

STATUTORY INSTRUMENTS SUPPLEMENT
to The Uganda Gazette No. 25, Volume CXII, dated 31st May, 2019
Printed by UPPC, Entebbe, by Order of the Government.

S T A T U T O R Y I N S T R U M E N T S

2019 No. 33.

THE CIVIL PROCEDURE (AMENDMENT) RULES, 2019.

ARRANGEMENT OF RULES

Rule

1. Title.
2. Amendment of Statutory Instrument 71-1.
3. Insertion of Order XIA.
4. Amendment of Order XVII.
5. Amendment of Order XVIII.
6. Amendment of Order L.
7. Amendment of Appendices.
8. Amendment of Schedule.

SCHEDULE 2
GUIDELINES FOR SCHEDULING CONFERENCE

S T A T U T O R Y I N S T R U M E N T S

2019 No. 33.

The Civil Procedure (Amendment) Rules, 2019.

(Under section 41 of the Judicature Act, Cap. 13)

IN EXERCISE of the powers conferred upon the Rules Committee by section 41 of the Judicature Act, these Rules are made this 25th day of January, 2019.

1. Title.

These Rules may be cited as the Civil Procedure (Amendment) Rules, 2019.

2. Amendment of Order I of Statutory Instrument 71-1.

The Civil Procedure Rules, in these Rules referred to as the principal Rules, are amended in Order I by substituting for rule 8 the following—

“8. One person may sue or defend on behalf of all in same interest.

(1) A person may institute a representative suit on behalf of all plaintiffs or all defendants, as the case may be, who have the same actual and existing interest in the subject matter of the intended suit, for the benefit of all.

(2) An application for a representative order shall be made by an intending plaintiff or defendant who intends to represent all plaintiffs or all defendants for the benefit of all as the case may be, who have the same actual and existing interest in the subject matter of the intended suit.

(3) Before the court grants an order for a representative suit, the applicant shall satisfy the court that—

- (a) all the plaintiffs or defendants, as the case may be, have an actual and existing interest in the subject matter of the intended suit;

- (b) all the persons represented have authorized the applicant to sue or defend in the suit, and the authorisation shall be in writing duly signed by the represented persons; and
- (c) the application is brought with a proposed plaint or defense, as the case may be, showing—
 - (i) a list of all persons so represented; and
 - (ii) that all persons so represented have the same actual and existing interest in the suit.

(4) Subject to subrule (2), the court shall, in such case, give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may in each case direct.

(5) Any person with the same interest wishing to be made a party to a representative suit may apply to the court to be made a party to the suit.

(6) For purposes of this rule, “a representative action” means a suit in which there are numerous persons having the same interest in one suit and where one or more of such persons, may, with the permission of the court, sue or be sued or may defend in the suit on behalf of or for the benefit of all persons interested.”

3. Insertion of Order XIA.

The principal Rules are amended by inserting immediately after Order XI, the following—

“ORDER XIA—SUMMONS FOR DIRECTIONS

1. Summons for directions.

(1) The court shall, for purposes of preparing for every action to which this rule applies, provide an occasion for consideration of a suit for a scheduling conference and trial of the suit so that—

- (a) any matter which should have been dealt with by an interlocutory application and has not been dealt with may, so far as possible be dealt with; and
- (b) directions may be given for the future course of action as appears best to be adapted to secure the just, expeditious and economical disposal of the matter.

(2) Where a suit has been instituted by way of a plaint, the plaintiff shall take out summons for direction within 28 days from the date of the last reply or rejoinder referred to in rule 18(5) of Order VIII of these Rules.

(3) The summons in subrule (2) shall be returned within fourteen days from the date they are taken out.

(4) This rule applies to all actions instituted by way of a plaint, except—

- (a) an action in which the plaintiff or counterclaimant has applied for a default judgment under Order IX rules 6 and 7, summary judgment under Order XXXVI or where application for leave to file a defence under Order XXXVI is refused;
- (b) an action in which the plaintiff or defendant has applied under Order VI rules 29 or 30 or Order XV rule 2 for determination of the suit on a point or points of law;
- (c) an action in which an order for the taking of an account has been made under Order XX;

- (d) an action in which an application for transfer to another division, court or tribunal has been made; or
- (e) an action in which a matter has been referred for trial to an official referee or arbitrator.

