(2) In deciding under art. III.1.2.14 whether it has penunciary jurisdiction, the court shall have regard to the amount stated in the statement of claim.

(3) Where a part of the claim is admitted at any time before evidence is produced and the amount or value of the subject-matter of the suit is accordingly reduced, the court may try the suit or of its own motion order the transfer of the suit to such subordinate court as has pecuniary jurisdiction with regard to the amount or value thus reduced.

(4) Where a suit has been instituted in a court competent under the provisions of this Paragraph, such court shall remain competent notwithstanding that the amount or value of the subject-matter of the suit increases or is reduced in consequence of changes in economic circumstances.

Art. 64 Plurality of claims

(1) Where one or more plaintiffs have united in the same suit several claims against the same defendant or the same defendants jointly, the jurisdiction of the court shall, except in cases where suits have been consolidated according to art. 107, depends on the amount or value of the aggregate claims.

(2) Where several claims are made in the same suit, some of which are principal and some accessory, or where alternative claims are made, the jurisdiction of the court shall depend on the amount or value of the higher principal claim.

(3) Where a counter-claim is made the jurisdiction of the court shall depend on the amount or value of the higher claim, whichever it may be. If the amount or value of the highest claim exceeds the competence of the court in which the principal claim was instituted, the court shall pass the case to the competent court.

Art. 65 Claim which cannot be expressed in money

Without prejudice to the provisions of art. 62 (2) and (3), where the subject-matter of a suit cannot be expressed in money, such suit shall be tried by the Regional Court having local jurisdiction.

PARAGRAPH 3 NATIONAL JURISDICTION: LOCAL JURISDICTION

Art. 66 Principle

(1) Without prejudice to the provisions of the following articles and to such special places of jurisdiction as may be provided for by any law, every suit shall be instituted in the court of the place where the defendant is a habitual resident or carries on business or personally works for gain.

(2) A suit against joint defendants may be instituted in the court of any of the places where any of the defendants resides or carries on business or personally works for gain.

Art. 67 Defendant residing abroad

(1) Where the defendant resides, carries on business, or personally works for gain abroad, the suit shall be instituted in such court in Ethiopia as the plaintiff may choose, unless it relates to immovable property which the defendant owns in Ethiopia, in which case the suit be instituted in the court of the place where such property is situated.

(2) Where the defendant is a foreigner not residing, carrying on business or personally working for gain in Ethiopia but he owns movable or immovable property in Ethiopia the suit may be instituted in the court of the place where such property is situated

Art. 68 Suits against the State

Suits against the State or a Government department or agency may in the discretion of the plaintiff be instituted in the court of the place where:

- (a) the plaintiff resides, carries on business or personally works for gain;
- (b) the contract to which the suit relates was made or was to be executed; or
- (c) the act giving rise to liability occurred.

Art. 69 Suits against body corporate

- (1) Suits against a business organisation shall be instituted in the court of the place where the head office or branch against which the suit is made, is situated.
- (2) Suits against an association, committee, trust or endowment shall be instituted in the court of the place where such association, committee, trust or endowment was formed or, where such association committee, trust or endowment requires by law to be registered, at such place of registration.
- (3) Suits regarding the liability of an officer of a body corporate may be instituted in accordance with the provisions of this article or those of art. 74 (1).

Art. 70 Suits regarding successions

Suits regarding a succession which is being liquidated shall be instituted in the court of the place where the succession was opened.

Art. 71 Suits regarding contracts

- (1) Suits regarding contracts may to the discretion of the plaintiff be instituted in the court of the place where the contract was concluded or was to be executed, unless some other place is mentioned in the contract.
- (2) Suits regarding a contract of carriage shall be instituted in accordance with the provisions of art. 208 (**CHECK**) Maritime Code or art. 647 (**CHECK**) Commercial Code.
- (3) Suits regarding a contract of insurance may be instituted in the court of the place where the head office of the insurance company concerned is situated or registered in Eritrea or where the insured object is situated.
- (4) Suits regarding pledge, deposit or bailment may be instituted in the court of the place where the property which is the subject-matter of the suit is situated.

Art. 72 Suits regarding immovable property

- (1) Notwithstanding any provision to the contrary, with the exception of art. 77, suits for:
- (a) the recovery of immovable property with or without rent or mesne profits;
 - (b) the partition of immovable property;
 - (c) the determination of any other right to, or interest in immovable property; or
 - (d) compensation for wrong to immovable property,
- shall be instituted in the court of the place where such property is situated.

(2) Where in a suit to obtain relief regarding, or compensation for, wrong to immovable property held by or on behalf of the defendant, the relief sought can be entirely obtained through his personal obedience, such suit may be instituted either in, the court of the place where such property is situate or in accordance with the provisions of art. I.2.4.23.

Art. 73 Immovable situated within jurisdiction of different courts

- (1) A suit regarding immovable property situated within the jurisdiction of different courts may be instituted in any of these courts.
- (2) Where it is alleged to be uncertain within the local limits of the jurisdiction of which courts any immovable property is situated, any of those courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon try any suit regarding such property. Its judgment shall have the same effect as if the property was situated within the local limits of its jurisdiction.
- (3) The provisions of this article shall not apply unless, in respect of the subject-matter of the suit, the entire claim falls within the material jurisdiction of such court.

Art. 74 Suits regarding wrong to persons or movables

- (1) Suits for compensation for wrong done to persons or to movable property may be instituted in the court of the place where such wrong was done or in accordance with the provisions of art. 66.
- (2) Suits regarding collisions at sea shall be instituted in accordance with the provisions of art. 237 (**CHECK**) Maritime Code.

Art. 75 Several causes of action

Where a suit is based upon several causes of action arising in different places, the suit may be instituted in any of the courts having jurisdiction by reason of one of such causes of action.

Art. 76 Accessory claim and counter-claim

(1) An accessory claim or a counter-claim shall be filed in the court having jurisdiction to try the principal claim where such court has material jurisdiction to try such accessory claim or counterclaim.

(2) Such court shall remain competent to try a counter-claim notwithstanding that the principal claim is withdrawn, struck out or dismissed.

Art. 77 Change of venue

Whenever it is made to appear to the High Court, at any time before judgement, upon application of either party that:

- (a) a fair and impartial trial cannot be held in any court subordinate thereto;
- (b) some question of law of unusual difficulty is likely to arise; or
- (c) an order under this article will tend to the general convenience of the parties or witnesses or is expedient for the purposes of justice,

the High Court may make an order, not open to appeal, holding that the suit:

- (i) be tried by any Court not empowered under the provisions this Paragraph to try it but having material jurisdiction to try the same; or
- (ii) be transferred for trial by itself.

(2) Whenever it is made to appear to the Supreme Court at any time before judgment by application of either party that there are good reasons why a suit pending in any division of the High Court on circuit should be tried by another division of the High Court, the Supreme Court may order that such suit be tried by such division of the High Court as it shall direct.

PARAGRAPH 4 DISPUTING JURISDICTION**Art. 79 Choice of court**

(1) When the parties have agreed upon that another than the legally competent court shall have local jurisdiction to settle the dispute that has arisen or possibly will arise between them and the dispute is to their free disposal, the chosen court shall have exclusive jurisdiction, provided that the interested party will invoke the agreement.

(2) Par. (1) does not apply where one of the parties of the agreement is a natural person not acting in the course of his business or profession.

(3) An agreement that another than the legally competent court shall have material jurisdiction is not valid if the claim exceeds 500 Nakfa, the dispute concerns a contract of employment or an contract in which one of the parties is a natural person acting in the course of a business or profession, unless

- (a) it is the said natural person who files the claim;
- (b) the agreement to choose another than the legally competent court is concluded after the dispute has arisen.

(4) A jurisdiction agreement shall be proven in writing.

(5) Jurisdiction agreements shall be considered and decided upon as a separate agreement. Therefore, the court shall have the power to decide on the validity of the main contract which the jurisdiction agreement is related to.

CHAPTER II PARTIES AND OTHER PERSONS IN SERVICE OF PROCESS

PARAGRAPH 1 GENERAL PROVISIONS

Art. 80 Scope of application

- (1) The provisions of this Chapter shall apply in any proceedings under this Code.
- (2) In applying the provisions of this Chapter to appeals, so far as may be, the word 'plaintiff' shall be held to include an appellant, the word 'defendant' a respondent, and the word 'suit' an appeal.

Art. 81 Qualifications

- (1) Any person capable under the law may be party to a suit.
- (2) No person may be a plaintiff unless he has a vested interest in the subject-matter of the suit.
- (3) No person may be a defendant unless the plaintiff alleges some claim against him. A civil suit is commenced by filing a statement of claim with the court.
- 4) The rules of this article do not limit in any way the joinder of parties, according to the rules of Paragraph 4 of this Chapter.

Art. 82 Legal representatives

- (1) A person under disability may sue or be sued through his legal representative.
- (2) Where a person under disability is not represented by his legal representative, the proceedings shall be stayed until a legal representative is appointed in accordance with the relevant provisions of the Civil Code.

- (3) Without prejudice to the provisions of the following articles, bodies corporate may be represented in accordance with the relevant provisions of the Civil or Commercial Code.
- (4) Representation in maritime matters shall be as provided for by the Maritime Code.
- (5) In all suits concerning property administered by a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not be necessary to make them parties to the suit unless the court otherwise directs.

Art. 83 Representative party

- (1) Where several persons have the same interest in a suit, one or more of such persons may sue or be sued or may be authorized by the court to defend on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be so represented.
- (2) Any person on whose behalf or for whose benefit a suit is instituted or defended under par. (1) may apply to the court to be made a party to such suit.

Art. 83a Class action

(forthcoming as soon as possible)

Art. 84 Suing partners in name of firm

Two or more persons claiming or being liable as partners and carrying on business in Eritrea may sue or be sued in the name of the firm of which such persons were partners at the time of occurring the cause of action. Any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were at the said time partners in such firm, to be furnished and verified in such manner as the court may direct.

Art. 85 Disclosure of partners names

(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under par. (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the court may direct.

(3) Where the names of the partners are declared in accordance with par. (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the statement of claim: Provided that all the proceedings shall nevertheless continue in the name of the firm.

Art. 86 Suing person carrying on business in another name than his own

Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name. Any provision in this Code which applies to suits by or against firms and persons carrying on business in a name other than their own shall apply so far as the nature of the case will permit.

Art. 87 Suits between co-partners

Any provision in this Code which applies to suits by or against firms and persons carrying on business in a name other than their own shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common.

PARAGRAPH 2 AGENTS, PLEADERS AND INTERPRETERS

Art. 88 Principle

Without prejudice to the provisions of Paragraph 5 of this Chapter any appearance, application or act in or to any court, required or authorized to be made or done by a party in

such court, may be made or done by the party in person or his legal representative, by his agent or by a pleader able to answer all material questions relating to the suit or accompanied by a person able so to answer.

Art. 89 Agents in general

Without prejudice to the provisions of the following articles, the agents of parties by whom appearances, applications and acts may be made or done are:

- (a) the spouse, mother, daughter, sister, brother, son, father, grandmother or grandfather of such parties appearing without reward on behalf of such parties;
- (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Art. 90 Pleaders

- (1) A pleader is an attorney or any person authorized to appear and plead for another person.
- (2) No pleader shall act for any person in any court, unless he has been appointed for that purpose by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment.
- (3) The authority as meant in par. (2) or a copy thereof shall be filed together with the pleadings in the matter for which the pleader is authorized to act and shall be deemed to be in force until determined with the leave of the court by a writing signed by the client or the pleader and filed with the court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.
- (4) For the purposes of par. (3) any application under art. 6, 208 or 349 (**CHECK**), any appeal in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into

the court or execution office in connection with the suit shall be deemed to be proceedings in the suit.

Art. 91 Persons authorized to act for Government

Persons being ex-officio or otherwise authorized to act for the Government with respect to any judicial proceeding shall be deemed to be the agents by whom appearances, applications and acts under this Code may be made or done on behalf of the Government.

Art. 92 Procedure in suits against public servant

(1) Where the Government undertakes the defence of a suit against a public servant, the government pleader, upon being furnished with authority to appear and answer the statement of claim shall apply to the court and upon such application the court shall cause a note of his authority to be entered in the record.

(2) Where no application under paragraph (1) is made by the government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties.

Art. 93 Agent of member of Armed Forces

(1) A member of the Armed Forces who is a party to a suit and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person may authorize any person to sue or defend in his place.

(2) The authority shall be in writing and shall be signed by the party giving it in the presence of:

- (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer; or
- (b) when the party is serving in military staff employment the head or other superior officer of the office in which he is employed.

(3) The authority shall be countersigned by such commanding or other officer and filed with the court and, when so filed, the countersignature shall be sufficient proof that the authority

was duly executed, and that the party giving it could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

(4) Any person authorized under par. (1) may prosecute or defend the suit in person or appoint a pleader to prosecute or defend the suit.

Art. 94 Agent of prisoner

(1) A prisoner who is a party to a suit and cannot obtain leave to prosecute or defend the suit in person may authorize any person to sue or defend in his place.

(2) The authority shall be in writing and shall be signed by the prisoner giving it in the presence of the superintendent who shall countersign the authority which shall be filed with the court.

(3) The provisions of art. 93(3) and (4) shall apply by analogy.

Art. 95 Agent to accept service

(1) Besides the agents described in the preceding articles any person residing within the jurisdiction of the court may be appointed an agent to accept service of process.

(2) Such appointment shall be made in writing signed by the principal and filed with the court.

Art. 96 Interpreter

(1) An interpreter being the person who possesses the knowledge of the language in court, necessary to make the translation on behalf of a party who does not have sufficient knowledge of that language, shall be appointed by the court in the cases, which person shall before interpreting take the oath or affirmation.

(2) The parties in the process may suggest to the court the names of an interpreter. However, the other party in the process, his representative, agent or pleader shall not have the right to

assume upon themselves the duties of an interpreter, even though they possess sufficient knowledge of the language, necessary for the translation.

(3) The interpreter is obliged to fully, correctly and promptly make the translation. He shall have the right to ask questions in order to render a more precise translation.

PARAGRAPH 3 MULTIPLICITY OF PARTIES AND CLAIMS (joinder, intervention, consolidation and separation)

Art. 97 Joinder of causes of action

(1) Unless otherwise provided a plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly.

(2) Any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly, may unite such causes of action in the same suit.

Art. 98 Claims joined for recovery of immovable property

No cause of action shall be joined with a suit for the recovery of immovable property, except:

- (a) claims for mesne profits or arrears of rent with respect to such property or any part thereof;
- (b) claims for damages for breach of any contract under which such property or any part thereof is held;
- (c) claims in which the relief sought is based on the same cause of action.

Art. 99 Claims by or against executor, administrator, trustee or heir

No claim by or against an executor, administrator, trustee or heir as such shall be joined with claims by or against him personally unless the latter claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor,

administrator, trustee or heir, or which as such he was entitled to, or liable for, jointly with the deceased person whom he represents.

Art. 100 Joinder of plaintiffs

All persons who allege to claim any right to relief in respect of or arising from the same transaction or series of transactions, whether jointly, severally or in the alternative, may be joined in one action as plaintiffs where, if such persons brought separate actions any common question of law or fact would arise.

Art. 101 Joinder of defendants

(1) All persons against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, may be joined as defendants where, if separate suits were brought against such persons, any common question of law or fact would arise.

(2) Where a suit concerns property administered by several trustees, executors or administrators, all such persons shall be made parties to a suit against one or more of them.

(3) Where the plaintiff sues for the recovery of immovable property free of occupants, such occupants, whatever their title, shall all be made parties to the suit.

(4) Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants so that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all the parties.

(5) It shall not be necessary that every defendant be interested as to all the relief claimed in any suit against him.

Art. 102 Compulsory joinder of parties

(1) A person whose joinder will not deprive the court of jurisdiction over the subject matter of the suit shall be joined as a party in the action if

(a) in the person's absence complete relief cannot be accorded among those already parties,
or

- (b) the person claims an interest relating to the subject of the suit and is so situated that the disposition of the suit in the person's absence may as a practical matter impair or impede the person's ability to protect that interest or leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest.

If the person has not been so joined, the court shall order that the person be made a party. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

- (2) A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in paragraph (1) who are not joined, and the reasons why they are not joined.

Art. 103 Judgment for or against one or more parties

Notwithstanding art. 108 judgement may be given :

- (a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;
- (b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Art. 104 Joinder of third party

- (1) Where a defendant claims to be entitled to contribution or warranty from any person not a party to the suit, he may in his statement or defence show cause why the third party is liable to make contribution or warranty and the extent of such liability and apply to the court for an order that such person be made a party to the suit.

- (2) Where the application is allowed, the third party shall be served with a copy of the statement of claim and defence and, upon being summoned to appear on such day as the court shall fix, shall be deemed to be in the same position as a defendant.

- (3) The claim between the defendant and the third party shall be tried in such manner as the court shall direct.

(4) The provisions of this article shall apply by analogy where a defendant claims to be entitled to contribution or warranty from any other defendant in the suit, unless this would prejudice the plaintiff against any defendant in the suit.

(5) When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Art. 105 Misjoinder and nonjoinder

(1) No suit shall be defeated by reason only of the misjoinder or nonjoinder of parties and the court may in every suit deal with the matter in dispute so far as regards the rights and interest of the parties actually before it.

(2) Any objection on the ground of misjoinder or nonjoinder of parties shall be raised at the earliest possible opportunity and, in all cases in which issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen. Any objection not so raised shall be deemed to have been waived.

Art. 106 Intervention of third party

(1) Any person interested in a suit between other parties may intervene therein at any time before judgment. The intervention is allowed whenever it is based on an unconditional right, given by law or whenever the applicant has an interest that is related to the action of the original parties and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by the existing parties.

(2) The intervention shall be made by filing a separate statement containing all the grounds which justify such person in intervening.

(3) Where the intervention is allowed, the intervening party shall be served with a copy of the statement of claim and defence and the proceedings shall be stayed until the parties have been served with a copy of the statement of the intervening party.

(4) Where for a reason attributable to the intervening party, his statement is not served within the time fixed by the court, he shall be deemed to have withdrawn his statement.

(5) Nothing in this article shall affect the provisions of art. 293-299 (**CHECK**)

Art. 107 Consolidation of suits

(1) Where two or more suits or appeals are pending between the same parties in the same court, in which the same or similar questions of law or fact are involved, the court may, of its own motion or on the application of either party, order a consolidation of such suits or appeals on such terms as it thinks fit.

(2) Where two or more suits or appeals are pending between the same parties in different courts, in which the same or similar questions of law or fact are involved, or where two or more suits pending between the same parties in different courts are so closely connected that they cannot properly be tried separately, either party may, at any time before evidence is taken in any of such courts, apply for an order that such suits be consolidated.

(3) An application under par. (2) shall be made to the High Court, where the suits are pending in courts which are all subordinate thereto, or to the Supreme Court, when one or more of the courts in which the suits are pending is a division of the High Court on circuit.

(4) The court to which the application is made shall, on granting the same, direct by which of the subordinate courts the consolidated suits shall be tried.

Art. 108 Separate trials

When more than one cause of action is presented in a suit, whether as a claim, a counterclaim or a third-party claim, or when multiple parties are involved, whether as joined (third-) parties or intervening parties, the court may at any time order separate trials whenever it appears that the claims cannot be tried or disposed of together without avoiding unnecessary costs or delay, or without avoiding prejudice or inconveniences.

PARAGRAPH 4 SUBSTITUTION, ADDITION AND SUCCESSION OF PARTIES AND OTHER PERSONS IN SERVICE OF PROCESS

Art. 109 Substitution and addition of parties

- (1) Where a suit has been instituted in the name of a wrong person as plaintiff or it is doubtful whether it has been instituted in the name of the right plaintiff, the court, on being satisfied that the suit has been instituted through a bona fide mistake and that it is necessary for the determination of the real matter in dispute so to do, may at any time order that any other person be substituted or added as plaintiff on such terms as it shall fix.

- (2) The court may at any time, on its own motion or on the application of either party and on such terms as it shall fix, order that the name of any party through a bona fide mistake has been joined as plaintiff or defendant be struck out and that there be added the name of any person who ought to have been joined as plaintiff or defendant. No person shall be added as plaintiff or defendant without his consent.

- (3) Where a plaintiff or defendant is added, the statement of claim and, if already filed in with the court, the statement of defence shall, unless the court otherwise directs, be amended accordingly and a copy thereof shall thereupon be served on the new plaintiff or defendant and, if the court thinks fit, on the original plaintiff or defendant.

Art. 110 Loss of capacity to be a party

- (1) When a party loses its capacity to be a party to a suit, the court shall, upon application, substitute its legal representative.

- (2) All actions, performed in the process before the legal representative enters the suit, shall be obligatory for him to the extent to which they would have been obligatory for the party itself.

- (3) If within one year after the loss of capacity, no application is made under par. (1), the suit shall be abated as far as that party is concerned and the court may award to him the costs which he may have incurred.

Art. 111 Substitution of agent, pleader, interpreter or legal representative

(1) When an agent, pleader, interpreter or legal representative dies, falls ill, loses his quality or for any other reason is no longer able or authorized to act properly on behalf of the party, the party may at any time substitute him.