(5) In a case where discovery of documents is required to be made by any of the parties, the period of 28 days referred to in paragraph (2) may be extended either by order of court or on application of either party to the suit.

(6) If the plaintiff does not take out a summons for directions in accordance with subrules (2) or (6), the suit shall abate.

(7) Where a suit has abated under subrule (7), the plaintiff may, subject to the law of limitation, file a fresh suit.

(8) In the case of an action which is proceeding only in respect of a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

2. Duty to consider all matters.

(1) When the summons for directions first comes to be heard, the court shall consider whether—

- (a) it is possible to deal with all matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions;
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage; or
- (c) there is an interlocutory application that has not been dealt with and if so, deal with it at that point.

(2) If when the summons for directions first comes to be heard, and the court considers that it is possible to deal with all the matters at the same time, it shall deal with them immediately and shall endeavour

to ensure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also dealt with.

(3) If, when the summons for directions first comes to be heard, and the court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons, the court shall deal immediately with such matters as it considers can conveniently be dealt with and adjourn the consideration of the remaining matters and shall endeavour to ensure that all other matters which must or can be dealt with on interlocutory applications by a registrar and have not been dealt with are dealt with then or at a resumed hearing of the summons for directions.

(4) Where an action is ordered to be transferred to a Magistrates Court or some other court, nothing in this Order shall be construed as requiring the court to make any further order on the summons.

(5) Where the parties have agreed to an order as to the place, mode or trial before all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions, no such order shall be made until all those matters have been dealt with.

(6) Where a question or issue is ordered to be tried before an official referee or arbitrator, the court may without giving any further directions, adjourn the summons for direction so that the issue can be heard by the referee.

(7) Where summons for directions are adjourned without a fixed date for resuming the hearing, either party may restore it on the list of matters for hearing on a two days' notice to the other party.

3. Particular matters for consideration.

(1) Upon hearing of the summons for directions, the court shall on its own motion, consider whether any order should be made or direction given in the exercise of the powers conferred by any other law as—

- (a) to whether evidence on particular matters may be given by way of affidavits without the need to call the deponent for cross examination for avoidance of expenses and inconvenience of calling witnesses to prove particular matters;
- (b) to whether evidence of witnesses shall be in written form or in such other manner as may be contained in the court order;
- (c) to whether the number of expert witnesses may be limited; and
- (d) to whether exhibits may not be admitted in evidence unless the opposite party has been given an opportunity to inspect at least within a reasonable time not less than ten days prior to the hearing unless the court in special circumstances sees it fit to waive the inspection.

(2) In matters relating to land, the registrar shall visit the locus with the parties before the hearing of the case and shall record all the developments on the land at the time of visiting the locus and shall prepare a report to that effect.

4. Admissions and agreement to be made.

At the hearing of the summons for directions, the court shall endeavour to ensure that the parties make all admissions and agreements as to the conduct of the proceedings which ought reasonably to be made by them, and the Order from the summons may record the admissions or agreements so made, and any refusal to make any admission or agreement.

5. Duty to give all information at hearing.

(1) Subject to subrule (2), no affidavit shall be used on the hearing of the summons for directions except by the leave or direction of court and subject to subrule (6).

(2) The parties to the action and their advisers have the duty to give all information and produce all such documents as the court may reasonably require for purposes of enabling it to properly deal with the summons.

(3) The court may, if it appears proper so to do in the circumstances, authorise any such information or documents to be given or produced to the court without being disclosed to the other party but, in the absence of such authority, any information or document given or produced under paragraph (2), shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the court.

(4) Subject to paragraph (1), leave of court shall not be required for use of an affidavit by any party at the hearing of the summons for directions in connection with any application for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.

(5) If the court upon hearing of the summons for directions requires a party to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (5), the court may—

- (a) cause the facts to be recorded in the Order with a view to such special order, if any, as to costs of the trial, or
- (b) if it appears to the court to be just and fair, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is the plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(6) Notwithstanding anything in the foregoing provisions of this rule, no information or document which is privileged from disclosure shall be required to be given or produced under this rule without the consent of the author of the document or information.

6. Duty to make interlocutory applications before hearing of summons for directions.

(1) Any party to whom summons for directions are addressed, shall, so far as practicable, apply before the hearing of the summons for any order or directions which he or she may desire as to any matter capable of being dealt with by an interlocutory application and shall in not less than seven days before the hearing of the summons, serve on the other party a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) Where the hearing of the summons for directions is adjourned and any of the parties to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under subrule (1), that party shall in not less than seven days before the resumed hearing of the summons, serve on the other party, a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application shall be made under the summons by giving the other party two days' notice stating the grounds for the application.

7. Matters that may be dealt with in summons for directions.

(1) All formal matters preliminary to the trial and all interlocutory applications as stipulated under Order L rule 3 of these Rules may be handled under summons for directions and the registrar shall have powers and jurisdiction to handle the interlocutory applications.

(2) The parties shall, after compliance with directions in the summons, and where the matter has not been referred for alternative dispute resolution or referred to another court, produce a trial bundle

for purposes of a scheduling conference before the trial judge in accordance with the Guidelines for Scheduling Conference prescribed in Part IV of the Schedule to these Rules.

8. Compliance with summons for directions.

The summons for directions shall be complied with within forty five days from the date of hearing the summons for directions under rule 1 (3) and thereafter, the plaintiff shall, within seven days from the last of the compliances in the summons for directions, have the suit fixed for a scheduling conference before the trial judge.”

4. Amendment of Order XVII.

The Principal Rules, are amended in Order XVII by substituting for rules 5 and 6 the following—

“5. Dismissal of suit for want of prosecution.

(1) In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, the suit shall automatically abate; and

(2) Where a suit abates under subrule (1) of this rule, the plaintiff may, subject to the law of limitation bring a fresh suit.”

5. Amendment of Order XVIII.

The principal Rules, are amended in Order XVIII by inserting immediately after rule 5 the following rule—

“5A. Witness statement.

(1) The evidence of a witness shall consist of a witness statement which shall be filed after the scheduling conference on the direction of the trial judge and served upon the opposite party.

(2) The witness statement shall be formally tendered as evidence in chief of the witness after the witness has appeared in court and taken oath.

(3) Before a witness statement is admitted as the evidence in chief of a witness, the witness may, with leave of court, correct any typographical, arithmetic or other error which does not go to the substance of the testimony filed in court and served on the opposite party and any correction made shall be countersigned by the witness in court.

(4) A witness may be cross examined on his or her witness statement at the option of the opposite counsel or party after the evidence has been formally received on the court record by order of the court admitting it as evidence in chief of the witness.

(5) Except with the consent of the parties, a witness who does not appear to tender in the witness statement and be cross examined, shall have his or her statement expunged from the court record.

(6) The witness statement shall be filed on the date fixed by the trial Judge.

(7) A witness who has not filed a witness statement shall not be heard except with leave of court.

(8) A witness statement shall—

- (a) include the full name, address, age and occupation of the witness;
- (b) include the number of the statement;
- (c) include identified and verified initials of each document referred to;
- (d) be numbered in paragraphs;

- (e) include a statement of the witness regarding the witness's present and past relationship, if any, with any of the parties—
 - (i) whether the witness is a party to the proceedings or an employee of the party; and
 - (ii) where relevant, the capacity in which the statement is made and a description of his or her background, qualifications, training and experience, if the information may be of relevance to the dispute or to the contents of the statement;
- (f) be recorded in English and as far as possible, in the witness's own words;
- (g) where the witness statement was not recorded in English, a statement in the language in which the witness statement was originally prepared and the language in which the witness wishes to give testimony at the hearing;
- (h) where the witness writes the statement in a language other than English, the statement shall include a translation of the statement verified by the translator, on oath;
- (i) give a full and detailed narration of the facts and the source of the witness's information as to those facts, sufficient to serve as the witness's evidence in the matter in dispute;
- (j) include documents on which the witness relies, that have not already been agreed to at the scheduling conference and contained in the trial bundle, shall be provided subject to any rules of procedure on scheduling conference;
- (k) contain a statement at the bottom as to whether he or she believes the statement of fact in it to be true;
- (l) sufficiently identify any document to which the statement refers without repeating its contents, unless it is necessary for identification of the document;

- (m) be legible and typed on one side of the paper and bound in a manner that does not hamper filing; and
 - (n) be dated and signed at the bottom of every page.
- (9) A witness statement shall not—
- (a) include any matter of information or belief which are not admissible in evidence; and
 - (b) contain lengthy quotations from documents or provide legal or other arguments.

(10) For purposes of this rule, “witness statement” means a written testimony signed by a witness and filed in court and served on the opposite party for purposes of having it tendered in court as the evidence in chief of the witness.”