(2) On its own motion, the court may at any time order the substitution of an agent, pleader, interpreter or legal representative in case that agent, pleader, interpreter or legal representative displays a bad behaviour in his appearances before the court or proves a serious ignorance in proper acting on behalf of the party. In case of the substitution of an agent, the court needs the consent of the concerned party.

Art. 112 Procedural legal succession

(1) If, for reasons such as death of the party, merger, assignment of the claim or transfer of the debt, one of the parties exits from the legal relationship which is disputed in court, upon application the court shall substitute for this party its legal successor, indicating this in its judgment in the case. The legal succession is admissible at any stage of the proceedings.

(2) All actions, performed in the process before the legal successor enters the suit, shall be obligatory for him to the extent to which they would have been obligatory for the substituted party.

(3) If within one year after the death of a party, no application is made under paragraph (1), the suit shall be abated as far as that party is concerned and the court may award to him the costs which he may have incurred.

Art. 112a Right of suit on death of partner

(1) Where two or more persons may sue or be sued in the name of a firm and any of such persons dies, whether before the institution or the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit;

(2) Nothing in paragraph (1) shall limit or otherwise affect any right which the legal representative of the deceased may have:

- (a) to apply to be made a party to the suit; or
- (b) to enforce any claim against the survivor or survivors.

Art. 113 Questions as to legal representatives

Where a question arises as to whether any person is or is not the legal representative of a person who died or lost his capacity to be a party to the suit, such question shall be determined by the court, or the court may, if it deems it more convenient to do so and notwithstanding anything contained in the preceding articles, appoint an administrator ad litem to represent the estate.

Art. 114 Death or loss of capacity after hearing

Notwithstanding anything contained in the preceding articles, there shall be no abatement by reason of the death or loss of the capacity to be a party to the suit of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death or the loss of capacity and shall have the same force and effect as if it had been pronounced before the death or the loss of capacity took place.

Art. 115 Party's insolvency

(1) The insolvency of a party in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or, unless for any special reason the court otherwise directs, to give security for the costs thereof within such time as the court may direct.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the opposite party may apply for the dismissal of the suit

Art. 118 Appearance of one of several plaintiffs or defendants

- (1) Any one of two or more plaintiffs or defendants may be authorized by any other of them to appear or act for such other in any suit.

- (2) The authority shall be in writing signed by the party giving it and shall be filed in the case

Art. 119 Appearance of partners

- (1) Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall continue in the name of the firm.

- (2) Where a summons is served in the manner provided by art. 98 (**CHECK**) upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

- (3) Any person so served may appear under protest denying that he is a partner, but such an appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a judgment against the firm in default of appearance when no partner has appeared.

Art. 120 Power to require appearance of certain persons

- (1) The court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of a body corporate who is able to answer material questions relating to the suit.

- (2) The court may also, in any case in which the pleader of the Government is not accompanied by any person on the part of the Government who may be able to answer material questions relating to the suit, require the attendance of such a person.

Art. 121 Parties to appear at hearing; neither party appears

- (1) On the day fixed for the hearing of the case, the parties shall be in attendance in the court in person or by their respective agents or pleaders and the suit shall than be heard.
- (2) Where neither party appears when the suit is called on for hearing, the court shall make an order that the suit will be struck out or, in case of appeal, that the appeal will be dismissed.
- (3) The provisions of paragraph (2) shall not apply when a party who has not been required to appear in person fails to appear but his agent or pleader appears.

Art. 122 Defendant fails to appear

When the plaintiff appears and the defendant does not appear when the suit is called on for hearing:

- a. if it is proved that the summons was duly served, the suit shall be heard ex parte;
- b. if it is not proved that the summons was duly served, the court shall direct a second summons to be served on the defendant;
- c. if it is proved that the summons was served upon the defendant but not in sufficient time to enable him to appear on the day fixed therein, the court may adjourn the hearing;
- d. if it is proved that the summons was not served upon the defendant or upon any one of several defendants through the plaintiff's negligence or default, the court may adjourn the hearing or order that the suit be struck out as against any defendant not served or, in cases of appeal, that the appeal be dismissed as against any respondent not served.

Provided that no order for the striking out of the suit or the dismissal of the appeal under sub-art. (d) shall be made where, although the summons has not been served on the defendant or respondent, the defendant or respondent appears in person or by agent or pleader when the suit or appeal is called on for hearing.

Art. 123 Effect of striking out

- (1) Where a suit is struck out under art. 121 (2) and 122 under (d), the plaintiff may bring a fresh suit on payment of full court fees.

(2) Where he satisfies the court that there was sufficient cause for his non-appearance, the court may make an order dispensing from payment of court fees and shall appoint a day for proceeding with the suit.

Art. 124 Subsequent appearance defendant

Where the court has adjourned the hearing of the suit ex parte, and the defendant at or before such hearing, appears and shows good cause for his previous non-appearance, he may, upon such terms as to costs or otherwise as the court may direct, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Art. 125 Plaintiff fails to appear

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an order that the suit will be dismissed, unless the defendant admits the claim or part thereof, in which case the court shall pass a judgement against the defendant upon such admission and, where part only of the claim has been admitted, shall dismiss the suit as it relates to the remainder.

Art. 126 Effect of dismissal

(1) Where a suit is wholly or partly dismissed under art. 125, or an appeal is dismissed under art. 121 (2), 122 under (d) and 125 plaintiff shall be precluded from bringing a new suit in respect of the same cause of action.

(2) Nothing in paragraph (1) shall prevent plaintiff from applying for an order to set the dismissal aside within one month of such dismissal, and if he satisfies the court that there was sufficient cause for his non-appearance, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

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

Art. 127 Several parties failing to appear

(1) Where one or more of several plaintiffs fail to appear, the court may, upon application of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

(2) Where one or more of several defendants, although duly served upon, fail to appear, the suit shall proceed, and the court shall, at time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who did not appear.

Art. 128 Third party failing to appear

(1) Where a third party duly summoned to appear under art. I.3.3.25 (2) fails without sufficient cause to appear for the purpose of disputing the plaintiff's claim as against the defendant on whose behalf the summons was issued, or his own liability to the defendant, he shall be deemed to admit the validity of the judgement passed against such defendant and his own liability to contribute or warranty, as the case may be, to the extent claimed by the defendant.

(2) Where judgement is given against the defendant, the defendant shall be entitled, after satisfying such judgement or, on the granting of an application to this effect, before satisfying such judgement, to judgement against the third party to the extent of the contribution or warranty claimed by the defendant.

Art. 129 Party failing to appear in person

A plaintiff or defendant who has been ordered to appear in person and fails without sufficient cause so to appear shall be subject to all the provisions of the preceding articles applicable to plaintiffs and defendants, respectively, who do not appear.

Art. 130 Opposing a default judgement

(1) Any defendant against whom a final judgement by default was rendered may within one month after the day when he became aware of such judgement or after the day on which this judgement has been served upon him in person, apply to the court by which the judgement was rendered for an order to oppose the default judgement.

- (2) The application to oppose the default judgement shall be served upon the original plaintiff who shall have the right to contradict it.

(3) If the defendant satisfies the court that the summons was not duly served upon him, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing or for filing his defence or reply, the court shall make an order to grant the opposition against the default judgement upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or re-hearing the appeal.

When the judgement is such that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.

(4) The sole ground that the applicant was absent at the time when the default judgment was passed, is no sufficient cause as meant in paragraph (3).

(5) Resuming the proceedings after the opposition has been granted, the application to oppose the default judgement shall be considered as the equivalent to a statement of defence.

(6) As from the moment the application to oppose the default judgement has been filed with the court and has been duly served upon the original plaintiff, the execution of the default judgement is stayed.

(7) The paragraphs (1) to (6) of this article apply to default judgements in appeal as well

BOOK II GENERAL PROVISIONS REGARDING CIVIL SUITS**CHAPTER I SERVICE****PARAGRAPH 1 ISSUE AND SERVICE OF SUMMONS ON DEFENDANT****Art. 131 Issue of summons**

(1) When a suit has been duly instituted, a summons shall, unless otherwise provided, be issued to the defendant to appear and answer the claim on a day specified therein in accordance with the provisions of Book II, Chapter II and of Book III, Chapter I, paragraph 2. No such summons shall be issued when the defendant has appeared at the presentation of the statement of claim and admitted the plaintiff's claim.

(2) The summons shall order the defendant to produce all the documents mentioned in the list annexed to the statement of defence under the provisions of Book III, Chapter I, paragraph 2.

(3) The summons shall inform the defendant that the case will be proceeded on the basis of the statement of claim if he does not appear or if he appears without his statement of defence.

(4) Every summons shall be in the form prescribed by the Second Schedule to this Code (*CHECK*) and shall be signed by or on behalf of a judge or the registrar and bear the seal of the court.

Art. 132 Modes of service

(1) Unless otherwise provided, the summons will be served on the defendant by the court. Where the court is to serve the summons, it may authorize any person, hereinafter referred to as the serving officer, to do this on its behalf.

(2) The court may order other methods for effecting service, e.g. by registered post or by fax or other means of electronic communication, provided that such methods put the recipient in a position to be able to ascertain the content of the summons within due time.

(3) Without prejudice to the provisions of the following articles, the summons shall as far as possible be served on the defendant in person.

(4) Unless otherwise provided or ordered by the court, where there are more defendants than one, the summons shall be served on each defendant.

Art. 133 Personal service

(1) The summons are served in person on an individual by leaving it either with his habitual residence or, in the absence of a habitual residence, with his present whereabouts.

(2) The summons are served in person on a company or other corporation

(a) by leaving it with the secretary or with any director or other principal officer of the company or corporation;

(b) by leaving it or sending it by post addressed to the company or corporation at its registered office or, if there is no registered office, at the place where the company or corporation carries its activities.

(3) The summons are served in person on a partnership where partners are being sued in the name of their firm by leaving it with:

(a) any one or more of the partners, or

(b) any person who, at the time of the service, has the control or management of the partnership business at its principle place of business.

(4) In case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served by leaving it with the liquidators' office or his habitual residence.

Art. 134 Service on agent or pleader

- (1) Where the defendant has an agent empowered to accept service, service shall, unless the court directs otherwise, be made on the agent and shall be as effectual as service on the defendant in person.
- (2) Where in a suit to obtain relief respecting, or compensation for wrong to immovable property, the summons cannot be served in person on the defendant while this defendant has no agent authorised to accept service on behalf of him, service may be made on any agent of the defendant in charge of the property.
- (3) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court by which the summons is issued, service on any manager or agent, who at the time of service, personally carries on such business or work for such person within such limits, shall be deemed as served on the person. For the purpose of this paragraph, the master of a ship shall be deemed to be the agent of the owner or charterer.
- (4) Where a pleader is authorised to accept service on behalf of the defendant, the summons may, unless the court directs otherwise, be served on that pleader or left at the office of such pleader and shall be as effectual as service on the defendant in person.
- (5) In suits against the Government, the summons shall be served on the government pleader or, where no such pleader has been appointed, in such other manner as the court shall direct.

Art. 135 Service on a member of defendant's family

Where in a suit the defendant cannot be found while he has no agent authorised to accept service on behalf of him, service may be made on any person of suitable age and discretion who is at the moment of service residing with him.

Art. 136 Defendant who cannot be found

Where the serving officer or any other person authorised in that behalf by the court, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service, nor any other person on whom service can be made, the serving

officer or person shall return the summons to the court from which it was issued, together with an affidavit as to the facts which prevented him from serving the summons. Art. 139 (2) shall apply.

Art. 137 Acknowledgement of service

(1) Where the summons is served in person on the defendant, on an agent, on a pleader or on another person on behalf of the defendant, the person to whom the summons is served shall sign acknowledgement of service on the original summons.

(2) Where such person refuses to sign the acknowledgment, art. 136 shall apply, but the court may, if it thinks fit, rule that such person has been duly served and dispense with the requirements of art. 139 (2)

(3) Where the summons, according to art. 132 (2) is served by registered post addressed to the defendant, his agent or pleader, an acknowledgement purporting to be signed by the defendant, the agent, the pleader or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the court issuing the summons to be prima facie proof of service.

Art. 138 Endorsement of time and manner of service

Where the summons has been served under art. 137 (1), the serving officer or any other person authorised in that behalf by the court shall endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and manner in which the summons is served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons.

Art. 139 Substituted service

(1) Where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way, it shall order the summons to be served by affixing a copy thereof in some conspicuous place in the courthouse and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on

business or personally worked for gain, or in such other manner, including publications in certain newspapers, as it thinks fit.

(2) Where a summons is returned under art. 136, the court may, on the application of the plaintiff, issue a fresh summons and order substituted service under par. (1). When the plaintiff's application will not be made within three months from such return, art. 122 (1) under (d) shall apply.

(3) Service substituted by order of the court shall be as effective as if it has been made on the defendant personally.

(4) Where service is substituted by order of the court, the court shall fix such time for appearance of the defendant as the case may require.

Art. 140 Serving officer

(1) Where a summons is delivered or sent to any person for service as mentioned in art. 132, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

Art. 141 Territorial limits of service

(1) A summons may be sent by the court by which it is issued either by one of its officers or by post to any court having jurisdiction in the place where the defendant resides or is known to have last resided, carried on business or personally worked for gain.

(2) The court to which a summons is sent under par. (1) shall, upon receipt thereof, proceed as if it had been issued by such court and shall return the summons to the court of issue, together with the record, if any, of its proceedings with regard thereto.

Art. 142 Service upon a defendant in a foreign country

Where the defendant resides out of Eritrea and has no agent in Eritrea empowered to accept service, service shall be made:

- (a) by any internationally agreed means reasonably calculated to give notice, such as those means authorised by the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, or the 2001 Regulation on the Service of Judicial and Extrajudicial Documents within the European Union; or
- (b) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
 - (i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or
 - (ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or
 - (iii) unless prohibited by the law of the foreign country, by either delivery to the individual personally of a copy of the summons, or by registered post, to be addressed and dispatched by the clerk of the court to the party to be served; or
- (c) by other means not prohibited by international agreement as may be directed by the court.

PARAGRAPH 2 ISSUE AND SERVICE OF SUMMONS ON WITNESS**Art. 143 Expenses of witness**

(1) The party applying for a witness summons may, before the witness summons is granted and within a period to be fixed, have to pay into court such a sum of money as appears to the court in this case to be sufficient to defray the travelling and other expenses of the witness in attending the court in which he is required to attend, and for one's day attendance.

(2) In determining the amount payable under par. (1), the court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) The sum so paid into court shall be tendered to the witness at such time, in such manner and to such amount as the court shall direct.

Art. 144 Additional payment

(1) Where it appears to the court that the sum paid into court is not sufficient to cover such expenses or reasonable remuneration, the court may direct such further sum to be paid to the witness as appears to be necessary on that account.

(2) Where a witness must be detained for more than one day, the court may order the party at whose instance he was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period.

(3) In case of default in payment under this article, the court may either order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons or discharge the person summoned without requiring him to give evidence or may order both such levy and discharge.

Art. 145 Mode and proof of service

(1) Every summons served under this Paragraph shall be served as nearly as may be in the same manner as a summons to a defendant. The provisions of the previous Paragraph as to proof of service shall apply, notwithstanding the provisions of Book II, Chapter III, Paragraph 4 on witness evidence.

(2) The summons shall state the date, time and place of the examination, the facts in respect of which evidence is to be provided and the consequences of non-appearance. Any particular document to be produced by the witness shall be described in the summons with reasonable accuracy.

(3) The interested party shall summon the witness a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Art. 146 Witness in a foreign country - letter of request

(1) Where a party wishes to obtain evidence as a witness of person residing outside Eritrea, the High Court may order the issue of a letter of request to the judicial authorities of the country in which the proposed witness is.

(2) A letter of request is a request to a judicial authority of a foreign country to take the evidence of that person, or arrange it to be taken.

(3) If the government of a foreign country allows a person to examine a person in that country, the High Court may make an order appointing a special examiner for that purpose.

(4) A person may be examined under this Article on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(5) If the High Court makes an order for the issue of a letter of request, the party who sought the order must file the following documents and a translation of them:

- (a) a draft letter of request;
- (b) a statement of the issues relevant to the proceedings;
- (c) a list of questions or the subject matter of questions to be put in the person to be examined.

(6) The High Court may order the party seeking the order for the issue of a letter of request, to pay such a sum of money as appears the High Court in the case concerned to be sufficient to defray the costs of both the letter of request itself as well as the fees and expenses of the examiner of the court as meant by par. (3).

**PARAGRAPH 3 SERVICE OF PROCESS OTHER THAN SUMMONS AND OF
OTHER PAPERS**

Art. 147 Application by analogy

Except as otherwise provided or ordered by the court, the provisions of Paragraph 1 of this Chapter apply by analogy to all process other than summons and to all other papers which according to this Civil Procedure Code shall be served upon one or each party.

CHAPTER II PLEADINGS**Art. 148 Contents of pleading**

- (1) Pleading shall mean a statement of claim, statement of defence, counter-claim, memorandum of appeal, amendment thereof, application or petition and any other document originating proceedings or filed in reply thereto.
- (2) Every pleading shall be written in ink, printed or typewritten on paper and shall contain only a statement in a concise form of the material facts on which the party relies for his claim or defence and shall be in a form as near as may be to the appropriate Form in the First Schedule to this Code (**CHECK**).
- (3) Whenever particulars may be necessary beyond those mentioned in the said appropriate Form, such particulars shall be stated in the pleading, with dates and items if necessary.
- (4) Sums and numbers shall be expressed in words and figures and where a sum is expressed in foreign currency, its equivalent in Eritrean currency shall be indicated.
- (5) When the court determines that a party to the proceedings due to insufficient knowledge of the law is apparently unable to meet these requirements it can notify both parties of its finding and allow the defaulting party a brief delay not exceeding ... days to complete its statement.
- (6) Paragraph (5) of this article also applies in the following articles.

Art. 149 Condition precedent

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Art. 150 New fact

The plaintiff and defendant, as the case may be, shall raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, which, if not raised, would be likely to take the opposite party by surprise or would, without sufficient cause, raise issues of fact not arising out of the preceding pleadings.

Art. 151 New ground of claim or new allegation

No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Art. 152 Denial to be specific

It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim or for a plaintiff in his reply to a counter-claim to deny generally the grounds alleged by the defendant and each party shall deal specifically with each allegation of fact of which he does not admit the truth except damages.

Art. 153 Denial of contract

Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of such contract or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Art. 154 Effect of document to be stated

Whenever the contents of any document are material or whenever a party to a suit refers to any document, it shall not be sufficient to state the effect thereof in the pleading, but the party, provided the document is in his possession, shall attach a copy thereof to his pleadings unless the document is so extensive that the party may reasonably attach only a copy of the part of the document to which he is referring to in his pleadings.

Art. 155 Condition of mind

Whenever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same may be inferred.

Art. 156 Notice

Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice barely as a fact without setting out the form or the precise terms of such notice, or the circumstances from which such notice may be inferred, are material.

Art. 157 Implied contract or relation

(1) Whenever any contract or relation between any persons may be implied from circumstances, it shall be sufficient to allege such contract or relation barely as a fact and to refer generally to such circumstances without setting them out in detail.

(2) Where a person pleading as provided in paragraph (1) wishes to reply in the alternative on more contracts or relations than one as to be implied from such circumstances as are referred to, he may state the same in the alternative.

Art. 158 Legal presumptions

Neither party needs in any pleading allege specifically any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other party, unless the same has first been specifically denied.

Art. 159 Amendment of pleading

(1) The court may at any time before judgement, when it is convinced that there is a compelling reason, allow either party to alter or amend his pleading in such manner and on such terms as to costs or otherwise as may be just. All such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in dispute.

(2) A party who has obtained leave to amend fails to amend within the time fixed by the court, shall not be permitted to amend thereafter, unless the time is extended by the court.

(3) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading may in all cases be ordered by the court on its own motion or on the application of either party upon such terms, as to costs or otherwise, as may be just.

(4) The court may at any time order to be struck out or amended in any pleading any matter which is unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

(5) Where pleadings are so amended as to have the effect of bringing the claim within the jurisdiction of a higher court, the court in which the suit was instituted shall transfer the claim to such higher court for trial.

Art. 160 Further information

The court may at any time order a party to clarify any issue which is in dispute in the proceedings or to give additional information in relation to any such issue, whether or not the issue is contained or referred to in any statement.

Art. 161 Pleading to be signed

Every pleading shall be signed by the party or his pleader, if any, or where a party is for good cause unable to sign, by any other person duly authorized by him to sign the same or to sue or defend on his behalf.

Art. 162 Statement of truth

(1) Unless otherwise expressly provided by law, every pleading shall be verified by a statement of truth at the foot by the party or by one of the parties pleading or by some other person other than the pleader, directly acquainted with the facts of the case and authorized by the party or one of them.

(2) In suits by or against a corporation, any pleading may be signed and verified by a statement of truth on behalf of the corporation by the secretary or by any director or other officer of the corporation who is authorized by the corporation and who is able to depose to the facts of the case.