6. Amendment of Order L.

The principal Rules, are amended in Order L—

- (a) by substituting for rule 3 the following—

“3. Formal and interlocutory matters.

A Registrar shall handle interlocutory matters within fourteen days of the filing of an application”; and

- (b) by inserting immediately after rule 3 the following—

“3A. Application for ex parte interim order.

(1) The court shall, in all cases, before granting relief for an interim order, direct notice of the application to be given to the opposite party, except where it appears that the giving of such notice would cause undue delay and that the object of granting the interim relief would thereby be defeated.

(2) All applications for interim relief shall be inter-parties except for exceptional circumstances that may include—

- (a) where the matter is urgent in nature;
- (b) where there is a real threat or danger; or
- (c) where the application is made in good faith,

(3) The court shall only consider the hearing of an application for interim relief were there is a pending substantive application with a likelihood of success.

(4) An application for an ex parte interim application shall be made orally.

(5) Subject to subrule (2), an ex parte interim order shall be granted only in exceptional circumstances and for a period not exceeding three days from the date of issue and upon hearing of the substantive application, the order shall lapse.

(6) The applicant shall, within the three days referred to in subrule (5), present proof of effective service on the opposite party.

(7) Where proof of effective service is not presented within the period stipulated in subrule (6), the order shall lapse.”

7. Amendment of Appendices.

The principal Rules, are amended in Appendix by inserting immediately after Form 14, the following—

- “(a) Form 14A
Summons Directions
(Order XIA, rule 1); and

- (b) Form 14B
Matters which may be Considered upon Summons for
Directions
(Order XIA, rules 2 and 7”

8. Amendment of Schedule.

The principal Rules are amended by inserting immediately after the Schedule, the following Schedule 2.

“SCHEDULE 2 PART IV

GUIDELINES FOR SCHEDULING CONFERENCE

(Order XIA, rule 7(2))

Form 14A

Summons for Directions (Order XIA, rule 1)

[Heading as in the plaint or counterclaim/written statement of defence]
[___ Applicants to complete the text of any matter required and to strike out the number opposite any matter not required but not to strike out the text, which must be left for the Registrar.]

Let all parties concerned attend the Registrar in Chambers, in the High Court _____ Division _____ in _____ on the _____ day of _____ 20 _____, at _____ O'clock in the forenoon/afternoon on the hearing of an application for directions in this action, that:

1. This suit be consolidated with Civil Suit No's _____ and _____ and _____ of 20 _____
2. The action be referred to an Official Referee or Special Referee for inquiry and report under section 26 of the Judicature Act and that the costs of this application be costs in the cause.
3. The action be transferred to _____ Magistrates Court/Tribunal, and that the costs of this application be in the discretion of the Magistrates Court/Tribunal.
4. Unless the plaintiff within _____ days gives security for the defendant's costs in the sum of Uganda shillings _____ to the satisfaction of the Registrar, the action be transferred to the _____ Magistrates Court _____ with stay of proceedings in the meantime and that the costs of this application be in the discretion of the Magistrates Court [and that if the security be so paid the directions be as follows—]
5. The plaintiff have leave to amend the plaint by _____ and that the service of the summons and plaint and the defendant's appearance stand, and that the costs incurred and thrown away by the amendment be the defendant's in any event.

6. The plaintiff have leave to amend the statement of claim as shown in the document served herewith and to re-serve the amended statement of claim in _____ days, with leave to the defendant to serve an amended written statement of defence (if so advised) in _____ days thereafter and with leave to the plaintiff to re-serve an amended reply (if so advised) in _____ days thereafter and that the costs incurred and thrown away by the amendments be the defendant's in any event.
7. The defendant have leave to amend the written statement of defence as shown in [the document served with the defendant's notice under this summons] and to re-serve the amended written statement of defence in _____ days [with leave to the plaintiff to re-serve an amended reply (if so advised) in _____ days thereafter] and that the costs of and the costs thrown away as a result of the amendments be the plaintiff's in any event.
8. The plaintiff serve upon the defendant within _____ days the further and better particulars of the statement of claim specified in [the document served with] the defendant's notice under this summons.
9. The defendant serve upon the plaintiff within _____ days the further and better particulars of the defence specified in the document served herewith.
10. The plaintiff serve on the defendant within _____ days the further and better particulars of the reply specified in [the document served with] the defendant's notice under this summons.
11. The plaintiff give security for the defendant's costs to the satisfaction of the Registrar in the sum of _____ on ground(s) of _____ and that in the meantime all further proceedings be stayed.
12. The plaintiff within _____ days serve the defendant with a list of documents [and file an affidavit verifying such list] [limited to the documents relating to the—
[Special damage claimed]
[Plaintiff's industrial injury, industrial disablement, or sickness benefit rights]

[Period from _____ to _____]
[Issues raised in Paragraphs. _____ of the statement of
claim and Paras. _____ of the defence]
[issues of _____]]

13. The defendant within _____ days serve the plaintiff with a list of documents [and file an affidavit verifying such list] [limited to documents relating to the—
[period from _____ to _____]
[issues raised in Paragraphs. _____ of the statement of claim and Paras. _____ of the defence]
[issues of _____]]
14. There be inspection of documents within _____ days of the service of the lists [filing of the affidavits].
15. The plaintiff have leave to serve upon the defendant the interrogatories shown in the document served herewith, and that the defendant answer the interrogatories on affidavit within _____ days.
16. The defendant have leave to serve upon the plaintiff the interrogatories shown in the document served with the defendant's notice under this summons, and that the plaintiff answer the interrogatories on affidavit within _____ days.
17. The [plaintiff] [defendant] [retain and preserve, pending the trial of the action] [upon _____ days' notice give permission for inspection of the subject matter of the action, to the [defendant] [plaintiff] and to his legal advisors [and experts].
18. The statements in _____ be admissible in evidence at the trial without calling as a witness the maker of the statements [and, if a copy of that document certified by _____ to be a true copy is produced, without production of the original document].
19. An affidavit of _____ [in the form of the draft affidavit [served herewith] [with the defendant's notice under this summons]] [to be served within _____ days] be admissible in evidence at the trial.

20. Evidence of the following fact (s), namely, _____ be received at the trial by statement on oath of information and belief [by the production of the following documents or entries in books or copy documents or copy entries in books, namely, _____].
21. It be recorded that the parties [[plaintiff] [defendant] refuses to] admit for the purposes of this action that [_____] [the truth of the statements in the document served [herewith] [with the defendant's notice under this summons]].
22. _____, a witness on behalf of the [plaintiff] [defendant] may, upon _____ days' notice, be examined before [one of the examiners of the court] [a Registrar] [a special examiner to be agreed upon by the parties or appointed by the Registrar] and that the said witness need not attend at the trial.
23. A medial report be agreed, if possible, and that, if not, the medial evidence be limited to _____ witnesses for each party.
24. A report by [engineers] [surveyors] [expert _____] be agreed if possible, and that, if not, the expert evidence be limited to _____ witnesses for each party.
25. A plan of the *locus in quo* other than a sketch plan be receivable in evidence at the trial.
26. Photographs and a plan of the *locus in quo* be agreed, if possible.
27. By consent [the right of appeal be excluded] [any appeal be limited to the Court of Appeal] [any appeal be limited to questions of law only].
28. [*Space for any other directions*][*See attached check list*]
29. The suit be fixed before the trial judge for a scheduling conference within 45 days from issuance of summons for directions unless the time is otherwise extended.
30. The costs of this summons be costs in the cause.

Dated the _____ day of _____ 20 _____.

To the Defendant/Plaintiff(s) (As appropriate and to his (their) Advocate (s)

This summons was taken out by _____ of _____ Advocates for the Plaintiff/Defendant.

FORM 14B

Matters which may be Considered upon Summons for Directions (Order XIA, rule 2 and 7)

The following matters may be considered by court upon summons for directions—

- (a) consolidation of actions;
- (b) transfer to official referee and reference to official referee under sections 26 of the Judicature Act for investigation and report or reference to arbitration under section 27 of the Judicature Act and Order XLVII of the Civil Procedure Rules;
- (c) transfer to a Magistrates Court where the suit is partly settled and the pending matter falls within the pecuniary jurisdiction of a Magistrates Court;
- (d) amendment of pleadings;
- (e) further and better particulars;
- (f) discovery and inspection of documents;
- (g) interrogatories;
- (h) inspection or preservation of real or personal property;
- (i) evidence (for instance, whether affidavit evidence may be accepted without cross examination of the deponent) and (any other mode of taking and receiving evidence may, subject to the rules of court, be adopted);
- (j) admissions under Order XIII rule 6. Admission of documents as exhibits can be without prejudice and by agreement of the counsel applying the rule in **Bipin Shantilal Patel vs. State of Gujarat** (Supreme Court of India) namely; documentary exhibits are admitted tentatively without prejudice to addressing the issue of relevance and weight in the final judgment after final address by counsel;
- (k) taking of accounts;
- (l) attendance of witnesses;