(3) In suits by or against the Government, any pleading shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by a statement of truth by any person whom the Government may so appoint and who is acquainted with the facts of the case.

(4) Where persons sue or are sued as partners in the name of their firm under art. 84, it shall suffice that any pleading be signed or verified by a statement of truth by any one of such persons.

(5) The court may order a party who has failed to verify or to have verified by a statement of truth any pleading to adjust the failure.

(6) If a party fails to observe the order of paragraph (5) the party may not rely on the pleading as evidence of any of the issues set out in it, regardless whether the court strikes out the pleading. The opposite party may apply for an order of the court to strike out the pleading.

CHAPTER III EVIDENCE**PARAGRAPH 1 GENERAL PROVISIONS****Art. 163 Main rule: party's autonomy**

(1) Unless otherwise stipulated in the law, the court shall found its decision solely on the facts or rights that have come to its knowledge, or have been alleged, in the course of the suit, and have been established in accordance with the rules provided in the present and following articles. Facts or rights that have been alleged by one party and have not been denied, or have not been denied adequately, by the other party, shall be deemed by the court to have been established, subject, however, to its powers to require evidence whenever acceptance of the allegations would lead to a legal consequence that is not at the party's disposal.

(2) Agreements which depart from the statutory law of evidence shall not apply if they relate to the proof of facts to which the law attaches consequences which are not at the party's disposal.

Art. 164 Proof not required

The court may found its decision on truth or on certain facts universally regarded as established by common notoriety, irrespective of whether they have been alleged, and does not require proof thereof.

Art. 165 Admission

An admission is the express acknowledgment by a party in a pending suit of the truth of one or more of the allegations made by the other party.

Art. 166 Burden of proof

(1) The party who relies on the legal consequences of facts or rights that she has alleged, bears the burden of proving such facts or rights. The court may shift the burden of proof in consequence of some special regulation or the demands of reasonableness and fairness to the other or one of the other parties to the suit.

(2) The same shall apply to others who work with highly complicated procedures and sophisticated knowledge.

Art. 167 Means and assessment of evidence.

(1) Evidence may be provided by any means unless otherwise stipulated by law.

(2) The assessment of evidence is left to the discretion of the court unless otherwise provided by law.

PARAGRAPH 2 DOCUMENTARY EVIDENCE

Art. 168 Proof to be in writing

Where the law requires written form for a contract or for the establishment of another right, such right may not be proven by witnesses or presumptions unless it is established that the document evidencing this right has been destroyed, stolen or lost.

Art. 169 Instruments

(1) Instruments are signed documents intended to serve as evidence.

(2) Authentic instruments are instruments in the prescribed form and properly drawn up by the officials who have been required by or pursuant to the law thus to provide evidence of observations made or acts performed by them. Instruments that may be drawn up by officials only but which the law requires persons other than officials to draw up in certain circumstances, are also deemed to be authentic instruments.

(3) All instruments other than authentic instruments are private instruments.

Art. 170 Authentic instruments

Authentic instruments provide presumptive evidence against third persons, of all the official, within the scope of his authority, has stated his observations and acts about. The presumptive evidence comprises the time and date of the deed, the identity of the parties to the deed, and the fact that the parties to the deed made statements embodied in it, but not the truthfulness of such statements.

Art. 171 Copies of authentic deeds.

If issued by a competent official, first copies and full copies of authentic instruments provide the same evidence as the original instruments.

Art. 172 Appearance of authenticity

A document that appears to be an authentic instrument shall be presumed to be such unless the contrary is proved.

Art. 173 Probatory value of statements in authentic and private instrument

An authentic or private instrument provides, in respect of the statement by a party about which the instrument is intended to prove in favour of the opposite party, presumptive evidence between the parties of the truth of such statement, unless this could lead to a legal consequence that is not at the party's disposal. The term 'party' includes a singular or universal successor, in so far as the relevant title was acquired after the instrument had been drawn up.

Art. 174 Signature of private instrument

(1) A private instrument signing of which has explicitly been denied by the party against whom it would provide presumptive evidence, does not provide any evidence as long as it has not been proved who the signature produced. A statement to the effect that the authenticity of the signature has not been acknowledged shall suffice.

(2) If the party who challenge the authenticity of the private instrument refuses to cooperate in establishing whether it is his signature on the document, the court can draw its own conclusions.

Art. 175 Contrary proof

Statements contained in a written instrument may be challenged by those who signed it only by tendering an oath to the party who avails himself thereof. No proof by witnesses nor any presumption is admissible against such statements.

Art. 176 Trade books

- (1) Entries in trade books are no evidence in favour of those who made the entries.

- (2) They are of evidence against those who made the entries, but a party wishing to avail himself thereof may not sever them so as to discard entries contrary to his claim.

Art. 177 Domestic records and papers.

Domestic records and papers are no evidence in favour of the person who wrote them.

Art. 178 Evidence against author.

Such records and papers are evidence against the person who wrote them where:

- (a) they formally mention a payment; or
- (b) they include an express statement that the entry was made to make good the lack of document of title in favour of the person for the benefit of whom they state an obligation.

Art. 179 Criminal acts

A final and conclusive judgment in a defended action in which an Eritrean criminal court states that it has been proved that someone committed an act provides presumptive evidence of that act.

PARAGRAPH 3 PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTARY EVIDENCE

Art. 180 Documentary evidence when to be produced

- (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence in their possession or power, on which they intend to rely, and which has not already been filed in court, and all documents which the court may order to be produced.
- (2) The court shall receive the documents so produced which shall be accompanied by an accurate list thereof.
- (3) Without prejudice to the provisions of art. 250, no document which should be but is not annexed to or filed with the pleading or produced at the first hearing shall be received at a later stage in the suit on behalf of the party who should have so annexed, filed or produced it.
- (4) Nothing in this article shall apply to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

Art. 181 Court orders to produce documents

- (1) The court may, at any stage of the suit, order the parties or third persons to produce documents. Any particular document to be produced shall be described in the court-order and the summons with reasonable accuracy.
- (2) Whosoever is summoned by court-order to produce a document shall either attend to produce it, or cause it to be produced, at such time at the latest and place as the court has determined.
- (3) Any person may be summoned to produce a document, without being summoned to give evidence and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

(4) A third person under the obligation to produce a document is, with the exception of the paragraphs (2) and (3), under the same obligations and has the same rights as a witness under Paragraph 4 of this Chapter.

(5) The court shall receive the documents so produced which shall be accompanied by an accurate list thereof.

(6) Without prejudice to the provisions of art. III.1.3.37, no document which should be but is not produced by a party to the suit in due time shall be received at a later stage in the suit on behalf of that party.

Art. 182 Rejection of irrelevant or inadmissible documents

The court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Art. 183 Endorsements on documents

(1) Subject to the provisions of par. (2) of this article, the court shall endorse on every document which has been produced in the suit:

- (a) the number and title of the suit;
- (b) the name of the person producing the document; and
- (c) the date on which it was produced.

(2) Where a document so produced is an entry in a book, account or record, and a copy thereof has been substituted for the original under art. 184, the particulars aforesaid shall be endorsed on the copy.

Art. 184 Endorsements on copies

(1) Where a document produced in the suit is an entry in a letterbook or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such document is an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the court may require a copy of the entry to be furnished:

- (a) where the book or account is produced on behalf of a party, by that party; or
- (b) where the book or account is produced in obedience to an order of the court acting on its own motion, by either or any party.

(3) Where a copy of an entry is furnished under this article the court shall, after causing the copy to be examined, compared and certified in accordance with art. 230 (**CHECK**), mark the entry and cause the book or account in which it occurs to be returned to the person producing it.

Art. 185 Endorsements on documents rejected

Where a document relied on as evidence by either party is considered by the court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in art. 183 (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the court.

Art. 186 Recording of admitted and return of rejected documents

(1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under art. 184, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Art. 187 Court may order any document to be impounded

Notwithstanding the provisions of art. 184, 186 and 230 (**CHECK**), the court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of the registrar for such period and subject to such conditions as the court thinks fit.

Art. 188 Return of admitted documents

- (1) Any person, whether a party to the suit or not, desirous of receiving back any original document produced by him in the suit and placed on the record shall be entitled to receive back the same when :
 - (a) a copy is substituted therefore in accordance with the provisions of art. 184; and
 - (b) such person undertakes to produce the original if required to do so.
- (2) No document shall be returned which, by force of the decree, has become wholly void or useless.
- (3) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Art. 189 Court may send for records

- (1) The court may on its own motion or on the application of any of the parties to a suit, send for the record of any other suit either from its own records or from any other court, and inspect the same.
- (2) Unless otherwise directed, an application under par. (1) shall show how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such parts thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.
- (3) Nothing in this article shall be deemed to enable the court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Art. 190 Preliminary disclosure of documents

- (1) A disclosure of documents as regulated in the preceding articles of this Paragraph may be requested immediately, before the suit's pendency, at the request of the interested person.
- (2) If a suit is already pending, the court may, at the request of one of the parties, also order a preliminary disclosure of documents.

Art. 191 Provisions as to documents apply to all material objects

The provisions of this Paragraph which apply to documents shall, so far as may be, apply to all other material objects producible as evidence.

PARAGRAPH 4 WITNESS EVIDENCE

Art. 192 Offer of proof by witnesses

(1) If evidence provided by witnesses is permitted by law, the court shall order an examination of witnesses whenever one of the parties so requests and the facts that such party has offered to prove are in dispute and may lead to the decision in the action. The court may also do so on its own authority.

(2) The order shall state which party will be required to produce evidence, the facts in respect of which evidence is to be produced, as well as the place, date, and time of the examination of the witnesses. The place, date, and time of the examination of the witnesses may also be fixed by a subsequent order of the court.

(3) A court may rule in its order that the examination takes place before one of its members who has been appointed to act as a delegated judge. The delegated judge will have the powers of the court in this Paragraph.

(4) The examination of witnesses shall take place at a sitting of the court.

(5) Parties may also appear as witnesses.

Art. 193 Preliminary Examination of witnesses

The court may, at any stage of the proceedings after the institution of an action, order examination of witnesses at the request of one of the parties where there is good reason to believe e.g. that the witness may depart, travel abroad, or face the risk of death.

Art. 194 Duty to testify

- (1) Anyone who has been legally summoned as a witness is obliged to give evidence.
- (2) The following persons may claim exemption from giving evidence:
 - (a) the spouse or former spouse of one of the parties, the relations by blood or affinity of one of the parties or of the party's spouse, up to and including the second degree, unless the party is acting in any formal capacity;
 - (b) those who, by virtue of their office, profession or employment, are bound to secrecy in respect of that which has been confided to them in that capacity.
- (3) A witness may refuse to answer a question put to him if he would thereby expose himself or any one of his relations by blood or affinity in the direct line or in the collateral line in the second or third degree or his spouse or former spouse to the risk of conviction in respect of a criminal offence.

Art. 195 Parties be present

The court may order that the parties be present at the examination of the witnesses.

Art. 196 Counter-evidence

The examination of witnesses providing counter-evidence shall be held at the place, on the date, and at the time to be decided on immediately after the examination of the witnesses providing evidence or at a later date, unless the court, after consulting the parties, rules that the examination takes place immediately after the examination of the witnesses providing evidence.

Art. 197 Notification of witnesses

- (1) The court shall summon the witnesses to be heard.
- (2) The summons shall state the date, time and place of the examination, the facts in respect of which evidence is to be provided and the consequences of non-appearance.

(3) Summon shall be made a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation and travelling to the place at which his attendance is required.

(4) If a party has produced more witnesses than is reasonably required, the court may take such circumstances into account when awarding costs.

Art. 198 Witness failing to comply with summons

(1) Where a witness fails to attend or to produce the document in compliance with the summons, the court shall verify whether the summons has been duly served.

(2) Where the court sees reason to believe that the evidence to be given or document to be produced by such witness is material and meets the requirements of art. 192:

- (a) if the court is satisfied that the summons has not been duly served, it may order the issue of a fresh summons on such terms as to costs or otherwise as it thinks fit;
- (b) if the court is satisfied that the witness has without good cause failed to comply with such summons or has intentionally avoided service, the court may make such order, including the issue of a warrant with or without bail for the arrest of such person, as it considers necessary for the attendance of such person.

Art. 199 Refusal of party to testify

Where any party to a suit refuses, without lawful excuse, when required by the court, to give evidence, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Art. 200 Witness unable to attend

(1) If a witness lives too far away the court may transfer the examination to an equivalent court in the witness's place of residence.

(2) If a witness is prevented from appearing in court as a result of sickness or some other reason, the court or a delegated judge of the court in session may travel to such person in

order to take his deposition or, in case paragraph (1) is applicable as well, transfer the examination to an equivalent court in the witness's place of residence.

Art. 201 Participation in judgement

The member(s) of the court who examined the witnesses shall participate as much as possible in the judgement of the case.

Art. 202 High Court acting at instance of foreign court

(1) When the High Court is satisfied that a foreign court wishes to obtain the evidence of a witness in any civil proceeding before it, it may, subject to the provisions of this and the next Paragraph, examine such witness itself or issue the examination to the court where the witness lives.

(2) The High Court may proceed under paragraph (1) upon application of:

- (a(a) a certificate signed by the diplomatic representative of the foreign country in Eritrea and transmitted to the High Court through proper channels;
- (b) a letter of request issued by the foreign court and transmitted to the High Court through proper channels.

(3) The evidence taken under this article shall be sent to proper channel which transmitted the request, along with the letter of request for transmission to the foreign court.

PARAGRAPH 5 EXPERT EVIDENCE

Art. 203 Appointment of experts

If the court considers it necessary or expedient, the court may at the request of one of the parties or on its own authority order an examination of experts. The order shall record the points on which expert opinion is requested. After consulting with the parties, the court shall, in the order or by a subsequent order, appoint one or more experts, with the instruction to submit a written report or to report orally to the court within a fixed time. A copy of the order or subsequent order shall be sent to the appointed experts.

Art. 204 Refusal and substitution

- (1) If an expert refuses the appointment, or dies before completing his task, or is unable to complete his task for some other reason, or refuses to do so, the court may, by order, replace him by another expert.
- (2) An expert who has accepted his appointment is obliged to carry out his instructions impartially and to the best of his knowledge.

Art. 205 Investigation by experts; costs

- (1) If the experts are required to conduct an investigation, the court shall at the time of their appointment or by subsequent order decide when and where they are to commence such an investigation.
- (2) The court may, on its own motion or at the request of one or more of the parties, request the experts to provide an estimate of their costs. An advance on such costs, the amount of which shall be fixed by the court, shall be paid into court by the plaintiff, unless, in view of the circumstances of the action, the defendant has, or both the contending parties have, been instructed by an order to pay such an advance.
- (3) If the expert's report has not been received by the fixed date, the court may, on its own motion or upon request of the parties or of one of them, fix a fresh date. This may also be done if the oral report has not been made at the sitting fixed for that purpose.
- (4) The experts shall conduct their investigation under the supervision of the court. The experts shall, in the course of their investigation, give the parties an opportunity to make comments and requests. The written report shall show whether this instruction has been met. The contents of such comments and requests shall be recorded in the report. If a party submits written comments to the experts, that party shall immediately provide the other party with a copy.

(5) The minutes, holding the account of the oral report, shall be signed after it has been read out, by the members of the court and the experts. If an expert states that he is unable to sign, such a statement, including the reason for the inability, shall be recorded in the minutes.

Art. 206 Written report

(1) The written report shall be substantiated. Each of the experts may express a dissentient opinion. A copy of the report shall be sent to the parties each.

(2) If the court has not been informed sufficiently by the written or oral report, it may instruct the experts to provide further explanations or additions, or it may appoint other experts.

Art. 207 Fee and reimbursement of expenses

(1) The experts shall be entitled to reimbursement of expenses and a fee to be assessed by the court at the foot of the original of the written report or at the foot of the minutes of the oral report.

(2) The court shall have paid the sum to the experts out of the amount paid in advance. If that amount appears to be inadequate, an order in enforceable form shall be issued for the remaining sum, to be charged to the party or parties referred to in art. 206 (2). In case of an oral report, such an order issued in enforceable form shall be added to an extract from the minutes of that report.

PARAGRAPH 6 LOCAL INVESTIGATIONS OR VISITS

Art. 208 Local investigation or visit

(1) In any suit in which the court considers a local investigation to be necessary for the purpose of elucidating any matter in dispute, it may, at the request of one of the parties or on its own motion, inspect local conditions or view items which cannot, or cannot easily, be brought to the court while in session. The court may be accompanied by its clerk.

(2) The order to this effect shall state the place or item to be inspected, specify the time of the visit, the time and place of the view, the period within which the minutes of such action is to be lodged with the court, as well as the hearing designated for the resumption of the case. The minutes shall be signed by the judge and the clerk.

(3) The parties shall be given an opportunity to make comments or submit requests. The minutes shall record whether this requirement has been met. The contents of the comments or requests shall be recorded in the minutes. The court may examine witnesses on the spot. Chapter 4 of this Section shall apply in such an event.

(4) The court may proceed beyond the area of its jurisdiction for the purpose of exercising the powers granted to it in this article.

(5) Costs of travel and lodging incurred by the court and the clerk shall to the courts's discretion be chargeable to one or both parties.

PARAGRAPH 7 AFFIDAVITS

Art. 209 Power to ordere any point to be proved by affidavit

(1) The court may at any time for sufficient reason order that any particular fact or facts be proved by affidavit, or that the affidavit of any witness be read at the hearing, on such conditions as it thinks reasonable.

(2) Where it appears to the court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, no order under par. (1) shall be made.

Art. 210 Attendance of deponent

(1) Upon any application evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance for cross-examination of the deponent.

- (2) Such attendance shall be in court, unless the court otherwise directs.

Art. 211 Matters to which affidavits shall be confined

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statement of his belief may be admitted if the grounds thereof are stated.

(2) The relief asked for on the grounds mentioned in the affidavit shall be stated in an application to which such affidavit shall be attached.

Art. 212 Oath by whom administered

In the case of any affidavit under this Code, the oath or affirmation to the deponent may be administered by any court or judge or any other person authorized by virtue of his office or appointed by a court in this behalf.

BOOK III ORDINARY PROCEEDINGS IN FIRST INSTANCE**CHAPTER I INSTITUTION, FRAMING AND HEARING****PARAGRAPH 1 GENERAL PROVISIONS****Art. 213 Suit to be instituted by statement of claim**

(1) Without prejudice to the provisions of this Code regarding applications and petitions, every suit shall be instituted by filing a statement of claim in the registry of the court.

(2) Every statement of claim shall comply with the rules contained in Book II, Chapter II on Pleadings and in Paragraph 2 of this Chapter.

Art. 214 Register of suits

Without prejudice to the provisions of art. 224, the registrar shall cause the particulars of every suit to be entered in a book or in an electronic retrieval system kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the statements of claim are admitted.

Art. 215 Court fees

(1) Without prejudice to the provisions of art. *CHECK*, no statement of claim shall be admitted under art. 225 except after payment of the prescribed court fee.

(2) The prescribed court fee shall also be paid upon the filing of a statement of defence containing a counter-claim.

Art. 216 Frame of suit

(1) Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

(2) Every suit shall include the whole of the claim which the plaintiff is entitled to with respect to the cause of action unless he intentionally relinquishes any portion of his claim so as to bring the suit within the jurisdiction of any court.

(3) A plaintiff who omits to sue in respect of, or intentionally relinquishes, any portion of his claim shall not afterwards sue with respect to the portion so omitted or relinquished.

(4) A person entitled to more than one relief with respect to the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

PARAGRAPH 2 STATEMENT OF CLAIM AND OF DEFENCE

Art. 217 Contents of statement of claim

(1) Every statement of claim shall contain:

(a) the name and place of the court in which the action is brought;

(b) the title of the action;

(c) the name, description, place of residence and address for service of the plaintiff and defendant;

(d) where the plaintiff or defendant is a person under disability, a statement to that effect;

(e) where the plaintiff is suing in a representative capacity, a statement showing the capacity in which he is suing;

(f) the facts constituting the cause of action, and when and where it arose;

(g) the facts showing that the court has jurisdiction;

(h) the facts showing that the defendant is or claims to be interested in the subject-matter and is liable to be called upon to answer the claim;

(i) where appropriate, a statement of the value of the subject-matter of the action.

(2) In suits by or against the Government, instead of inserting the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name of the administrative authority concerned.

Art. 218 Annexes

(1) The plaintiff shall attach to the statement of claim:

- (a) a list, which he shall certify to be complete, of the witnesses to be called at the hearing, with their full name and address and the purpose for which they are to be called, and of the documents on which he relies, specifying in whose possession or power such documents are;
- (b) the original and a copy of any document in his possession upon which he sues;
- (c) where he has no witnesses or documents to produce, a declaration to that effect.

(2) A sufficient number of copies of the statement of claim and list, documents or declaration annexed thereto shall be filed for the purpose of service on all the defendants named therein.

(3) Notwithstanding par. (2), any document upon which the plaintiff sues may, with the permission of the court, be deposited in the registry where it shall be open to inspection by the defendant, instead of being copied and served on the defendant.