- (m) stay of proceedings;
- (n) reference to arbitration under section 5 of the Arbitration and Conciliation Act, Cap.4;
- (o) security for costs;
- (p) attachment before judgment and all matters under Practice Direction No. 1 of 2002 which include but are not limited to—
 - (i) Order I—Parties to suits: rules 8, 14, 15 and 16;
 - (ii) Order V—Issue and service of summons: rules 1 (1) (b), (1a), 19 and 23;
 - (iii) Order XVI—Summoning and attendance of witnesses: rules 10, 11, 12 and 13;
 - (iv) Order XVII—Prosecution of suits and adjournments: rules 2 and 5;
 - (v) Order XXV—Withdrawal and adjustment of suits;
 - (vi) Order XXXIII—Suits by paupers;
 - (vii) Order XL—Attachment before judgment;
 - (viii) Order XLI—Temporary injunctions;
 - (ix) Order LI—Time: rule 6 on enlargement of time for matters in prescheduling conference; and
 - (x) Order LII—Motions and other applications.

SCHEDULE 2

Order XIA, rule 7(2)

GUIDELINES FOR SCHEDULING CONFERENCE

THE REPUBLIC OF UGANDA
**IN THE HIGH COURT OF UGANDA AT DIVISION
HCT-00-CC**

..... ***PLAINTIFF/S***

VERSUS

..... ***DEFENDANT/S***

SCHEDULING CONFERENCE/PRE-TRIAL DIRECTIONS

(These directions guide and give a framework for the production of a joint scheduling memorandum and trial bundle by counsel. The expected outcome of discussions between opposite counsel is a joint scheduling memorandum and a joint trial bundle to be filed in court before the date for holding a scheduling conference. Parties and their counsel are expected to attend the pre-trial conferencing scheduled on the date given. Costs may be ordered against a party who intentionally and with a view to delay or defeat the pre-trial, delays or does not cooperate in producing the necessary joint scheduling memo and trial bundle (if any) under these directions)

1. At least 7 days before the date agreed upon for a meeting between counsel of the parties/counsel shall exchange copies of or a list of all documents he/she intends to rely on at the trial of the suit and draft scheduling memos/proposals where applicable by email, telephone or other media as proposed points of agreement and disagreement under order 12 rule 2 of the Civil Procedure Rules. The communication should specify in writing the documents a party intends to rely on but not in their possession and documents he/she does not intend to contest.

2. The Advocates and/the Parties agree to meet on the ____ of _____ 20__ or to exchange drafts and discuss by electronic media with the expected outcome of the discussion being a joint conferencing memorandum following the broad outline written hereunder—

- (a) material facts of the suit which are agreed to or disclosed by the pleadings of both parties;
- (b) any other agreed additional and material facts;
- (c) summary of material facts in support of the plaintiff's case but not admitted by the defendant;
- (d) summary of material facts in support of the defendant's case but not admitted by the plaintiff;
- (e) list of documents relied on by the plaintiff and the Defendant respectively agreed to be exhibited in evidence without prejudice to objection on relevance or weight of evidence or any other just ground for the exclusion of evidence;
- (f) list of documents of plaintiff contested by the defendant and list of documents of defendant contested by the plaintiff;
- (g) list of witnesses of the plaintiff and defendant;
- (h) the agreed issues for trial;
- (i) any points of law or matters that may be resolved without adducing evidence;
- (j) any interlocutory matters to be resolved or agreed upon (i.e. temporary injunctions, stays of proceedings, execution etc);
- (k) estimated time for the trial;
- (l) whether interpreters are needed for which particular witness and in what language?; and
- (m) whether Alternative Dispute Resolution (ADR) is possible and the kind of ADR preferred (i.e. Mediation or Arbitration). Is there an agreement with an arbitration clause?