Art. 219 Relief to be stated

(1) The statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for.

(2) Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated separately and distinctly.

Art. 220 Identification of subject-matter

(1) Where a claim relates to a specific thing, the statement of claim shall contain such particulars as are necessary to identify such thing.

(2) Where a claim relates to immovable property, the statement of claim shall contain a description of such property sufficient to identify it and, where such property can be identified by boundaries or numbers in a public record, the statement of claim shall specify such boundaries or numbers.

Art. 221 Particulars as to amount of claim

(1) Where the plaintiff seeks the recovery of money, the precise amount claimed shall be indicated in the statement of claim.

(2) Where the plaintiff sues for an amount which will be found due to him on taking unsettled accounts between him and the defendant, then, for purposes of pecuniary jurisdiction only, the approximate amount claimed shall, whenever possible, be indicated in the statement of claim.

(3) Where the claim relates to a specific thing, the actual value of such thing shall be indicated in the statement of claim.

(4) Where the claim relates to a generic thing, the current price of such thing shall be indicated in the statement of claim.

Art. 222 Claim relating to periodical dues

(1) Where the claim relates to periodical dues payable for a specified period of time, the value of the capital producing such dues shall be indicated in the statement of claim.

(2) Where the claim relates to periodical dues payable for an unspecified period of time, then, for purposes of pecuniary jurisdiction only, the value of the annual amount of such dues multiplied by twenty shall be indicated in the statement of claim.

Art. 223 Establishment, enforcement or termination of right

Where the plaintiff seeks to establish, enforce or terminate a right the actual value of which cannot be indicated in accordance with the preceding articles, then, for purposes of pecuniary

jurisdiction only, statement of claim shall, whenever possible, indicate the estimated pecuniary benefit, if any, which would accrue to the plaintiff in consequence of a judgment being given in his favour.

Art. 224 Rejection of statement of claim by registrar

The statement of claim shall be rejected by the registrar where:

- (a) it is not in the form provided for by art. 217;
- (b) it is not accompanied by the annexes provided for by art. 218; or
- (c) it is not verified in the manner provided for by art. 161 and 162;

Art. 225 Admission of statement of claim by registrar

Where there are no reasons for rejecting the statement of claim under the preceding article, the registrar shall:

- (a) make the entry required by art. 214;
- (b) examine and compare the original and copy of any document attached to the statement of claim and, on finding the copy to be correct, shall certify it to be so and file it and shall return the original to the plaintiff after marking it for purposes of identification; and
- (c) submit the statement of claim and annexes to the court.

Art. 226 Rejection of statement of claim by court

(1) The court shall reject any statement of claim submitted under the preceding article where:

- (a) it does not disclose any cause of action; or
- (b) the suit appears from the particulars in the statement of claim to be outside the jurisdiction of the court.

(2) A claim for recovery shall be rejected where the plaintiff fails to produce the securities required by art. 1403 (*CHECK*) of the Civil Code.

(3) On rejecting a statement of claim, under par. (1), the court shall record a reasoned order to that effect.

Art. 227 Effect of rejection

(1) Where a statement of claim is rejected the registrar shall:

(a) in cases of rejection under art. 224, return the statement claim and annexes to the plaintiff, give him the reason for such rejection and inform him that the case will be proceeded without taking into consideration the rejected statement. Where the plaintiff is dissatisfied with the reason given for the rejection, he may apply within five days to the court for a revision of the registrar's decision;

(b) in cases of rejection under art. 226, refund the plaintiff with the prescribed portion of the court fee paid on filling the statement of claim and enter a note of the rejection in the registrar of civil suits.

(2) The rejection of a statement of claim under art. 224 or art. 226 shall not preclude the plaintiff from filing a new statement of claim with respect to the same cause of action.

Art. 227a Service of statement of claim

Where there are no reasons for rejecting a statement of claim under art. 226, the court shall cause the statement of claim and annexes to be served on the defendant together with a summons requiring him to appear with his statement of defence on a day to be fixed in the summons and informing him that the case will be proceeded with notwithstanding that he does not appear or that he appears without his statement of defence.

Art. 228 Contents of statement of defence

Every statement of defence, to which there shall be attached the annexes mentioned in art. 218, shall contain:

(a) the name and place of the court in which the defence is filed;

(b) the number of the suit;

(c) the facts, if any, showing that the claim is inadmissible on grounds of want of capacity or jurisdiction, or limitation;

(d) a concise statement of the material facts on which the defendant relies for his defence and generally of any ground of defence which, if not raised, would be likely to take the opposite party by surprise. It shall not raise issues of fact not arising out of the statement of claim;

- (e) a specific denial of any fact stated in the statement of claim which is not admitted:
- (f) precise details of the counter-claim, if any, in which case the provisions of art. 217-227 shall apply by analogy.

Art. 229 Evasive denial

- (1) Where a defendant denies an allegation of fact in the statement of claim, he shall not do so evasively, but answer the point of substance and if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with these circumstances.

- (2) Every allegation of fact in the statement of claim, if not denied specifically or by necessary implication, or stated to be not admitted in the statement of defence, shall be taken to be admitted except as against a person under disability. The court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Art. 230 Particulars of set-off

- (1) Where in a suit for the recovery of money of the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant shall in his statement of defence give the particulars as to the debt sought to be set-off.

- (2) The statement of defence shall have the same effect as a statement of claim in a cross-suit so as to enable the court to give final judgement with respect both to the original claim and to the set-off.

Art. 231 Defence or set-off founded upon separate grounds

Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated separately and distinctly.

Art. 232 Examination of statement of defence

- (1) On the day fixed under art. 131, the court shall examine the statement of defence and the provisions of art. 224 shall apply by analogy in appropriate cases.

(2) Where the statement of defence is not rejected par. (1), the court shall examine whether it contains a counter-claim or claim of set-off and the provisions of art. 226 shall apply by analogy in appropriate cases so far as concerns such counter-claim or claim of set-off.

(3) Where a statement of defence is not submitted or is rejected under this article, the case shall be proceeded with in accordance with the provisions of the following Paragraph notwithstanding such non-submission or rejection.

Art. 233 Further pleadings

(1) Where a statement of defence containing a counter-claim or claim of set-off is not rejected under art. 232, the court shall ask the plaintiff to state whether he wishes to reply thereto and shall, if he so wishes, require him to submit a written reply within time as it shall fix.

(2) On the expiration of the period of time fixed under par. (1) the court shall declare the pleadings closed.

Art. 234 Notice to admit documents

(1) Either party may, by notice in the form prescribed by the Third Schedule to this Code, call upon the other party to produce or admit any document.

(2) Such notice shall be given not later than ten days before the hearing so as to enable the opposite party to reply thereto before the hearing or to produce the document at the hearing.

PARAGRAPH 3 FIRST HEARING

Art. 235 Examination of parties

(1) At the first hearing of the suit, the court shall, after verifying the identity of the parties if they appear in person, read the pleadings and ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the statement of the other party and

as are not expressly or by necessary implication admitted or denied by the party against whom they are made.

(2) Any party appearing in person or present in court, or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the court which may, if it thinks fit, put in the course of such examination questions suggested by either party.

(3) Where the pleader of any party who appears by a pleader or any such person as is referred to in par. (2) refuses or is unable to answer any material question relating to the suit which the court considers that the party whom he represent ought to answer and is likely to be able to answer if examined in person, the court may adjourn the hearing to a future day and direct that such party shall appear in person on that day.

(4) The substance of the examination held under this article and any admission or denial made in the course thereof shall be in writing by the court and shall form part of the record.

Art. 236 Judgment on admissions

Any party may, when the opposite party has given notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case of the other party, or has made admission of fact during the examination held under art. 235, apply to the court for such judgement or order as he may be entitled to upon such admissions, without waiting for the determination of any other question between the parties and the court may thereupon make such order or give such judgement as it thinks fit.

Art. 237 Saving

Nothing in the preceding articles shall prevent the court at any later stage of the suit from calling upon any party to admit a fact or document and shall then record whether such party admits or refuses or neglects to admit the same, whereupon it may in accordance with art. 235 give judgment or make such other order as it thinks fit.

Art. 238 Preliminary objections

(1) Before proceeding with the trial of the suit, the court shall decide such preliminary objections as may be taken by the parties.

(2) The provisions of art. 239 shall apply where either party states that:

(a) the court has no jurisdiction;

(b) the subject-matter of the suit is *res judicata*;

(c) the suit is pending in another court;

(d) the other party is not qualified for acting in the proceedings;

(e) prior permission to sue has not been obtained, when this is required by law;

(f) the suit is barred by limitation; or

(g) the claim is to be settled by arbitration or has previously been made the subject of a compromise or scheme of arrangement.

(3) Where there are several objections under this article, they shall all be taken together and any objection not taken at the earliest possible opportunity, shall be deemed to have been waived, unless the ground of objection is such as to prevent a valid judgment from being given.

Art. 239 Decision of objection

(1) The court shall decide any objection taken under art. 238 after hearing the opposite party and ordering the production of such evidence as may be necessary for the decision to be made.

(2) Where the court is satisfied that the objection is well-founded, it shall, in the case of an objection under art. 238 (1) (b) or (f), dismiss the suit and, in other cases, strike out the suit and/or make such other order as it thinks fit.

(3) The striking out of the suit shall not of its own force preclude the institution of a fresh suit with respect to the same cause of action and the court shall, in appropriate cases, inform the plaintiff that he may sue in the court having jurisdiction or in the court in which the previously instituted suit is pending.

(4) Where a suit is struck out on the ground of want of jurisdiction, the prescribed portion of the court fee paid on the filing of the statement of claim shall be refunded.

(5) Any decision taken under this article shall be recorded together with the reasons for such decision.

Art. 240 Framing of issues

(1) After preliminary objections, if any, have been decided, the court shall ascertain upon what material propositions of fact or of law the parties are in variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(2) Nothing in par. (1) shall compel the court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Art. 241 Issues defined

(1) Issues arise when a material proposition of fact or of law is affirmed by one party and denied by the other.

(2) Material propositions are those propositions of fact or of law which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

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

Art. 242 Materials from which issues may be framed

The court may frame the issues from all or any of the following materials:

- (a) allegations made in the pleadings;
- (b) the contents of documents produced by either party; or
- (c) allegations made by the parties, or by any persons present on their behalf, or made by the pleaders of such parties in the course of the examination held under art. 235.

Art. 243 Court may examine witnesses or document before framing issues

Where the court considers that the issues cannot be correctly framed without the examination of some person not before the court or without the inspection of some document of a kind other than, that mentioned in art. 180 (1) and in art. 218 but which the court deems relevant, it may adjourn the framing of the issues to a future day, and may compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Art. 244 Dispute as to amount of claim

Where the parties disagree as to the amount or value of the subject-matter of the suit, the court may adjourn the framing of the issues to a future day and appoint an expert under art. 203.

Art. 245 Power to amend and strike out issues

(1) The court may at any time before judgment amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The court may also, at any time before judgment, strike out any issues that appear to it to be wrongly framed or introduced.

Art. 246 Questions of fact or law may be stated in form of issues

Where the parties agree as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the court in the affirmative or the negative of such issue

- (a) a sum of money specified in the agreement or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement; or
- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or
- (c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement, and relating to the matter in dispute.

Art. 247 Judgement on agreement executed in good faith

(1) Where the court is satisfied, after making such inquiry as it deems proper

- (a) that the agreement under art. 246 was duly executed by the parties;
- (b) that they have a substantial interest in the decision of such question as aforesaid; and
- (c) that the same is fit to be tried and decided

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the court.

(2) Upon the finding or decision on such issue, the court shall pronounce judgement in terms of the agreement.

Art. 248 Parties not at issue

(1) Where after preliminary objections, if any, have been decided, it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce judgement.

(2) Where any one of several defendants is not at issue with the plaintiff on any question of law or of fact, the court may at once pronounce judgement for or against such defendant and the suit shall proceed only against the other defendants.

Art. 249 Parties at issue

(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the court as hereinbefore provided, if the court is satisfied that no further argument of evidence than the parties can at once adduce is required upon such of the issues as may be

sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues.

(2) If the finding on the issues is sufficient for the decision the court may pronounce judgement accordingly.

Art. 250 Failure to produce evidence

(1) Where evidence which should have been produced in accordance with art. 180 (1) and 181, art. 218 or art. 243 is not so produced due to the default of either party, the court may at once pronounce judgement or may, for good cause to be recorded, adjourn the hearing on such terms as to costs or otherwise as it thinks fit.

(2) Where a suit is founded upon a negotiable instrument and it is proved that the instrument is lost, and a security is given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, the court may at once pronounce such judgement as it would have pronounced if the instrument had been produced.

PARAGRAPH 4 FURNISHING OF PROOF AND JUDGEMENT

Art. 251 Order for evidence other than produced under art. 180, art. 181, art. 218 and art. 243

(1) Where the court is satisfied that evidence other than that produced under art. 180 (1), art. 181, art. 218 and art. 243, if any, is required for the proper determination of the suit, it shall give an interlocutory judgment, in which it orders for such evidence.

(2) The order shall contain

(a) which evidence on which facts or issues in dispute is needed (documents, witnesses, expert evidence, local investigation);

(b) which party has to produce the evidence;

- (c) the place, time and date of the re-opening of the hearing,
- (d) the date for submitting the documents to the court and the exchange thereof between the parties.

Art. 252 Re-opening of hearing

On the day fixed for the re-opening of the hearing, the plaintiff shall be entitled to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant shall be entitled to begin.

Art. 253 Statement and production of evidence

- (1) The party entitled to begin shall state his case and produce his evidence or refer to other evidence produced in the suit in support of the issues which he is bound to prove.
- (2) The other party shall then state his case and produce his evidence or refer to other evidence produced in the suit and may address the court generally on the whole case.
- (3) The party beginning may then reply generally on the whole case.

Art. 254 Evidence where several issues

- (1) Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party.
- (2) When evidence is reserved, the party beginning may produce such evidence after the other party has produced all his evidence, and the other party may then reply specifically on the evidence so produced by the party beginning but the latter party shall then be entitled to reply generally on the whole case.

Art. 255 Manner of giving evidenc by witness

- (1) The party entitled to begin shall call his witnesses who, after taking an oath or affirmation in the form provided for by the Third Schedule to this Code (***CHECK***), shall be examined-in-chief by such other party and may be re-examined by the party beginning.
- (2) If a party wishes to give evidence on his own behalf, he shall do so before calling his witnesses and he shall then for all practical purposes be deemed to be a witness.
- (3) Witnesses shall give evidence orally in open court, unless the court otherwise directs for good cause to be recorded.
- (4) The court may at any time put to a witness any question which appears necessary for the proper determination of the suit.

Art. 256 Form of questions

- (1) Questions put in examination-in-chief shall only relate to facts relevant to the issues to be decided and only to such facts of which the witness has direct or indirect knowledge.
- (2) No leading question shall be put to a witness without the permission of the court.
- (3) Questions put in cross-examination shall tend to show to the court what is erroneous, doubtful or untrue in the answers given in examination-in-chief. Leading questions may be put in cross-examination.
- (4) No question shall be put in re-examination except for the purpose of clarifying matters which have been raised in cross-examination.

Art. 257 Court may examine other persons

- (1) Any person present in court may be required by the court to give evidence or to produce any document then and there in his possession or power.
- (2) Where the court considers it necessary at any time to examine any person other than a party to the suit and not called as a witness by a party to the suit, it may of its own motion

summon such person as a witness to give evidence or to produce any document in his possession on a day to be fixed and may examine him as a witness or require him to produce such evidence.

(3) On issuing a summons under par. (2), the court may, where it considers that such person should have been called as a witness by either party for the proper determination of the suit, require the defaulting party to comply with the provisions of art. 143 or make such order as to costs as it thinks fit.

Art. 258 Power to examine witness immediately

(1) Where at any time after the institution of a suit the court is satisfied that the evidence of a witness should be taken immediately, it may, on the application of any party or of the witness, take the evidence of such witness in the manner hereinbefore provided and such evidence may then be read at any hearing of the suit.

(2) Where such evidence is not taken forthwith and in the presence of the parties such notice as the court thinks sufficient of the day fixed for the examination, shall be given to the parties.

Art. 259 Court may recall and examine witness

The court may, at any stage of a suit, on its own motion or at the request of either party, recall any witness who has been examined and may put to him such questions as it thinks fit.

Art. 260 Refusal of party to give evidence

Where any party to a suit present in court refuses, without lawful excuse, when required by the court, to give evidence or to produce any document then and there in his possession or power, the court may pronounce judgement against him or make such order in relation to the suit as it thinks fit.

Art. 261 Expert evidence

Parties and the court shall have the right to question the results of expert evidence and to ask for an oral explanation in open court by the expert himself. The provisions as to witnesses shall apply to the expert by analogy as far as they are applicable.

Art. 262 Recording of evidence

- (1) The evidence of each witness shall start with his name, age, occupation and address and an indication that he has been sworn or affirmed.
- (2) The evidence of each witness shall be taken down in writing by the presiding judge or under the personal direction of the presiding judge.
- (3) The evidence shall be divided into examination-in-chief, cross-examination and re-examination with a note as to where the cross-examination and re-examination begin and end.
- (4) The evidence shall ordinarily be taken down in the form of a narrative, but the presiding judge may in his discretion take down or cause to be taken down any particular question and answer.
- (5) When completed, the record shall be signed by the court.

Art. 263 Recording objections

Where any question put to a witness is objected to by a party or his pleader, and the court allows the same to be put, the question, the answer, the objection and the name of the person making it shall be recorded together with the decision of the court thereon.

Art. 264 Evidence recorded by another court

- (1) No change in the constitution of any court prior to the conclusion of a suit shall affect evidence recorded in such court before such change occurred and the suit shall be proceeded with on that evidence as recorded.
- (2) The provisions of par. (1) shall apply by analogy to evidence taken in a suit transferred under art. 77.

Art. 265 Judgement

After the evidence has been concluded and the address and reply under art. 253, if any, have been made, the court shall render judgement.

CHAPTER II JUDGEMENTS**PARAGRAPH 1 GENERAL PROVISIONS****Art. 266 Judgement when pronounced**

(1) After a suit has been heard, the court shall pronounce judgement either at once or, as soon thereafter as may be practicable, on some future day to be fixed by the court. In the latter case the court shall inform the date to the plaintiff and the appeared defendant.

(2) On demand of the parties, the court shall postpone its judgement.

Art. 267 Pronouncement of judgement in open court

Judgement shall be pronounced in open court.

Art. 268 Form and pronouncement of judgement

(1) The judgment shall be in writing, signed by the member or members of the court and pronounced by the judge or presiding judge.

(2) In case a judge is for whatever reason, such as death, sickness, transfer or retirement, unable to sign the judgment, the judgment may be signed by any judge of the court which gave judgment or, if such court has ceased to exist, by any judge of any court to which such court was subordinate.

(3) A judgment, when signed, may be pronounced by a judge or judges other than those who signed it.

Art. 269 Contents of judgement

(1) The judgment shall contain:

- a. the names and the domicile of the parties and the names of their agents or pleaders;
- b. the number of the suit;

- c. the conclusion of the pleadings of the parties;
- d. the issues to be decided, the decision of the court and the reasons for the decision, including the facts on which the judgement is based;
- e. the relief to which the parties are entitled or obliged and the amount of costs incurred in the suit and by whom, or out of what property such costs are to be paid;
- f. where the judgement can be executed by the personal obedience of the judgement-debtor, the time within which it shall be executed.
- g. such particulars as are necessary to be susceptible of execution. An Appellate Court may itself give the necessary directions for the execution of its judgement or may delegate the execution thereof to the court which first heard the case;
- h. the date of the judgement.

(2) The reasons for the decision shall express a satisfactory insight in the train of thoughts on which the decision is based so that the decision is able to be checked by and made acceptable to the parties, as well as, in case the decision is open to review, to be checked by a higher court.

(3) A court of first instance may not give judgment on any matter not specifically raised by the parties, but an Appellate Court may pass any judgement or make any order which ought to have been passed or made, and may pass or make such further or other decree or order as the case may require.

(3) The judgement shall express a clear order to do or to abstain from doing something or to pay a definite sum of money or to deliver a particular thing or to surrender or restore immovable property, as the case be.

Art. 270 The issues to be decided and the legal grounds

(1) The court shall state its decision on each separate issue unless the decision on any one or more issues is sufficient for the determination of the case.

(2) Unless the law provides for otherwise, the court shall not ground its decision and shall not give judgment on facts or issues which are not specifically raised by the parties.

(3) The court shall supplement the legal grounds.

Art. 271 Copies of judgement

(1) Certified copies of the judgement shall be furnished to the parties on application to the registry of the court which passed it and the date when such copy was furnished shall be mentioned thereon.

(2) A certified copy of the judgement passed by an Appellate Court shall be sent to the court which passed the judgement appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgement of the Appellate Court shall be made in the register of civil suits.

PARAGRAPH 2 IRREGULARITIES AND MISTAKES

Art. 272 Principle

Unless otherwise expressly provided by law or directed by the court, where irregularities arise from non-compliance with any provision of this Code or regulations made thereunder, the court, may of its own motion or on the application of either party, set aside such proceedings either wholly or in part as irregular, or amend them or make, on such terms as it thinks fit, such other order as may be appropriate.

Art. 273 Correction of mistakes

The court may at any time of its own motion or on the application of either party correct any clerical or arithmetical mistakes in any summons, judgement, or order, or any errors arising therein from any accidental slip or omission, and such mistakes or errors shall not be deemed to be irregularities within the meaning of art. 272.

Art. 274 Application to set aside irregular proceedings

(1) Any party may apply to the court to set aside all or part of the proceedings as irregular.

(2) Where the application proceeds upon several grounds, they shall all be stated together.

(3) Without prejudice to the provisions of art. 276 (1) , the application shall be made at the time when preliminary objections are taken or as soon thereafter as the applicant has knowledge of the irregularity.

Art. 275 Decision on application

(1) Where the court is satisfied that:

(a) an irregularity has occurred which affects the issue to be decided and has prejudiced or is likely to prejudice the applicant; and

(b) the applicant has not taken any fresh step in the proceedings after knowledge of the irregularity or has taken such a step under protest, it shall record a reasoned order allowing the application and make in accordance with art. 272 such order as it thinks fit:

Provided that the proceedings shall not be set aside wholly or in part unless the irregularity cannot be otherwise remedied and provided further that, where the proceedings are set aside in part, any step taken in the proceedings prior to the occurrence of the irregularity shall not be affected.

(2) Where the court considers that the conditions laid down in par. (1) are not fulfilled, it shall record a reasoned order dismissing the application and the proceedings shall continue as though such application had not been made.

Art. 276 Appeal

(1) No irregularity other than one arising from an alleged want of material jurisdiction or one alleged in a judgment may be taken as a ground of appeal unless an application was made under art. 274.

(2) Notwithstanding the provisions of par. (1), an Appellate Court may at any time of its own motion correct any irregularity having occurred in the proceedings in which the judgement appealed from was given :

Provided that, where the irregularity was such as to prevent a valid judgment from being given, the proceedings in which judgment was given shall be quashed and the Appellate Court shall order the retrial of the case.

Art. 277 Validation of proceedings

No proceedings in which an irregularity has occurred shall be void where no appeal is made against the judgement given in such proceedings or where such judgement is confirmed by the Appellate Court.

CHAPTER III COSTS

PARAGRAPH 1 GENERAL PROVISIONS

Art. 278 Costs

(1) Court fee shall be on the basis of a tariff determined by the government. For other expenses suffered, up to 100.000 Nakfa it shall be 4% of the amount in dispute; for any amount more than 100.000 Nakfa it shall be 2%. Lawyers expenses shall be on the basis of the official receipt; if the official receipt is exaggerated, the court may decide on the expense which it thinks reasonable. If the amount in dispute is indeterminable the court may decide the amount of expenses which it thinks reasonable

(2) If the court decides to make an order about costs

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party;

(b) the court may make a different order.

(3) The general rule does not apply to family proceedings and to commercial proceedings between members of the same family.

(4) In deciding what order, if any, to make about costs the court must have regard to all the circumstances, including the conduct of all the parties, whether a party has succeeded on part of his case, even if he has not been wholly successful, and whether any payment into court or an offer to settle has been made, which is drawn to the court's attention. In deciding under par. (2) (b), the court shall give its reason in writing.

(5) The conduct of the parties as referred to in par. (4) includes

(a) conduct before, as well as during, the proceedings;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue;

(d) whether a plaintiff who has succeeded in its claim, in whole or in part, exaggerated his claim.

Art. 279 Bill of costs

(1) Where the court has ordered the unsuccessful party to pay the costs, the successful party shall prepare an itemised bill of costs showing the expenses he has incurred in the suit.

(2) The bill shall be filed in the court having given judgment and a copy thereof shall be served on the party liable for costs.

Art. 280 Taxation of bill

(1) On filing the bill, the court shall fix a day for considering the bill and shall summon the parties to appear on such day.

(2) After considering the bill and hearing the parties, the court may reduce the bill as to costs which it does not assess reasonably incurred or does not assess reasonable and proportionate in amount in favour of the receiving party.

(3) Where the party entitled to costs has failed to file a bill, the court shall, after recording such, certify the costs of the other parties or may allow the defaulting party a nominal or other sum so as to prevent any other party being prejudiced by such default.

(4) Costs shall carry interest at the legal rate as from the day of the judgment until final settlement.

Art. 281 Compensatory costs

(1) Where in any suit or proceeding, a party objects to a claim or defence on the ground that it is, in whole or in part, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and such claim or defence is subsequently disallowed, abandoned or withdrawn in whole or in part as against the objector, the court may, if it thinks

fit and after recording its reasons for holding such claim or defence false or vexatious, make an order for the payment to the objector, by the party by whom such claim or defence was put forward, of costs by way of compensation up to an amount not exceeding 5000 Nakfa.

(2) No person against whom an order has been made under this article shall, by reason thereof, be exempted from criminal proceedings under art. 446 of the penal Code with respect to any false statement made by him.

(3) The amount of any compensation awarded under this article shall be taken into account in any subsequent suit for damages or compensation with respect to the claim or defence held to be false or vexatious.

Art. 282 Appeal

A party may, notwithstanding that he does not appeal from a judgement, appeal from any decision on costs made in such judgement and the decision of the Appellate Court shall be final.

PARAGRAPH 2 SECURITY FOR COSTS

Art. 283 When security for costs may be required from plaintiff

(1) At any stage of a suit, both in first instance and in appeal, the court may on the application of any defendant, order the plaintiff or the joinder of plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant.

(2) An order under par. (1) shall be made whenever it appears to the court that a sole plaintiff is, or if there are more plaintiffs than one that all the plaintiffs are, residing out of Eritrea and that that such plaintiff does not possess or that no one of such plaintiffs possess any sufficient immovable property within Eritrea other than the property in suit.

(3) Whoever is about to leave Eritrea under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called to pay costs shall be deemed to be residing out of Eritrea within the meaning of par. (2).

Art. 284 Effect of failure to furnish security

(1) Where security for costs is not furnished within the time fixed, the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under par. (1), the plaintiff may, within one month of the date of dismissal, apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security costs or otherwise as thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

PARAGRAPH 3 SUITS BY PAUPERS

Art. 285 Suits may be instituted in forma pauperis

(1) Any suit may be instituted by a pauper on the conditions laid down in this Paragraph.

(2) Whosoever is not possessed of sufficient means to enable him to pay all or part of the prescribed court fee shall be deemed to be a pauper within the meaning of sub-art. (1) and may apply for leave to sue as a pauper.

Art. 286 Contents of application

(1) An application under art. 285 (2) shall be in the form provided for by the Third Schedule to this Code (*CHECK*) and shall be supported by an affidavit in the form provided for by the said Schedule.

(2) The applicant or his agent shall file the application together with the statement of claim.

Art. 287 Examination of applicant

- (1) On the filing of an application made in proper form, the court may, if it thinks fit, examine the applicant or his agent as to the merits of the claim and the property of the applicant.
- (2) Where the application is filed by an agent, the court may, if it thinks fit, summon the applicant to appear for his examination.
- (3) Where the application is not made in proper form, the court may require the applicant to amend it then and there or within such time as it shall think fit.

Art. 288 Rejection of applicant

The application shall be rejected where it appears from the application or the examination held under art. 287 or 289 that:

- (a) the applicant is not a pauper;
- (b) there is no cause of action;
- (c) the applicant has, within two months next before the filing of the application disposed of any property fraudulently or in order to be able to apply for leave to sue as a pauper; or
- (d) the applicant has entered into any agreement with respect to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

Art. 289 Evidence of pauperism

- (1) Where the court sees no reason for rejecting the application under art. 288, it shall fix a day for receiving such evidence as the applicant may adduce, in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.
- (2) The day fixed under par. (1) shall be notified not less than ten days in advance to the opposite party.

Art. 290 Procedure at hearing

- (1) On the day fixed under art. 289, the court shall examine such witnesses as may be produced by either party, and may examine the applicant or his agent, and shall record the substance of their evidence.
- (2) The court shall also hear any argument which the parties may wish to offer on the question whether, on the face of the application and of the evidence, if any, taken by the court, the application should be refused under art. 288 (a), (c) or (d).
- (3) The court shall then allow or refuse to allow the applicant to sue as a pauper.

Art. 291 Procedure when application granted

Where the application is granted, the applicant shall be given a certificate to this effect and upon the application being numbered and registered, the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay the whole or part of the court fee or other fees or charges in proceedings connected with the suit, as the court may direct.

Art. 292 Validity of certificate

- (1) A certificate issued under art. 291 shall be valid until the proceedings in relation to which it was issued are completed or until it is discharged, including appeal.
- (2) Nothing shall prevent a pauper from applying to the Appellate Court for leave to appeal as a pauper.

Art. 293 Dispaupering

- (1) The court may, on his own motion, or on the application of the defendant of which notice has been given to the plaintiff, order the plaintiff to be dispaupered and the certificate issued under art. 291 to be discharged where:
 - (a) in the course of the proceedings he fails without good cause to appear or is guilty of vexatious or improper conduct;
 - (b) it appears that his means are such that he should not have been permitted or ought not to continue to sue as a pauper; or

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

(2) Where the plaintiff is dispaupered for the reasons mentioned in par. (1) (b) or (c), the court shall order him, or any person added as co-plaintiff to the suit, to pay such fees as would have been payable if the plaintiff had not been permitted to sue as a pauper.

Art. 294 Costs where pauper succeeds

Where the plaintiff succeeds in the suit, the court fee and other fees which would have been payable if the plaintiff had not been permitted to sue as a pauper shall be recoverable by the execution officer from the unsuccessful party, and shall be first charge on the subject-matter of the suit.

Art. 295 Bar of subsequent applications

An order refusing to allow the applicant leave to sue as a pauper or dispaupering him shall be a bar to any subsequent application of the like nature by him with respect to the right to institute the same suit, but the applicant shall be at liberty to institute a suit in the ordinary manner with respect to such right, provided that he first pays the costs, if any, incurred by the opposite party in opposing his application for leave to sue as a pauper.

Art. 296 Pauper becoming possessed of means

A pauper becoming possessed of means in the course of the proceedings in relation to which a certificate has been issued under art. 291 or within ten years of having been issued therewith shall forthwith inform the court which issued the same and shall, where he fails so to inform the court be deemed to be guilty of an offence contrary to art. 656 of the Penal Code.

Art. 297 Costs

The costs of an application for leave to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

**CHAPTER IV DISCONTINUANCE OF SUITS AND PAYMENT INTO
COURT**

PARAGRAPH 1 COMPROMISE

Art. 298 Principle

- (1) The parties may by a compromise agreement relating to all or some of the matters in issue terminate a dispute with respect to which a suit has been instituted.

- (2) Without prejudice to the provisions of this chapter, the provisions of art. 3307-3324 of the Civil Code (*CHECK*) shall apply to compromise agreements, in particular as regards the effect of, appeal from and invalidation of such agreements.

Art. 299 Making of compromise agreement

- (1) A compromise agreement may at any time be made by the parties at the hearing or out of court, on their own motion or upon the court attempting to reconcile them.

- (2) The court may, on the application of the parties, indicate to them the lines on which a compromise agreement may be made.

Art. 300 Contents of compromise agreement

- (1) A compromise agreement shall contain
 - (a) the name and place of the court in which the suit is pending;
 - (b) the title of the action and the number of the suit;
 - (c) the name, description, place of residence and address for service of the parties; and
 - (d) the matters to which the agreement relates.

- (2) The compromise agreement may settle all accessory matters, in particular as regards costs, damages and execution.

Art. 301 Recording of compromise agreement

- (1) Where a compromise agreement is made at the hearing, it shall be reduced to writing and signed by the parties and the court shall thereupon enter it in the case file on being satisfied that its terms are not contrary to the law or morals.
- (2) After entering the compromise agreement in the case file the court may, on the application of the parties, give judgment in terms of such agreement.
- (3) Where a compromise agreement is made out of court, the court shall be informed thereof and the plaintiff may apply to the court for permission to abandon the claim.

PARAGRAPH 2 WITHDRAWAL AND ABANDONMENT

Art. 302 Principle

- (1) The plaintiff and joinder plaintiff may, as against all or any of the defendants, withdraw the suit or wholly or partly abandon his claim.
- (2) The defendant may, as against all or any of the plaintiffs and joinder plaintiffs, withdraw the suit or wholly or partly abandon his defence.
- (3) The abandonment of a claim or a defence, but not the withdrawal of a suit, shall preclude further proceedings between the same parties in respect of the subject-matter of that claim or defence.
- (4) The other party may, subject to the control of the court, object to the withdrawal of the suit.
- (5) The costs caused by a party's withdrawal or abandonment shall be paid by that party.

(6) Where the court rejects the objection under par. (4), in any fresh suit the party who withdrew shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Art. 303 Extinction of cause of action

Where at any stage of a suit it is proved to the satisfaction of the court that the cause of action no longer exists, the court, shall, on such terms as to costs as it thinks fit, dismiss the suit and record a reasoned order to that effect.

PARAGRAPH 3 PAYMENT INTO COURT

Art. 304 Deposit by defendant of amount in satisfaction of claim

- (1) The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

- (2) Notice of the deposit shall be given through the court by the defendant to the plaintiff, and the amount of the deposit shall, unless the court otherwise directs, be paid to the plaintiff on his application.

Art. 305 Deposit accepted as satisfaction in part

- (1) Where the plaintiff accepts the amount deposited as satisfaction in part only of his claim, he may prosecute his suit for the balance.

- (2) Where the court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Art. 306 Deposit accepted as satisfaction in full

(1) Where the plaintiff accepts the amount deposited as satisfaction in full of his claim, he shall present to the court a statement to that effect, and such statement shall be filed and the court shall pronounce judgement accordingly.

(2) In directing by whom the costs of each party are to be paid, the court shall apply the provisions of Chapter III, Paragraph 1 of this Book.

**BOOK IV SPECIAL PROCEDURE AND PROVISIONAL OR
INTERLOCUTORY MEASURES**

CHAPTER I FAST TRACK PROCEDURES

PARAGRAPH 1 MONEY DEBT COLLECTION PROCEDURE

Art. 307 Application

(1) An application for a money debt collection judgement may be made ex parte by a creditor against a debtor in respect of a claim based on negotiable instruments such as bill of exchange, promissory note or cheque, on a bond or contract written for payment of a liquidated amount of money or on a guarantee where the claim against the principal is in respect of a debt or liquidated amount only.

(2) The application shall have to meet the requirements of the statement of claim in ordinary proceedings and shall endorse 'Money debt collection procedure'.

Art. 308 (Non-)Awarding

(1) By means of the application and the submitted documents, the court considers whether the application for the money debt collection judgement is admissible and well founded.

(2) If the court regards the application inadmissible or unfounded, it may refuse the application in whole or in part. Such refusal shall not have the effect of res judicata, but shall be a bar to the making of a fresh application on the same grounds. No appeal shall lie against a refusal.

(3) If the application is granted the court shall make a judgement for money debt collection by the debtor and determine the sum found to be due from him to the creditor.

(4) Any decision under this Paragraph shall be made or given on such terms as to costs or otherwise as the court thinks fit.

rt. 309 Service

(1) The service of the money debt collection judgement on the debtor shall follow general rules.

(2) The court shall notify the debtor

(a) either to pay the sum fixed in the order within a reasonable time,

(b) or enter an objection to the judgement within 15 days after the service.

(3) The debtor shall also be notified that if he does not enter an objection within due time, the judgement against him shall not be subject to appeal, with the consequence that the judgement shall have the effect of res judicata and shall become enforceable in the same way as a judgement in an ordinary procedure.

Art. 310 Objection

If an objection is entered within the time allowed in the money debt collection judgment the proceedings shall continue as an ordinary procedure. The application shall be considered to be the statement of claim as meant in art. 213.

PARAGRAPH 2 SUMMARY JUDGEMENT

Art. 310a Summary judgement

(1) In a summary judgement the court decides, on its own motion or upon request by a party, a claim or a particular issue thereof.

(2) The court may give summary judgement in any type of proceedings, governed by the Civil Procedure Code

Art. 310b Grounds for summary judgement

The court may give summary judgement against a plaintiff or defendant on the whole of a claim or a particular issue if it considers that the claim or issue has no real prospect of succeeding or of successfully defending, and there is no other reason why the case or issue should be disposed of at a hearing.

Art. 310c Procedure

(1) A court may not give summary judgement unless the parties have submitted or have failed to submit in due time their statements of claim and defence and, in case of a counter-claim or a claim of set-off, the reply thereto.

(2) Where the court dismisses the application for summary judgement or gives a judgement that does not completely dispose of the claim, the court will give directions as to the future conduct of the case.

(3) No appeal shall lie against a dismissal under par. (2)

Art. 310d Setting aside summary judgement

After the judgement the court may, if satisfied that the service of the summons was not effective, or for any other good cause to be recorded, set aside the judgement, and if necessary stay or set aside execution. It may order to continue the suit as an ordinary procedure and give all directions as to the further conduct of the case as it thinks fit.

PARAGRAPH 3 ACCELERATED PROCEDURE

Art. 311 Scope of application

(1) The provisions of this Paragraph shall apply where an application is made concerning any of the matters expressly referred to in the following articles.

(2) Applications concerning matters other than those expressly referred to in the following articles may, subject to the provisions of Art. 313 (1) (c), be dealt with in accordance with the provisions of this Paragraph.

Art. 312 Institution of proceedings

- (1) Any person legally entitled to institute proceedings under this Paragraph may, on payment of the prescribed court fee, file a written, dated and signed application within the time fixed by the law under which the application is made, or, where no such time is fixed, within fifteen days from the occurrence of the facts on which the application is based.

- (2) The application shall specify the capacity in which the applicant acts and the provision of the law under which it is made and shall be supported by an affidavit stating the reasons for the application.

- (3) The applicant shall attach to the application such documents as are required under the following articles and may attach thereto such other documentary evidence as he deems necessary for the determination of the application.

Art. 313 Dismissal of application

- (1) The application shall be dismissed where:
 - (a) the applicant is not qualified for making the application;
 - (b) the application is not made in the form or within the time specified in art.312; or
 - (c) the court considers that the subject-matter of the application cannot be properly determined in the manner hereinafter provided for.

- (2) The dismissal of the application shall not create res judicata, but shall be a bar to the making of a fresh application on the same grounds.

Art. 314 Decision on application

- (1) Where the application is allowed, the court shall make its decision in accordance with the provisions of the following articles and such decision shall be in the form of a judgement or written order, as the nature of the case may require.

- (2) Unless otherwise provided for in this Paragraph or the law under which the application is made, the court shall make its decision on the basis of the application.

(3) Nothing in par. (2) shall prevent the court from requiring the production of such evidence or additional evidence as may be necessary, on such terms, in such manner and, within such time as the court shall direct.

Art. 315 Consequential orders

(1) Any decision under this Paragraph shall be made or given on such terms as to costs or otherwise as the court thinks fit.

(2) No decision under this Paragraph shall be a bar to the making of such further orders as may or must be made pursuant to the law under which the application is made, or as may appear expedient in the circumstances.

Art. 316 Issue of certificate

(1) On making its decision in favour of the applicant, the court shall, where he so requires, provide him with a dated and signed certificate stating in a concise form the contents of such decision.

(2) The provisions of par. (1) shall apply in particular in matters concerning change of name (Arts. 42 and 43 Civil Code), refusal to draw up records or to celebrate a marriage (Arts. 139, 470 and 601 Civil Code), prior permission to sue (Arts. 369, 773, 779 and 786 Civil Code), withdrawal of jurisdiction (Art. 377 Civil Code), opposition to marriage (Art. 592 Civil Code), widowhood (Art. 596 Civil Code) as well as in cases of applications to consult or to be issued with certain powers or documents or to be authorized to depart from certain instructions (Arts. 129, 209, 239, 287, 523, 528, 535 and 630 Civil Code).

NOTE: CHECK THE ARTICLES

(3) Where an application is made for the correction or cancellation of records or entries in registers (Arts. 121, 127, 1623 and 1630 Civil Code) or for approval or confirmation (Arts. 146, 628, 633, 749, 763, 766, 767, and 804 Civil Code and Art. 441 Commercial Code) or registration or certification, the court may, without further proceedings, but after having ordered such investigations as may be necessary, give such directions as are appropriate in the circumstances, or issue a certificate evidencing approval, registration or certification or

endorse the fact of approval, registration or certification on the relevant document, as the case may be, together with the date and number thereof, where appropriate.

NOTE: CHECK THE ARTICLES

Art. 317 Appeal

(1) Unless otherwise provided for by the law under which the application is made, no appeal shall lie from any decision under this Paragraph, other than a judgement under arts. 327-329.

(2) When an appeal lies from a judgement given under this Paragraph it shall be made within ten days from the giving of such judgement and such judgement shall not be enforced until the period for the appeal has expired or the appeal has been decided.