3. After the discussion in paragraph 2 each party to the suit shall produce a minimum of 5 copies of documents intended to be produced in

support of their case and hand them/it over to Counsel agreed upon who will file the joint trial bundle (Joint trial bundles may be in volumes i.e. Plaintiffs bundle and defendants bundle). More copies will be produced in cases where there is more than one plaintiff or defendant/counsel accordingly. These copies are intended to be used as follows: (1) Court copy, (2) Plaintiff's copy, (3) Defendant's copy, (4) Witness copy during trial and (5) an additional copy for court use at the trial.

4. The trial bundle/s and scheduling memorandum shall be filed in court at least 7 days before the pre-trial conference date. The joint trial bundle/s shall be indexed and page numbered and arranged as follows—
 - (a) index of items/table of contents;
 - (b) names and address of firms representing the parties;
 - (c) agreed facts disclosed by the pleadings of both parties;
 - (d) any other agreed additional facts;
 - (e) summary of relevant facts in support of the plaintiff's case contested by the defendant;
 - (f) summary of relevant facts in support of the defendant's case contested by the plaintiff;
 - (g) list of admitted documents relied on by the plaintiff and list of admitted documents relied on by the defendant. The list of documents arranged in a chronological order and marked as exhibits PE1 onwards and the admitted documents of the defendant arranged in a chronological order and marked as exhibit DE1 onwards;
 - (h) list of documents of plaintiff not admitted by the defendant and list of documents of defendant not admitted by the plaintiff. The list of Documents of the plaintiff not admitted marked as PID 1 – onwards and documents of the defendant not admitted marked as DID 1 onwards;

- (i) list of witnesses of the plaintiff and defendant;
- (j) the agreed issues for trial;
- (k) any points of law or matters that may be resolved without adducing evidence;
- (l) any interlocutory matters to be resolved or agreed upon (i.e. temporary injunctions, stays of proceedings, execution etc);
- (m) estimated time for the trial;
- (n) whether interpreters are needed and for which particular witness and in what language; and
- (o) whether ADR remains an option to be pursued and the kind of ADR.

WITNESS STATEMENTS

- (p) Whether witness statements are agreed to for adducing testimony in chief of witnesses. (NB Witnesses may be cross examined on their statements at the option of opposite counsel. Witness statements are not made before a commissioner for oaths but must be signed and the witness will tender it on oath in court after confirming their statement and its truthfulness). A written witness testimony is testimony taken in chambers and filed in court and served on the opposite counsel. Witness statements shall be filed on the same day scheduled by court by both sides and exchanged with opposite counsel on the date of filing. Witness statements will only be filed after the scheduling conference and will make reference to documents as marked. A witness statement shall be recorded in accordance with these directions—
 - (i) a witness statement shall contain the full name, address, age and occupation of the witness. The number of the statement;

- (ii) identifying initials of each exhibit referred to;
- (iii) whether the witness is a party to the proceedings or an employee of the party;
- (iv) whether the statement is made from the witness' own knowledge and the source of any matter of information. (A witness statement shall not include any matters of information or belief which are not admissible and where admissible, shall state the source of any matters of information or belief.);
- (v) any exhibits should be verified and identified and the witness statement shall sufficiently identify any documents to which the statement refers without repeating its contents unless it is necessary for identification of the document;
- (vi) a witness statement shall not contain lengthy quotations from documents nor engage in legal or other arguments;
- (vii) the statement shall be recorded as far as possible in the witnesses own words;
- (viii) a witness statement shall be numbered in paragraphs;
- (ix) the statement must be legible and typed on one side of the paper and must be bound in a manner that does not hamper filing;
- (x) a witness statement shall be dated and signed and he witness shall also sign on every page at the bottom;
- (xi) the witness statement shall contain a statement at the bottom as to whether he or she believes the statement of fact in it to be true.

5. Witness statements shall be evidence taken in chambers by counsel and follows the same rules for taking oral evidence in court. The documents should be proved in the statement.

6. At the pre-trial/scheduling conference each party may be requested to produce originals of documents not admitted by the opposite side.
7. At the pre-trial/scheduling conference the respective parties shall attend in person or through representatives with authority to make binding decisions in the suit. Where a party is a body corporate or Attorney General, a representative officer of the Corporation the Ministry Department or Organization with instructions shall attend.
8. The court shall on the of hold a pre-trial hearing/scheduling conference and may thereafter fix the suit for hearing

Issued this day of 20

Trial Judge/Registrar

BART.M.KATUREEBE

Chief Justice and Chairperson, Rules Committee

Cross Reference

The Judicature Act, Cap. 13