CHAPTER II**SPECIAL PROCEDURES****PARAGRAPH 1****INTERPLEADER****Art. 318 Definition**

A suit of interpleader is a suit wherein a person in possession of property or owing money which is or may be claimed adversely by two or more persons, to one or other of whom alone he can be liable, seeks to be relieved from liability to the claimants, or either of them, with regard to the disposition of such property of money.

Art. 319 Statement of claim in interpleader suit

A suit of interpleader shall be instituted by filing, upon payment of the prescribed court fee, a statement of claim which shall, in addition to the particulars required by art. 220 ff. state:

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the claims made by the defendants severally; or
- (c) that there is no collusion between the plaintiff and any one of the defendants.

Art. 320 Payment of thing claimed into court

Where the thing claimed is capable of being paid into court or placed in the custody of the court the plaintiff may be required to so pay or place it before he can be intitled to any order in the suit.

Art. 321 Defendant suing plaintiff

Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the court in which the suit against the plaintiff is pending shall, on being informed by the court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Art. 322 Procedure at first hearing

- (1) At the first hearing the court may
 - (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or
 - (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

- (2) Where the court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

- (3) Where the admissions of the parties do not enable the court so to adjudicate, it may direct:
 - (a) that an issue or issues between the parties be framed and tried; and
 - (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff, and shall proceed to try the suit in the ordinary manner.

Art. 323 Agents and tenants may not institute interpleader-suits

Nothing in this Paragraph shall be deemed to enable the agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interlead with any persons other than persons making claim through such principals or landlords.

Art. 324 Deposit in registry

- (1) Nothing in the preceding articles shall prevent a person who seeks to be relieved from liability at any time before or after the institution of a suit, from giving notice to any person or persons entitled theretoto accept any sum of money or other property.

- (2) Where such notice is not answered, such person may deposit against receipt such sum of money or other property in the registry of any court or of the court in which the suit is pending, as the case may be, after deducting his costs and charges, if any.

(3) On making a deposit under par. (2), the depositor shall give the registrar an affidavit showing the reasons for the deposit and deductions, if any, and stating that notice under par. (1) has been given but not answered, and a copy of the affidavit shall be served on the person or persons concerned in the same matter as a summons.

(4) Any sum of money or other property deposited under par. (2) may at any time be withdrawn by any person who on application satisfies the court that he is entitled thereto.

PARAGRAPH 2 SPECIAL CASES

Art. 325 Calling of meetings

Where, on receiving an application for the calling of a meeting, including a meeting of a family council, the court is satisfied that there is good cause under the law why a meeting should be called, it shall appoint such person as it thinks fit to call such meeting on such terms as the court shall fix and to carry out with regard to the meeting such other duties as are laid down by law or as the court may direct.

Art. 326 Appointments

(1) Where, on receiving an application for the appointment of a provisional director, trustee or liquidator, the court is satisfied that there is good cause under the law why such appointment should be made, it shall appoint such person as it thinks fit to carry out the duties of a director, trustee or liquidator and shall, where appropriate, fix his remuneration.

(2) On receiving an application for the appointment of a guardian or of an additional member of a family council, the court shall summon all the relatives of the minor to appear on such day as it shall fix and the appointment shall be made after such relatives have been heard.

(3) The provisions of this article shall apply by analogy to applications under arts. 211, 219, 220, 229, 238 and 393 of the Civil Code (*CHECK*)

Art. 327 Setting aside of resolution

(1) An application to set aside a resolution, such as an application under art. 448 of the Civil Code or art. 416 of the Commercial Code (*CHECK*), shall be accompanied by a copy of such resolution and of the memorandum and articles of association of the body corporate concerned.

(2) Where the court considers that judgement cannot be given on the application, it shall cause a copy thereof to be served on the body corporate concerned, the directors and auditors of which shall be required to file within fifteen days a written reply showing cause why the resolution should not be set aside.

(3) Where such reply is not filed or such cause is not shown, the court may order the resolution to be set aside.

(4) The provisions of this article shall apply by analogy to applications concerning resolutions expelling an associate, decisions made by the committee of management of an endowment or under art. 549 (1) of the Civil Code (*CHECK*), schemes of distribution of profits, final balance sheets and, generally without prejudice to such other provisions of this Code as may be applicable in any particular case, to objections made by the creditors of a trader.

Art. 328 Applications for expulsion, dismissal or removal

(1) On receiving an application for the expulsion of a partner or the dismissal of a manager or trustee, such as an application under art. 261 or 293 of the Commercial Code or art. 522 of the Civil Code (*CHECK*), the court shall cause a copy thereof to be served on him and require him to file within fifteen days a written reply showing cause why he should not be expelled or dismissed.

(2) Where such reply is not filed or such cause is not shown, the court may order expulsion or dismissal.

(3) The provisions of this article shall apply by analogy to applications for the removal of a guardian.

Art. 329 Dissolution of partnership or body corporate

(1) An application for the dissolution of a partnership or body corporate or for the termination of an endowment or trust shall, where appropriate, be in the form provided for by art. 328 (1).

(2) The provisions of art. 328 (2) and (3) shall in appropriate cases apply to applications under this article.

Art. 330 Amalgamation of endowments

(1) Where an application for the amalgamation of two or more endowments is made under art. 505 of the Civil Code (*CHECK*), the court shall cause a copy thereof to be served on the Ministry of Interior which may within fifteen days file a written reply concerning the desirability or otherwise of the proposed amalgamation.

(2) The court shall order amalgamation on being satisfied that it is desirable in the general interest.

Art. 331 Opposition to marriage

On receiving an application for the withdrawal of an opposition to marriage, the court shall summon the applicant and opponent to appear on such day as it shall fix and shall give judgement after both parties have been heard: Provided that the withdrawal of the opposition shall be ordered where the opponent fails without good cause to appear.

Art. 332 Applications to set aside refusal

(1) On receiving an application to set aside a refusal to make an entry in a public record or register or to celebrate a marriage, the court shall cause a copy thereof to be served on the person who so refused and require him to file within fifteen days a written reply showing cause why the refusal should not be set aside.

- (2) Where such reply is not filed or such cause is not shown, the court shall order the refusal to be set aside.

CHAPTER III PROVISIONAL REMEDIES

PARAGRAPH 1 ARREST BEFORE JUDGEMENT

Art. 333 Security for appearance

(1) Where at any stage of a suit, other than a suit regarding immovable property, the court is satisfied by affidavit or other evidence ~~on oath~~ that the defendant or a plaintiff against whom a counter-claim has been lodged

- (a) with intent to delay the plaintiff, or to avoid any process of the court or to obstruct or delay the execution of any judgement that may be passed against him is about to abscond or leave, or has absconded or left, the local limits of the jurisdiction of the court, or has disposed of or removed his property or any part thereof from such limits; or
- (b) is about to leave Eritrea under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any judgement that may be passed against the defendant in the suit,

the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance.

(2) The defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant such sum specified in the warrant as is sufficient to satisfy the plaintiffs claim, which sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court.

Art. 334 Amount of security

(1) Where the defendant fails to show such cause the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any judgement that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under art. 333 (2).

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay such sum of money as the defendant may be ordered to pay in the suit.

Art. 335 Application by surety to be discharged

(1) A surety for the appearance of a defendant may at any time apply to the court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

(4) Where the defendant is unable to find fresh security, the court shall order him to deposit in court, if he is able to do so, money or other property sufficient to satisfy any judgement that may be passed against him.

Art. 336 Refusal to furnish security

In cases of refusal to comply with an order under art. 334 or art. 335 (4) the court may order the defendant to be detained in the civil prison until he complies with the order or until the decision of the suit or where a judgement is passed against the defendant, until the judgement has been satisfied. The defendant may not be so detained for more than six months.

PARAGRAPH 2 ATTACHMENT BEFORE JUDGEMENT

Art. 337 Security for production of property

(1) Where, at any stage of a suit, the court is satisfied, by affidavit or otherwise, that the defendant or a plaintiff against whom a counter-claim has been lodged, with intent to obstruct or delay the execution of any judgement that may be passed against him:

- (a) is about to dispose of the whole or any part of his property;
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court,

the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the judgement, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

Art. 338 Attachment of property

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the court, the court may order that the property specified, or such portion thereof as appears sufficient to satisfy any judgement which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security after the property specified or any portion of it has been attached, the court shall order the attachment to be withdrawn or make such other order as it thinks fit.

Art. 339 Making and effects of attachment

(1) Unless otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a judgement.

(2) Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a judgement against the defendant

from applying for the sale of the property under the attachment in execution of such judgement.

(3) Where any claim is preferred to property attached before judgement, such claim shall be investigated in the same manner as a claim to property attached in execution of a judgement for the payment of money.

(4) Where an order is made for attachment before judgement, the court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

(5) Where property has been attached under this article and a judgement is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such judgement to apply for a reattachment of the property.

PARAGRAPH 3 TEMPORARY INJUNCTIONS

Art. 340 When temporary injunction may be granted

Where in any suit it is proved by affidavit or otherwise:

- (a) that any property in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a judgement; or
- (b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors, the court may by order grant a temporary injunction to such act, or make such other order for the purpose of staying and the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit, until the disposal of the suit or further orders.

Art. 341 Injunction to restrain repetition or continuance of breach

(1) In any suit for restraining the defendant from committing a breach of contract or other act prejudicial to the plaintiff, whether compensation is claimed in the suit or not, the plaintiff

may, at any time after the institution of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or act complained of, or any breach of contract or act of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as it thinks fit.

(3) Nothing in this article shall affect the provisions of art. **2121** of the Civil Code.

(*CHECK*)

Art. 342 Failure to comply with injunction

(1) In case of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also sentence such person for contempt of court in accordance with art. 443 of the the Penal Code.(*CHECK*)

2) No attachment under par.(1) shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

Art. 343 Notice to opposite party

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

Art. 344 Order may be discharged, varied or set aside

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

Art. 345 Injunction to body corporate binding on its officers

An injunction directed to a body corporate shall be binding on the corporation itself as well as on all the members and officers thereof whose personal action it seeks to restrain.

PARAGRAPH 4 INTERLOCUTORY ORDERS

Art. 346 Interim sale

The court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgement in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Art. 347 Detention, preservation and inspection

- (1) The court may, on the application of any party to a suit, and on such terms as it thinks fit:
- (a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein; and
 - (b) for all or any of the purposes aforesaid, authorize any person to enter upon or into any land or building in the possession of any other party to such suit, or any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.
- (2) The provisions as to execution of process shall apply by analogy to persons authorized to enter under par. (1).

Art. 348 Notice to opposite party

- (1) An application by the plaintiff for an order under art. 346 or art. 347 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

Art. 349 Suspension of sale

(1) Where a party in possession of land or tenure the subject-matter of a suit, neglects to pay the government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale apply to the court for the suspension of the sale and the court may grant the application on such terms as it thinks fit.

(2) The court in its judgement may award against the defaulter the amount paid under par. (1), with interest thereon at such rate as the court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the court orders, in any adjustment of accounts which may be directed in the judgement passed in the suit.

Art. 350 Deposit in court

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the court may order the same to be deposited in court or delivered to such last-named party with or without security, subject to the further direction of the court.

Art. 351 Other orders

Pending the decision of the suit, the court may at any time, on the application of any party of which notice shall be given to the other party, make on such terms as it thinks fit such orders as it considers necessary or expedient in the circumstances, including orders for the custody of a minor or the payment of alimonies.

PARAGRAPH 5 APPOINTMENT OF RECEIVERS

Art. 352 When receiver may be appointed

- (1) Where it appears to the court to be just and convenient, the court may by order:
- (a) appoint a receiver of any property, whether before or after judgement;
 - (b) remove any person from the possession or custody of the property;
 - (c) commit the same to the possession, custody or management of the receiver;
 - (d) confer upon the receiver all such powers, as to bringing a defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit.
- (2) Where an application is made for an order under par. (1), the court shall have regard to the amount of the debt claimed by the the applicant, to the amount which may possibly be obtained by the receiver and to the probable costs of his appointment and may before making the appointment, direct such inquiries on these or other matters to be made as it thinks fit.

Art. 353 Remuneration

The court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Art. 354 Duties

Every receiver appointed under art. 352 shall:

- (a) furnish such security, if any, as the court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the court directs;
- (c) pay the amount due from him as the court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Art. 355 Enforcement of receiver's duties

Where a receiver:

- (a) fails to submit his accounts at such periods and in such form as the court directs;
 - (b) occasions loss to the property by his wilful default or gross negligence,
- the court may direct his property to be attached and sold 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.

PARAGRAPH 6 AFFIXING OF SEALS AND MAKING OF INVENTORIES

Art. 356 Principle

(1) Where for the purpose of preserving property which may be or is the subject of proceedings in court, the court considers that seals should be affixed the provisions of this paragraph shall apply.

(2) No seal when affixed shall be removed without an order of the court for which any interested party may apply.

Art. 357 Application for affixing of seals

(1) An application for the affixing of seals may be made to any court by any person who satisfies the court, by affidavit or otherwise, that property which may be the subject of proceedings in court should be preserved.

(2) An order for the affixing of seals may be made at any stage of proceedings in court by the court of its own motion or on application.

(3) On making an order for the affixing of seals, the court shall appoint such person (hereinafter referred to as the official sealer) as it thinks fit to carry out such order.

Art. 358 Record

(1) The official sealer after having affixed seals in accordance with the order of the court, shall prepare a dated and signed record showing:

- (a) the order of the court and the date thereof;
 - (b) a list of the property to which seals have been affixed and the place where such property is to be found;
 - (c) a list of the articles to be sealed which cannot be found; and
 - (d) the name of the caretaker, if any, in charge of the premises where the sealing has taken place.
- (2) The official sealer shall hand over to the registrar of the court any keys belonging to any locks he has sealed.

Art. 359 No seals to be affixed on certain property

- (1) No seals shall be affixed to:
- (a) perishable goods;
 - (b) any property the affixing of seals to which might cause deterioration;
 - (c) any property required for the use of a party to the suit specifically exempted from sealing by the court.
- (2) Where any property is committed to the use of any person under par.(1) (c), the official sealer shall make and deposit in court an inventory of all such property.

Art. 360 Wills and other documents

- (1) Where the official sealer finds wills, sealed papers or other documents he shall make a list of such papers and shall place them in a sealed bundle and forward such list to the court for instructions.
- (2) The court shall make such order for the disposal of such documents as it thinks fit.

Art. 361 Removal of seals

- (1) Where an application for the removal of seals is made or where the court of its own motion proposes to order such removal, all interested parties shall be informed of the day when the order will be made and if they appear they may be heard. Any objection shall be considered by the court which shall, having heard the parties, give its decision forthwith.

(2) When an order for the removal of seals has been made the official sealer shall remove the seals and shall make a written dated and signed report to the court giving particulars of all property which he has unsealed.

Art. 362 Making of inventory

- (1) The court may, on the conditions laid down in art. 357, order that an inventory of property, which is or may be the subject of proceedings in court, be made by such person (hereinafter referred to as the official recorder) as it thinks fit to appoint.

- (2) The official recorder shall, in the presence of not less than two independent witnesses, prepare an inventory of the property specified in the order of the court, containing:
 - (a) a reference to the order of the court; and
 - (b) an accurate description of each article entered in the inventory and the estimated value thereof.

- (3) Where the court so orders, the estimation of value shall be made by an expert appointed under art. 203, whose report, dated and signed, shall be attached as an annex to the official recorder's report.

- (4) The report of the official recorder, dated and signed, shall be forwarded to the court and, after being registered by the registrar of the court in a special inventory register, shall form part of the record of the case.

**BOOK V APPEAL, CASSATION, THIRD-PARTY
OPPOSITION AND REVISION**

CHAPTER I APPEAL

PARAGRAPH 1 JUDGEMENTS SUBMITTED TO APPEAL

Art. 363 When appeal lies

(1) Unless otherwise expressly provided for by this Code or any other law, the plaintiff or the defendant may, on the conditions laid down in this Chapter, appeal against any judgement of a civil court.

(2) Where an appeal lies from a judgement or order, but remedy under this Code is available in the court which gave such judgement or made such order, no appeal may be lodged unless such remedy has been exhausted.

(3) No appeal shall lie from any decision or order of any court on interlocutory matters, preliminary objections, the admissibility or inadmissibility of oral or documentary evidence or permission to sue as a pauper, but any such decision or order may be raised as a ground of appeal when an appeal is made against the final judgment.

(4) Nothing in par. (3) shall prohibit an appeal from any order under any provision of this Code directing the arrest or detention of any person, or the transfer of property from the hands of one party into the hands of the other.

Art. 364 Courts having appellate jurisdiction

(1) An appeal shall lie from a judgment of:

(a) a Sub-Regional Court in its original jurisdiction to the Regional Court in whose area of jurisdiction such Sub-Regional Court lies;

(b) an Regional Court in its original jurisdiction to the High Court.

- (c) the High Court in its original jurisdiction to the Supreme Court.
- (2) Where on appeal an Regional Court or the High Court varies the judgement appealed from, an appeal shall lie:
 - (a) from an Regional Court to the High Court;
 - (b) from the High Court to the Supreme Court.

PARAGRAPH 2 FORM AND TIME OF APPEAL

Art. 365 Form and time of appeal

- (1) Every appeal shall be lodged by filing in the registry of the Appellate Court, upon payment of the prescribed court fee, a memorandum of appeal in the form provided by art. 371 and signed by the appellant or his pleader.
- (2) The memorandum of appeal shall be filed within sixty days of the judgement appealed from being delivered.
- (3) Where there are several appellants, they may file one memorandum of appeal which shall be signed by all of them or by their pleader on behalf of all of them.

Art. 366 Cross appeal

- (1) The respondent may, on payment of the prescribed court fee, institute a cross appeal to the judgement which he could have taken by way of appeal, notwithstanding that he did not appeal from any part of the judgement and even if he before the appeal was lodged acquiesced in the judgement in first instance.
- (2) A cross appeal shall be in de form of a memorandum of appeal and shall be filed in the Registry of the Appellate Court within one month from the date of service on him or his pleader of the summons issued under art. 382 (1).

(3) A cross appeal taken under this article may, after such notice to the other parties as the court thinks fit, be heard and determined notwithstanding that the original appeal is not proceeded with.

Art. 367 Register of Appeals

Every Appellate Court shall keep a book called the Register of Appeals wherein the particulars of all appeals and cross appeals shall be entered and numbered in order of reception or, as far as cross appeals are concerned, with the same number as the appeal.

Art. 368 Appeal or cross appeal filed out of time

(1) The registrar shall refuse to accept a memorandum of appeal and a memorandum of cross appeal filed after the expiry of the time laid down in art. 365 and art. 366 respectively and shall inform the party that he may within ten days file an application for leave to appeal and cross appeal respectively out of time.

(2) The registrar shall also refuse to accept the memorandum where the memorandum of appeal or of cross appeal is filed out of time and is accompanied by an application for leave to appeal out of time. In such case he shall inform the appellant that the application must be filed separately.

(3) A note of a refusal under this article shall be entered in the Register of Appeals together with the date of such refusal.

Art. 369 Application for leave to appeal or cross appeal out of time

(1) An application for leave to appeal or to cross appeal out of time shall be in writing and show good cause why the party did not appeal or did not institute cross appeal within the time laid down in art. V.1.2.6 or, in case of a cross appeal, within the time laid down in art. 366.

(2) The application shall be accompanied by such evidence as may be necessary to enable the court to decide whether the party was prevented for good cause from appealing or cross appealing in due time.

(3) Prior to deciding on the application, the court shall hear both parties and may make with regard to evidence such orders as it thinks fit.

Art. 370 Decision on application

(1) On being satisfied that the party was prevented for good cause to appeal or cross appeal the court shall record an order granting the application and the party shall file his memorandum of appeal or his memorandum of cross appeal within ten days of such order.

(2) There shall not be good cause within the meaning of par. (1) where the failure to appeal in time is due to the default of the appellant's pleader.

(3) No appeal shall lie from a decision dismissing or granting an application under this article.

(4) A note of any application under this article and of the decision thereon shall be entered in the Register of Appeals.

Art. 371 Contents of memorandum of appeal and cross appeal

(1) The memorandum of appeal shall contain:

- (a) the name and place of the court in which the appeal is filed;
- (b) the name and addresses of the appellant and the respondent;
- (c) the name of the court which gave the judgement appealed from, the date of such judgement and the number of the suit in which it was rendered;
- (d) the address within the jurisdiction of the court for service on the appellant;
- (e) the grounds of appeal; and
- (f) the nature of the relief sought.

(2) Attached to the memorandum of appeal and to the memorandum of cross appeal there shall be a certified copy of the full record of the proceedings in which the judgment appealed from was delivered and of such judgement.

(3) The appellant shall state whether he bases his appeal entirely on the record of the original hearing and shall, where appropriate, attach to the memorandum of appeal an application for permission to call additional evidence, stating the nature of such evidence, the names and addresses of the witnesses to be called, if any, the reasons why such evidence was not produced in the court which gave the judgment appealed from and why it should be produced in the appellate court. The same applies to the respondent in his memorandum of cross appeal.

(4) The memorandum of appeal and the memorandum of cross appeal shall be made in such number of copies as are required to serve one copy on each of the respondents.

Art. 372 Grounds for appeal

(1) The memorandum of appeal and the memorandum of cross appeal shall set forth concisely and under distinct heads the grounds of objection to the judgement appealed from and such grounds shall be numbered consecutively.

(2) 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. The same applies to the respondent and his memorandum of cross appeal.

(3) The appellate court in deciding the appeal or cross appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal and the memorandum of cross appeal respectively, or taken by leave of the court under par. (2). 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.

Art. 373 New facts and arguments

(1) Subject to the provisions of Paragraph 4 on additional evidence the appellant or the cross appellant may not raise any fact which was not in evidence in the court which gave the judgment appealed from.

(2) The appellate court may allow amendment of the memorandum of appeal and of the memorandum of cross appeal and arguments upon such terms of service of notice, costs or otherwise as it may think fit.

Art. 374 Rejection or amendment of memorandum

(1) Where the memorandum of appeal or the memorandum of cross appeal is not drawn up as provided by art. 371 it may be rejected, or be returned to the appellant or respondent respectively 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 and a note of the rejection shall be entered in the Register of Appeals.

(3) Where a memorandum of appeal or a memorandum of cross appeal is amended, the court shall make a record of the amendment.

Art. 375 Several plaintiffs or defendants

Where there are more plaintiffs or more defendants than one in a suit, and the judgement 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 judgement, and thereupon the Appellate Court may reverse or vary the judgement in favour of all the plaintiffs or defendants, as the case may be.

PARAGRAPH 3 STAY OF PROCEEDINGS AND OF EXECUTION

Art. 376 Stay by appellate court

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

Art. 377 Stay by court which passed the decree

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

Art. 378 Stay by President

Nothing in art. 376 shall prevent the President of the Appellate Court, and nothing in art. 377 shall prevent the President of the court which passed the judgement or made the order from granting a stay of execution for a period not exceeding fifteen days, provided that, when the appeal is not heard or an additional order for stay is not made by the court before the expiry of such period, the execution officer shall execute the judgement or order after the expiry of the said period.

Art. 379 Conditions for ordering stay

(1) No order for stay of execution shall be made under the provisions of this Paragraph unless the court or President 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 money has been deposited, security given or a surety produced by the applicant for the due performance of such judgement or order as may ultimately be binding upon him.

(2) The application shall be decided after the parties have been heard, but the court may, on an application supported by affidavit, make an ex parte order for stay of execution pending the hearing of such application.

Art. 380 Security in case of order for execution

Where an order is made for the execution of a judgement or order from which an appeal is pending, the appellate court may, 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 judgement or order for the payment of the value of such property and for the due performance of the judgement or order of the appellate court.

PARAGRAPH 4 ADMISSION AND HEARING OF APPEAL

Art. 381 Power to dismiss appeal without calling the respondent

Where the appellant states in his memorandum of appeal that he bases his appeal entirely on the record of the original hearing and does not apply for permission to call additional evidence, the appellate court may, after fixing a day for hearing the appellant or his pleader and hearing him accordingly on that day, dismiss such appeal, without calling on the respondent to appear, if it thinks fit and agrees with the judgement appealed from.

Art. 382 Day for hearing appeal

(1) Unless the Appellate Court dismisses the appeal under art. 381, it shall cause the memorandum of appeal to be served on the respondent, fix a day for hearing the appeal and summon the respondent to appear and answer on such day, informing him that the appeal will be heard notwithstanding that he does not appear on such day.

(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 memorandum of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

(3) If the respondent submits a memorandum of cross appeal within the time prescribed in art. 366, the court shall, unless it applies art. 381 accordingly,

(a) cause a copy of such memorandum of cross appeal to be served, as soon as may be after the filing of the cross appeal, on the party who may be affected by the cross appeal or on his pleader at the expense of the respondent, unless the respondent files with the cross appeal a written acknowledgement from such party of having received a copy thereof;

(b) fix a new day of hearing the appeal and cross appeal.

(4) Until the day of the hearing the respondent may submit a written reply to the appeal and, in case of a cross appeal, the appellant may submit a written reply to the cross appeal.

Art. 382 Appellant to begin

(1) On the day fixed for hearing the appeal, 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.

(3) Nothing in par. (2) shall prevent the court from requiring the respondent to submit a written reply to the memorandum of appeal and the appellant to submit a written counter-reply. If the respondent already submitted a written reply before the hearing, the court may officially or upon request grant the appellant to submit a written counter-reply.

(4) The reply and counter-reply shall be filed within such time as the court shall fix.

(5) The preceding paragraphs of this article apply correspondingly to the cross appeal.

Art. 384 Remand of case by appellate court

(1) Where the court from whose judgement or order an appeal is preferred has disposed of the suit upon a preliminary point and the decree or order is reversed in appeal, the Appellate 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.

(2) Where a case is remanded under par. (1), the Appellate Court shall send a copy of its judgement and order to the court from whose judgement or order 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.

(3) The evidence, if any, recorded during the original trial shall, subject to all just exceptions be evidence during the trial after remand.

Art. 385 Judgement on record

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgement of the court from whose judgement or order the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Art. 386 Appellate court may frame the issues

(1) Where the court from whose judgement or order the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues and refer the same for trial to the court from whose judgement or order the appeal is preferred, and in such case shall direct such court to take the additional evidence required.

(2) The court to which issues are referred shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor, which evidence and findings shall form part of the record in the suit.

Art. 387 Objections to findings

(1) Either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding returned under art. 386 (2).

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

Art. 388 Additional evidence

(1) The parties to an appeal shall not be entitled to produce additional evidence in the Appellate Court, unless

(a) the court from whose judgement or order the appeal is preferred has refused to admit evidence which ought to have been admitted; or
(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it pronounce judgement, or for any other substantial cause,
the Appellate Court may, of its own motion or upon an application for permission to call additional evidence being made under art. 371 (3), allow such evidence or document to be produced, or witness to be examined.

(2) Any decision made under par. (1) shall state the reasons which it is based upon.

Art. 389 Mode of taking additional evidence

Where additional evidence is allowed to be produced, the Appellate Court:

(a) may either take such evidence or direct the court from whose judgement or order the appeal is preferred, or any other subordinate court, to take such evidence and send it when taken to the Appellate Court; and
(b) shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

Art. 390 Giving of judgement

The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the court from whose judgement or order the appeal is preferred, to which reference may be considered necessary, shall pronounce judgement.

Art. 391 Power of the appellate court

(1) The judgement may confirm, vary or reverse the judgement or order from which the appeal is preferred.

(2) Where the parties to the appeal agree as to the form which the judgement in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a judgement or make an order accordingly.

Art. 392 Application for restitution

(1) Where and is so far as a judgement or order is varied or reversed, the court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such judgement or order or such part thereof as has been varied or reversed.

(2) For the purpose of par. (1), the court may make any orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits which are properly consequential on such variation or reversal.

(3) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under par. (1).

for many litigants to adress a court of appeal instead of a nearby court of first instance.

CHAPTER II CASSATION

(according to our agreement to be done by the Eritrean legislator)

CHAPTER III**THIRD-PARTY OPPOSITION****Art. 393 Who may file opposition**

Any person who should or could have been made a party to a suit and whose interests are affected by a judgement in the suit may, if he was not a party to such suit either in person or through a representative, file an opposition to such judgement within sixty days of the day the opposing party became aware of such judgement and before such judgment is executed.

Art. 394 Form of opposition

- (1) An opposition shall be in the form of a petition which shall, on the payment of the prescribed fee, be filed in the court having given the judgement opposed to.
- (2) The petition shall specify:
 - (a) the name and place of the court in which the petition is filed;
 - (b) the name and address of the petitioner;
 - (c) the names of the parties to the case in which the judgement opposed to was given;
 - (d) the name of the court which gave the judgement opposed to, the date of such judgement and the number of the suit in which it was rendered;
 - (e) the grounds of opposition; and
 - (f) the nature of the relief sought.
- (3) The petition shall be accompanied by an affidavit of the truth of the facts therein alleged.
- (4) An application for stay of execution of the judgement opposed to may, where appropriate, be filed together with the petition. On sufficient grounds being shown, the court may order the execution to be stayed.

Art. 395 Effect of opposition

- (1) On the filing of a petition under art. 394, the court shall fix a day for hearing the opposition and shall cause a copy of the petition to be served on all the persons who were

parties to the case in which the judgement opposed to was rendered together with a summons to appear on such day.

(2) The proceedings upon the filing of the opposition shall be subject to the same provisions as the proceedings upon the original action and the court may on the completion of such proceedings confirm, vary or set aside the judgement opposed to, but only in as far as the interests of the opposing party are affected by this judgement.

CHAPTER IV**REVISION****Art. 396 Grounds for revision**

Notwithstanding the provisions of art. 56 (res judicata), any party considering himself aggrieved by a judgement or order from which an appeal lies, but from which no appeal has been preferred, or by a judgement or order from which no appeal lies, may, on payment of the prescribed court fee, apply for a revision of judgement, where

- (a) subsequently to the judgement, he discovers new and important matter, such as forgery, perjury, bribery, fraud or deceit, which after the exercise of due diligence, was not within his knowledge at the time of the giving of the judgement; and
- (b) had such matter been known at the time of the giving of the judgement, it would have materially affected the substance of the judgement or order the revision of which is sought.

Art. 397 Time of revision

(1) An application for revision shall be filed within sixty days whereupon the ground for revision did arise and the applicant became aware of it, but before ten years after the judgement the revision of which is sought was rendered.

(2) The provisions of art. 368-370 shall apply by analogy when a petition under this article is made out of time.

Art. 398 Competent court

(1) The application for revision shall be made to the appellate court, or in case an appeal was not lodged, to the court of first instance which rendered the judgement.

(2) Where the Supreme Court decided on the case and either upheld the judgement of the lower court or squashed it and gave a final ruling, the application shall be made to the court whose judgement was reviewed by the Supreme Court.

(3) Where the judgment was delivered by the President of the court, the application shall be made to that court.

Art. 399 Form and contents of the application

An application for review shall contain the same particulars as a memorandum of appeal and shall be supported by an affidavit containing strict proof of the fulfilment of the conditions laid down in art. 396 (a).

Art. 400 Reopening of the proceedings

(1) On granting the application, after giving notice to the opposite party to enable him to appear and be heard in support of the judgement or order the revision of which is sought, the court shall make such order in regard to the re-hearing of the case as it thinks fit.

(2) No appeal shall lie from any decision of the court granting or rejecting an application for revision.

Art. 401 Stay of proceedings

The application for revision does not stay the execution of the judgement. However, the court which hears the application may, if sufficient grounds are shown by the applicant, by way of preliminary injunction declare the stay of the execution, but only in so far as the proceedings are reopened

Art. 402 Revision of the judgement

If the court grants the pleaded ground for revision, it shall render a new judgment, revising in so far the contested judgement.

BOOK VI. ATTACHMENT AND EXECUTION OF DECREES**CHAPTER 1. EXECUTION OF DECREES PASSED IN ERITREA****PARAGRAPH 1. COURTS EXECUTING DECREES****Art. 371.- Principle**

A decree may be executed in accordance with the provisions of this Chapter either by the court which passed it or by the court to which it is sent for execution.

Nothing in this Chapter shall affect the provisions of the Maritime Code regarding the arrest, detention and sale of ships.

Art 372.- Transfer of decree

(1) The court which passed a decree may, by order in the form prescribed by the Fourth Schedule to this Code, of its own motion or on the application of the decree-holder when execution is sought in accordance with Art . 378 , send it for execution directly to another court where:

- (a) the judgement - debtor resides, carries on business or personally works for gain within the local limits of the jurisdiction of such other court;
- (b) the judgement-debtor has property sufficient to satisfy the decree within the local limits of the jurisdiction of such other court, but not of the court which passed the decree;
- (c) the decree directs the sale or delivery of immovable property situate within the local limits of the jurisdiction of such other court; or
- (d) the court which passed the decree considers, for any other reason to be recorded, that the decree should be executed by such other court.

(2) Nothing in sub-art. (1) shall prevent a court from directing attachment or sale of immovable property notwithstanding that the entire property is not situate within the local limits of its jurisdiction.

Art. 373.- Procedure in case of transfer

- (1) The court sending a decree for execution shall send:
 - (a) a copy of the decree;
 - (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and
 - (c) a copy of any order for the execution of the decree or, if no such order has been made, a certificate to that effect.
- (2) The court to which a decree is transferred shall execute it after causing such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof unless the court, for any special reason to be recorded requires such proof.

Art. 374.- Power of court to which decree is transferred

- (1) The court to which a decree is transferred shall have the same powers in executing such decree, and its orders in execution shall be subject to the same rules regarding appeals, as if the decree had been passed by itself.
- (2) The court to which a decree is transferred shall certify to the court which passed such decree the fact of execution or, where the former court fails to execute the same, the circumstances attending such failure.

Art. 375.- Questions to be determined by court executing decree

- (1) Any question arising between the parties to the suit in which the decree was passed concerning the execution, discharge or satisfaction of the decree, shall be determined by the court executing the same and not by a separate suit.
- (2) Any question arising as to whether or not any person is the representative of a party, shall, for the purposes of this Article be determined by the court executing the decree.

Art. 376.- Stay of execution

- (1) The court to which a decree has been transferred shall, on sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the court which passed the decree for an order to stay execution or for any other order relating to the decree or execution which might have been made by such court if execution had been issued thereby.
- (2) Where the property or person of the judgment-debtor has been as seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application, but no such order shall prevent such property or person from being subsequently retaken in execution of the decree sent for execution.
- (3) Before ordering a stay of execution or the restitution of property or discharge of the judgment-debtor, the court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.
- (4) Any order of the court which passed the decree, in relation to the execution thereof, shall be binding upon the court to which the decree was transferred.

Art. 377- *Stay of execution pending suit against decree-holder*

Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise as it thinks fit, stay the execution of the decree until the pending suit has been decided

PARAGRAPH 2 APPLICATION AND PROCESS FOR EXECUTION

Art. 378.- *Making and contents of application*

- (1) Where the holder of a judgement wishes to execute it, he shall apply to the court which passed such judgement to issue process for its execution. The application shall be made on the judgement.
- (2) The application may be made upon the passing of the judgement, unless the judgement-debtor was given time to satisfy the judgement by his personal obedience,

in which case the application may not be made until the judgement-debtor is in default.

(3) The application, to which there shall be attached a certified copy of the judgement sought to be executed, shall be in writing, signed and verified in the same manner as a pleading, and shall state:

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) the amount with interest if any, due upon the judgement or the relief granted thereby.
- (e) the amount of the costs, if any, awarded;
- (f) the name of the person against whom execution is sought; and
- (g) the mode in which the assistance of the court is required, whether:
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment and sale, or by the sale without attachment, or any property;
 - (iii) by the appointment of a receiver; or
 - (iv) otherwise, as the nature of the relief granted may require.

Art. 379.- *Particulars in application for attachment*

(1) An application for the attachment of any movable property belonging to the judgement-debtor shall be accompanied by an inventory of the property to be attached, containing a reasonably accurate description of the same.

(2) An application for the attachment of any immovable property belonging to the judgement-debtor shall contain:

- (a) a description of such property in accordance with Art. 225(2).

Provided that, where such property is entered in the registers of immovable property, the court may require the applicant to produce a certified extract from such registers; and

- (b) a specification of the judgment-debtor's share of interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Art. 380.- Application for execution by joint decree-holder

(1) Where a decree has been passed jointly in favour of several persons, any one of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the court sees sufficient cause for allowing the decree to be executed on an application made under sub-art. (1), it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Art. 381.- Application for execution by transferee of decree

(1) Where a decree, or if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the judgement, is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to court which passed it.

(2) Subject to the provisions of sub-arts. (3) and (4), the decree may then be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

(3) Where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given in the form prescribed by the Fourth Schedule to this Code to the transferor and the judgement-debtor, and the judgement shall not be executed until the court has heard their objections, if any, to its execution.

(4) Where a decree for the payment of money against two or more persons had been transferred to one of them, the transferee judgement-debtor cannot execute against the other judgement-debtor or debtors.

Art. 382.- Enforcement of liability of surety

Where any person has become liable as surety:

- (a) for the execution of a decree or any part thereof;
- (b) for the restitution of any property taken in execution of a decree; or

(c) for the payment of any money or the fulfilment of any condition imposed on any person under an order of the court in proceeding consequent thereon, the decree or order may be executed against him to the extent to which he has rendered himself personally liable and he shall be deemed to be a party within the meaning of Art. 375, provided that such notice as the court in case thinks sufficient shall be given to him.

Art. 383.- *Death of judgement-debtor*

Where a judgment-debtor dies before the decree has been fully satisfied, the decree-holder may apply to the court which passed it to execute the same against the legal representative of the deceased.

Art. 384.- *Execution when barred*

No application for execution shall be submitted after the expiration of ten years from

- (a) the date of the judgement sought to be executed
- (b) where the judgement or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the judgement.

Art. 385.- *Procedure on receiving application for execution*

(1) On receiving an application for execution the court shall ascertain whether such of the requirements of the preceding Articles as may be applicable to the case have been complied with, reject the application or allow the defect to be remedied on such terms as it shall fix.

(2) Where an application is amended under sub-art. (1), it shall be deemed to have been an application in accordance with law presented on the day when it was first presented.

(3) Every amendment made under sub-art. (1) shall be dated and signed or initialled by the presiding judge.

Art. 386.- *Order of execution*

- (1) Where an application for execution is admitted, the court shall issue an order of execution and send a copy of the order thereof to the judgement debtor.
- (2) Every order shall be dated the day on which it is issued and shall be signed by a judge, sealed with the seal of the court and delivered to the execution officer

Art 387.- *Objection by the judgement-debtor*

If the judgement-debtor, having received a copy of the execution order, prefers to submit objection, the court shall consider the application and order as it thinks fit.

Art. 388.- *Examination of the judgement-debtor*

- (1) Upon request of the judgement-creditor, or on its own motion, the court may summon and examine the judgement-debtor under oath as to his means or for any other reason it deems necessary.
- (2) Where the judgement-debtor fails to appear in answer to the summons, the court shall order that he be arrested and brought before it for the purpose of being examined to his means.
- (3) For the purpose of an examination under this article, the court may summon any person or require the production of any book or record.

Art. 389.- *Judgemen- debtor unable to pay*

No order shall be issued where the court considers that the judgement-debtor is unable to pay the amount due under the judgement

Art. 390.- *Where warrant of arrest may be issued*

- (1) The court may forthwith order the arrest of the judgment-debtor on being satisfied, by affidavit or otherwise, that, with the object or effect of obstructing or delaying execution, he is about or likely to abscond or leave the local limits of the jurisdiction of the court or to dispose of or remove his property or any part thereof from such limits.
- (2) An order under sub-art. (1) may be made pending the making of an application for execution

Art. 391.- *Particulars in warrant of arrest*

(1) Every warrant issued shall direct the officer entrusted with its execution to bring the judgement-debtor before the court unless satisfaction of the decree by his personal obedience is sooner obtained.

(2) No warrant of arrest shall be executed where satisfaction is obtained in accordance with sub-art. (1).

Art. 392.- *Where detention may be ordered*

(1) Where after the examination

(a) a the judgement-debtor refuses without good cause to comply with the decree; or

(b) the court is satisfied that the judgement-debtor although able to comply with the decree, has wilfully failed to do so, the court may order the arrest of the judgment-debtor, if he is not already under arrest, and his detention in the civil prison for a period not exceeding six months.

(2) The provisions of Art. 388 (2) shall apply when detention is ordered under sub art. (1) of this Article.

Art. 393.-*Release from detention*

(1) The court shall order that the judgement-debtor be released from detention:

(a) upon the amount due of the decree being paid into court or to the officer in charge of the prison, or satisfaction of the decree being otherwise obtained; or

(b) upon the request of the decree-holder.

(2) A judgment-debtor released under sub-art (1) may not be rearrested in execution of the same decree.

Art. 394.- *Effect of detention or release*

A judgement-debtor arrested under Art. 392 or released under Art. 393 shall not merely by reason of his arrest or release be discharged from the whole or any part of his debt.

Art. 395.- *Endorsement of order*

(1) The execution officer shall endorse on the order the day on and manner in which it was executed and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay or, if it was not executed, the reason why it was not executed, and shall return the order with such endorsement to the court.

(2) Where the endorsement is to the effect that the execution officer is unable to execute the order, the court shall examine him touching his alleged inability and may, if it thinks fit summon and examine witnesses as to such inability and shall record the result.

PARAGRAPH 3. MODES OF EXECUTION

SUB-PARAGRAPH 1, GENERAL PROVISIONS

Art. 396.- *Decree of payment of money*

(1) Without prejudice to the provisions of the following Articles, every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the attachment and sale of the judgment-debtor's property.

(2) The value of the property attached shall, as nearly as may be, correspond with the amount due under the decree

Art. 397.- *Modes of payment of money*

(1) All money payable under a decree shall be paid as follows, namely:

- (a) into the court whose duty it is to execute the decree
- (b) out of court to the decree-holder; or
- (c) otherwise as the court which passed the decree directs.

(2) Where any payment is made under sub-art. (1), notice thereof shall be given to the decree-holder.

Art. 398. - *Payment out of court to decree-holder*

(1) Where any money payable under a decree of any kind is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly.

(2) The judgement-debtor may also inform the court of such payment or adjustment and apply to the court to issue a notice in the form prescribed by the Fourth Schedule of this Code to the decree-holder to show cause, on a day to be fixed by the court why such payment or adjustment should not be recorded as certified.

(3) If, after service of a notice issued under sub-art. (2), the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(4) A payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized by any court executing the decree.

Art. 399.- *Execution in case of cross-decrees*

(1) Where applications are made to a court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then :

(a) if the two sums are equal, satisfaction shall be entered upon both decrees: and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) The provisions of sub-art. (1) shall apply where either party is an assignee of one of the decree and as well in respect of judgement-debts due by the original assignor as in respect of judgement-debts due by the assignee himself.

(3) The provisions of sub-art. (1) shall not apply unless ;

(a) the decree-holder in one of the suits in which the decrees have been made is

the judgement-debtor in the other and each party fills the same character in both suits, and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Art. 400.- *Execution in case of cross-claims under same decrees*

Where application is made to a court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then :

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Art. 401.- *Decree for specific movable property*

A decree for any specific movable or any share therein may be executed by the seizure of the movable or share and the delivery thereof to the decree-holder or to such person as he appoints to receive delivery on his behalf.

Art. 402.- *Decree for specific performance or injunction,*

(1) Without prejudice to the provisions of Arts. 389, 415 and 427, where the party

against whom a decree for the specific performance of a contract or for an injunction has been passed has had an opportunity of complying with the decree and

has wilfully failed to do so, the decree may be executed by the attachment and sale

of his property and the court the proceeds award to the decree-holder such compensation as it thinks fit.

(2) Nothing in sub-art. (1) shall prevent the court from directing that the act required to be done may be done as far as practicable by the decree-holder or some other person appointed by the court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as though they were included in the decree.

Art. 403.- *Decree for execution of document, or endorsement of negotiable instrument.*

(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgement-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court.

(2) The court shall make such order approving or altering the draft as it thinks fit.

(3) The decree-holder shall deliver to the court a copy of the draft with such alterations, if any, as the court may have directed and the execution officer or such officer as may be appointed in this behalf shall execute the document so delivered

in the manner provided for by the Fourth Schedule to this Code.

(4) The court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by law and may make such order as it thinks fit as to the payment of the expenses of the registration.

Art. 404.- *Decree for immovable property*

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the decree-holder, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound

by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, possession shall be delivered by affixing a copy of the decree in some conspicuous part of the property and proclaiming by customarily accepted mode

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree does not afford free access, the execution officer may remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Art. 405.- *Distribution of assets*

Where assets are held by or under the authority of a court and more persons than one have, before the receipt of such assets, applied to the court for the execution of decree for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization shall be distributed among all such persons in the prescribed manner.

SUB-PARAGRAPH 2, ATTACHMENT OF PROPERTY

Art. 406.- *Property not liable to attachment*

The following property shall not be liable to attachment or sale at any stage of the proceedings:

- (a) the necessary wearing-apparel, cooking vessels, bed and bedding of the judgement-debtor and his family;
- (b) tools, books, instruments or implements of any kind used by the judgement-debtor in his profession, art or trade;
- (c) where the judgement-debtor is an agriculturist, such livestock and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood;
- (d) such amount of food and money as may, in the opinion of the court, be necessary for the judgement-debtor and his family for a period of six months;

- (e) pensions and alimonies;
- (f) three-fourth of the judgement-debtor's salary, provided that the entire salary shall be exempt from liability to attachment where it does not exceed two dollars per day and the judgement-debtor has no other income;
- (g) any other property declared by or in accordance with any law to be exempt from liability to attachment or sale.
- (h) The installations, machinery or other instruments specified or meant for
the use of public utilities whether the administration of such public utility is undertaken by the management itself or entrusted to any person natural or corporate.

Art. 407.- *Attachment where amount due not determined*

Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgement-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Art. 408.- *Attachment of movable property other than agricultural produce*

(1) Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgement-debtor, the attachment shall be made by actual seizure, and the execution officer shall, subject to the provisions of sub-art. (2), keep the property in a safe place, and shall be responsible for the due custody thereof.

(2) When the property seized is subject to speedy and natural decay, or when the

expense of keeping it in custody is likely to exceed its value, the execution officer may sell it at once.

Art. 409.- *Attachment of agricultural produce*

(1) Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment:

(a) where such produce is a growing crop, on the land on which such crop has grown;

or

(b) where such produce has been cut or gathered, on the threshing - floor or place for treading out grain or the like or fodder-stack or in which it is deposited.

(2) Another copy of the warrant shall be affixed on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the

leave of the court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain.

(3) Upon the affixing of the warrant, the produce shall be deemed to have passed into the possession of the court.

Art. 410.- Provisions as to agricultural produce under attachment

(1) Where agricultural produce is attached, the court shall make such arrangements for

the custody thereof as it may deem sufficient and, for the purpose of enabling the court to

make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the court either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it.

(3) Where the judgment-debtor fails to do all or any of the acts mentioned in sub-art.

(2), the decree-holder may, with the permission of the court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in

this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(4) Agricultural produce attached as a growing crop shall not be deemed to have ceased

to be under attachment or to require reattachment merely because it has been severed from the soil.

(5) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(6) A growing crop which from its nature does not admit of being stored shall not

be attached under this Article at any time less than twenty days before the time at

which it is likely to be fit to be cut or gathered.

Art. 411.- *Attachment of property not in possession of judgement-debtor*

(1) Where the property to be attached is a debt not secured by a negotiable instrument or a debt owing to the judgement-debtor under another decree, the attachment shall be made by a written order prohibiting the creditor from recovering the debt and the debtor from making payment thereof until the further order of the court.

(2) Where the property to be attached is a share in the capital of a corporation, the attachment shall be made by a written order prohibiting the person in whose name the share may be from transacting or receiving any dividend thereon and the corporation from registering any transfer of such share.

(3) Where any other movable property or a sum of money is to be attached, the attachment shall be made by a written order prohibiting the person in possession of the same from giving it over to the judgement-debtor

(4) A copy of the order made under sub-arts. (1)-(3) shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the

corporation, and, in the case of any other movable property, to the person in possession of the same.

(5) A debtor prohibited under sub-art. (1) may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

(6) Any order under this Article shall be accompanied by a notice informing the person in possession of the property that he may appear before the court on a day to be fixed in the notice to show cause, why he should not comply with the order.

(7) When such person so appears, the provisions of Arts. 418-421 shall apply by analogy.

Art. 412.- Attachment of share in movables

Where the property to be attached consists of the share or interest of the judgement-debtor

in movable property belonging to him and another as co-owners, the attachment shall be

made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Art. 413. Attachment of salary

(1) Where the property to be attached is the salary of an employee the court may order that the amount due be withheld from such salary either in one payment or by monthly instalments, as the court may direct.

(2) A copy of an order made under sub-art. (1) shall be sent to the employer of the judgement-debtor and the amount due under the order, or the monthly instalments, as the case may be, shall thereupon be withheld from the judgement-debtor's salary and remitted to the court.

(3) Where the attachable proportion of the judgement-debtor's salary is already being withheld and remitted to a court in pursuance of a previous and unsatisfied order of attachment, the employer of the judgement-debtor shall forthwith return the subsequent order to the court issuing it with a full statement of all the particulars of the existing attachment.

Art. 414.- Attachment of negotiable instruments

Where the property is a negotiable instrument not deposited in a court, nor in the of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to further orders of the court.

Art. 415.- Attachment of property in custody of court or public officer

Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the court from which the notice is issued:
 Provided that, where such property is in the custody of a court, any question of title or priority arising between the decree-holder and any other person, not being the judgement-debtor, claiming to be interested in such property by virtue of any assignment , attachment or otherwise, shall be determined by such court.

Art. 416.- Attachment of immovable property

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgement-debtor from transferring or charging the property with any right *in rem*, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by customarily accepted mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house.

Art. 417.- Removal of attachment after satisfaction of decree

Where:

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into court;
- (b) satisfaction of the decree is otherwise made through the court or

certified to the court; or

(c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgement-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by Art. 416 (2).\

Art. 418.- *Order for payment of coin or currency notes to party entitled under decree*

Where the property attached is current, coin or currency notes, the court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Art. 419.- *Determination of attachment*

(1) Where any property has been attached in execution of a decree but by reason of the decree-holder's default the court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a further date.

(2) Upon the dismissal of such application the attachment shall cease, however, he can apply within a one month period pursuant to article 74(2).

SUB-PARAGRAPH 3. INVESTIGATION OF CLAIMS AND OBJECTIONS

Art. 420.- *Investigation of claims to attached property*

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to

such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit: Provided that no such investigation shall be made where the

court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Any claim or objection under sub-art. (1) shall be made by presenting a written application to the court executing the decree

(3) The claimant or, objector shall adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

(4) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection.

Art. 421.- *Decision on claim or objection*

(1) Where upon the said investigation the court is satisfied that for the reason stated in the

claim or objection or for any other reason such property is not liable to attachment, it shall

make an order releasing the property, wholly or to such extent as it thinks fit, from

attachment.

(2) Where the court is satisfied that such property is liable to attachment, it shall disallow the claim or objection.

Art. 422.- *Continuance of attachment subject to claim of incumbrancer*

Where the court is satisfied that the property is subject to a mortgage or right *in rem* in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or right *in rem*.

Art. 423.- *Suits to establish right to attached property*

Where a claim or an objection is disallowed, according to Art. 419(2) the claimant or objector may institute a suit to establish the right which he claims, to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

SUB-PARAGRAPH 4. SALE GENERALLY

Art. 424.- *Order for sale of property attached*

(1) Any court executing a decree may on application order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same

(2) Unless otherwise directed, every sale in execution of a decree shall be:

- (a) conducted by an officer of the court or by such other person as the court may appoint in this behalf (hereinafter referred to as the auctioneer); and
- (b) made by public auction in accordance with the following Articles.

- i. (3) Nothing in this Article shall prevent the court from authorizing a sale by private contract at the request or with the consent of the judgement-debtor and after hearing the decree-holder.

Art. 425.- *Sale by auction*

(1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgement-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible:

- (a) the property to be sold and the estimated value thereof;
- (b) any incumbrance to which the property is liable;

- (c) the amount for the recovery of which the sale is ordered;
 - (d) the terms, and conditions of the sale and manner in which and time within which the purchase price shall be paid; and
 - (e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property.
- (3) The proclamation shall also draw attention to the provisions of Arts. 440-442 of this Code.

Art. 426.- Application for sale

- (1) An application for an order for sale under Art. 424 shall be accompanied by a statement signed and verified in the manner described for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by Art. 425 (2) to be specified in the proclamation.
- (2) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it thinks necessary to summon and may examine him with respect to any such matters and require him to produce any document in his possession or power relating thereto, and may appoint an expert to estimate the value of the property to be sold.

Art. 427.- Mode of making proclamations

- (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by Art 414 (2).
- (2) Where the court so directs, such proclamation shall also be published in a newspaper circulating at the place of the sale and the costs of such publication shall be deemed to be costs of the sale.
- (3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper

notice of the sale cannot, in the opinion of the court, otherwise be given.

Art. 428.- *Time of sale*

Save in the case of property of the kind described in Art. 406 (2), no sale hereunder shall, without the consent in writing of the judgement-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the court ordering the sale or, where the proclamation has been published in court newspaper, from the date of such publication, whichever is the later.

Art. 429.- *Stoppage of sale*

Every sale shall be stopped if, before the lot is knocked down, the debt and costs, including the costs of the sale, are tendered to the auctioneer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the court which ordered the sale.

Art.430.- *Second auction*

(1) Where the highest bid at a sale by auction does not reach a sum equal to the value specified in the proclamation in accordance with Art. 423 (2) (a) , a second sale by auction be held without a price limit The court is not bound to authorize such a auction. The court has the discretion to continue the auction at the estimated value for a period which it thinks reasonable, as long as the judgement-debtor or judgement-creditor is ready to pay the expense

(2) Where no bidder presents himself at the second auction, the court may, notwithstanding any provision to the contrary, authorize the decree-holder to take possession of the property ordered to be sold at its estimated value in full or partial satisfaction of the decree, as the case may be.

Art. 431.- *Defaulting purchaser answerable for loss on re-sale*

(1) Where the purchase price is not paid or deposited according to the provisions of the law or the terms and conditions of sale, such sale shall be deemed to be cancelled and a resale may be ordered by the court after the issue of a fresh proclamation in the manner and within the time specified above.

(2) Any deficiency of price which may happen on such resale and all expenses attending such resale shall be certified to the court by the auctioneer and shall, at the instance of either the decree-holder or the judgement-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

(3) On payment of the purchase money the auctioneer shall grant a receipt for the same, and the sale shall become absolute,

(4) For purposes of bidding, a resale by auction ordered under this Article shall be deemed
to be a first auction.

Art. 432.- Decree-holder not to bid for property without permission

(1) No holder of a decree in execution of which property is sold shall, without the written
permission of the court, a copy of which shall be given by the court to the auctioneer, bid for or purchase the property.

(2) Where a decree-holder purchases with such permission, the purchase-money and the
amount due on the decree, may, on such terms as shall be prescribed, be set off against one other, and the court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree - holder purchases, by himself or through another person, without such
permission, the court may on the application of the judgement-debtor or any other person whose interest are affected, set aside the sale.

Art. 433.- Restriction on bidding or purchase by officers

(1) No auctioneer or other person having any duty to perform in connection with any sale

shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

(2) Where a sale takes place in contravention of the provisions of sub-art. (1), it shall be set aside.

SUB-PARAGRAPH 5. SALE OF MOVABLE PROPERTY

Art. 434.- *Sale of agricultural produce*

(1) Where the property to be sold is agricultural produce, the sale shall be held :

- (a) if such produce is a growing crop, on or near the land on which such crop has grown; or
- (b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the executing court or the execution officer may direct the sale to be held at the place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) The sale shall as far as possible be held on a market day.

Art. 435.- *Special provisions relating to growing crops*

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the

land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Art. 436.- *Negotiable instruments and shares*

Where the property to be sold is a negotiable instrument or a share in a corporation, the court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Art. 437.- *Irregularity not to vitiate sale*

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or, if such other person is the purchaser, for the recovery of the specific property and for compensation in default of such recovery.

Art. 438.- *Delivery of movable property and shares*

- (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.
- (2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.
- (3) Where the property sold is a share in a corporation, the delivery thereof shall be made by a written order of the court prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest hereon, and the manager,

secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Art. 439.- *Transfer of negotiable instruments and shares*

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the provisions of Art. 401 (4) shall apply and the execution or endorsement shall have the same effects as an execution or endorsement by the party.

(2) Until the transfer of such negotiable instrument or share, the court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same, and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Art. 440.- *Vesting order in case of other property*

In the case of any movable property not hereinbefore provided for, the court may

make an order vesting such property in the purchaser or as he may direct, and such property shall vest accordingly.

SUB-PARAGRAPH 6 SALE OF IMMOVABLE PROPERTY

Art. 441.- *Postponement of sale to enable judgement-debtor to raise amount of decree.*

(1) Where an order for the sale of immovable property has been made if the judgement-debtor can satisfy the court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of

such property, or some part thereof, or of any other immovable property of the judgement-debtor, the court may, on his application and on the conditions laid down in Art. 422 (3), postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the court shall grant a certificate to the judgement-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in Art. 422, to make the proposed mortgage, lease or sale: Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgement-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of Art. 430 (2), into court.

(3) No mortgage, lease or sale under this Article shall become absolute until it has been confirmed by the court.

(4) Nothing in this Article shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of such property

Art. 442.- *Deposit by bidder*

(1) On every sale of immovable property the person declared to be the bidder shall pay immediately before such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the auctioneer.

(2) Where the decree-holder is the bidder and is entitled to set off the purchase-money under Art. 430 (2) the court may dispense with the requirements of sub-art. (1).

Art. 443.- *Time for payment in full of purchase money*

The full amount of purchase-money payable shall be paid by the purchaser to the auctioneer within fifteen days from the sale of the property:

Provided that, in calculating the amount to be so paid, the purchaser shall have the advantage of any set-off to which he may be entitled under Art. 430 (2).

Art. 444.- *Procedure in default of payment*

In default of payment within the period mentioned in Art. 441, the deposit may, if the court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Art. 445.- *Bid of co-sharer to have preference*

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

Art. 446.- *Application to set aside sale*

(1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on such conditions as the court may determine.

(2) Where a person applies under Art. 445 to set aside the sale of his immovable property, he shall not, unless he withdraws his application be entitled to make or prosecute an application under this Article.

(3) Nothing in this Article shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Art. 447.- *Application to set aside sale on ground of irregularity or fraud*

Where an immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it: Provided that no sale shall be set aside on the ground of irregularity or fraud unless the applicant satisfies the court that he has sustained substantial injury by

reason of such irregularity or fraud.

Art. 448.- *Application to set aside sale where no saleable interest*

The purchaser at any such sale in execution of a decree may apply to the court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Art. 449.- *Sale when to become absolute or be set aside*

(1) Where no application is made under Arts. 444-446 within two months of the sale, the sale shall become absolute.

(2) Where any such application is made but it is disallowed, the court shall make an order confirming the sale and thereupon the sale shall become absolute.

(3) Where a sale of immovable property has become absolute, the court shall grant a certificate specifying the property sold and the name of the person who at the time of

sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

(4) Where any such application is made and allowed, the court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(5) Where a sale of immovable property is set aside under sub-art. (4), the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the court may direct, against any person to whom it has been paid.

Art. 450.- *Delivery of property in occupancy of judgement-debtor*

Where the immovable property sold is in the occupancy of the judgement-debtor or of some

person on his behalf or of some person claiming under a title created by the judgement-debtor
 subsequently to the attachment of such property and a certificate in respect thereof has
 been
 granted under Art. 447 (3), the court shall, on the application
 of the purchaser, order delivery to be made by putting such purchaser or any person whom
 he
 may appoint to receive delivery on his behalf in possession of the property, and, if need
 be, by
 removing any person who refuses to vacate the same.

Art. 451.- *Delivery of property in occupancy of tenant*

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under Art. 447 (3), the court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by customary accepted mode, at some convenient place, that the interest of the judgement-debtor has been transferred to the purchaser.

PARAGRAPH 4. RESISTANCE TO DELIVERY OF POSSESSION

Art. 450.- *Resistance or obstruction to possession of immovable property*

(1) Where the holder of a decree for the possession of immovable property or the purchaser of
 any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining
 of
 such resistance or obstruction.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Art. 451.- *Resistance or obstruction by judgement-debtor*

Where the court is satisfied that the resistance or obstruction was occasioned without good cause by the judgement-debtor or some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgement-debtor, or any person acting at his instigation, to be detained in the civil prison for a period not exceeding thirty days.

Art. 452.- *Resistance or obstruction to possession of immovable property*

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Art. 453.- *Resistance or obstruction by judgement-debtor*

Where the court is satisfied that the resistance or obstruction was occasioned without good cause by the judgement-debtor or some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgement-debtor, or any person acting at his instigation, to be detained in the civil prison for a period not exceeding thirty days.

Art. 454.- *Resistance or obstruction by bonafide claimant*

Where the court is satisfied that the resistance or obstruction was occasioned by any person, other than the judgement-debtor, claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgement-debtor, the court shall make an order dismissing the application.

Art. 455.- *Dispossession by decree-holder or purchaser*

(1) Where any person other than the judgement-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

(3) Where the court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

CHAPTER 2. EXECUTION OF FOREIGN JUDGEMENTS

Art. 456.- *Provisions not applicable to transferee lite pendente*

Nothing in Arts. 452 and 453 (3) shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Art. 457.- *Orders conclusive subject to regular suit*

Any person not being a judgement-debtor against whom an order is made under Art. 451, 452, or 453 (3) may institute a suit to establish the right which he claims to the present possession of the property, but, subject to the result of such suit, if any, the order shall be conclusive.

Art. 458.- *Conditions for allowing application*

Permission to execute a foreign judgment shall not be granted unless

- (a) the execution of Eritrian judgments is allowed in the country in which the judgement to be executed was given;
- (b) the judgement was given by a court duly established and constituted;
- (c) the judgement-debtor was given the opportunity to appear and present his defence;
- (d) the judgment to be executed is final and enforceable; and
- (e) execution is not contrary to public order or morals.

Art. 459.- Procedure

- (1) The court to which the application is made shall enable the party against whom the judgment is to be executed to present his observations within such time as it shall fix.
- (2) The court shall decide whether pleadings may be submitted.
- (3) In cases of doubt the court may suspend its decision until all doubtful points have been clarified.

Art. 460.- Decision

- (1) The decision shall be made on the basis of the application unless the court for some special reason to be recorded decides to hear the parties at a hearing which it shall fix.
- (2) The court shall at the same time decide on costs.
- (3) Where the application is allowed and permission to execute is granted, the foreign judgment shall be executed in Ethiopia as though it had been given by an Ethiopian court.