

**CIVIL PROCEDURE CODE
OF THE STATE OF ERITREA**

2015

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CODIFICATION OF THE CIVIL PROCEDURE CODE OF THE STATE OF ERITREA

The Government of Eritrea mandated the Ministry of Justice to draft a Civil Procedure Code for the State of Eritrea. The Ministry, to which the drafting of legal codes is entrusted under Article 2(4)(5) of Legal Notice 14/1993, commenced the drafting process by assembling a team of international experts in the field of civil procedure to work in tandem with a national Law Reform Committee composed of Eritrean legal professionals. The Law Reform Committee was instructed to prepare a draft code that was concise, accessible and consistent with the values and aspirations of the Eritrean people. Countless meetings, correspondences, and studies of both customary law and practice in Eritrea and the experience of other nations culminated in the production of a preliminary draft Civil Procedure Code. Following the submission of the draft, the Ministry of Justice convened the principal stakeholders in order to solicit comments and suggestions on the draft document. This was followed up with a series of meetings involving judges, public prosecutors, attorneys, law lecturers and other legal professionals before being presented for discussion and input at various consultative meetings.

From the inception stage of the drafting process up to this final form, relentless and continuous efforts have been exerted to ensure that the mechanism for handling civil disputes is just, orderly and efficient. It is in the interest of the society in general and the parties to a dispute in particular to see that their cases are disposed of without unnecessary delay. The *Civil Procedure Code of the State of Eritrea*, therefore, aims at achieving uniformity, predictability and certainty in the administration of justice.

Fawzia Hashim
Minister of Justice
Asmara, Eritrea
15 May 2015

PRELUDE

The *Civil Procedure Code of the State of Eritrea* provides the mechanism by which persons access courts for the proper determination and enforcement of their rights and duties. It regulates the process courts should follow in adjudicating civil and commercial disputes.

The Code, as a means to reach substantive justice, incorporates rules and principles with the end of ensuring both substantive and procedural justice in the judicial process. To this end, this Code provides equal and fair treatment of parties to a dispute by putting in place provisions which afford reasonable and equal opportunities at every stage of the process. It aims to govern the litigation process to an extent which leaves little or no room for any arbitrariness in exercising judicial discretion thereby ensuring fairness and justice.

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PREAMBLE

WHEREAS the proper determination of rights and duties requires the existence of well-defined rules of procedure which regulate the litigation process;

WHEREAS the issuance of procedural law that meets the demands and standards of justice is indispensable;

WHEREAS the issuance of procedural law is desirable to ensure fair and uniform determination of rights and duties; and

WHEREAS the determination of rights and duties as provided in substantive law is dependent upon and rendered useless unless the rules of civil procedure put in place are effective, efficient, cost-effective and user friendly;

NOW, THEREFORE, it is issued as follows.

CIVIL PROCEDURE CODE OF THE STATE OF ERITREA

BOOK I - PRELIMINARY MATTERS

TITLE I - BASIC PROVISIONS

Art. 1. - Application.

- (1) This Code may be cited as the *Civil Procedure Code of the State of Eritrea* and shall come into force on the date of its publication in the Gazette of Eritrean Laws.
- (2) The *Civil Procedure Code of the State of Eritrea* shall apply to all proceedings in civil and commercial disputes within the jurisdiction of the Community Courts, Regional Courts, High Court, and Supreme Court.

Art. 2. - Interpretation.

- (1) In this Code, unless the context requires otherwise,
 - (a) “**affidavit**” means a statement of facts in writing lawfully sworn or affirmed as true by the affiant;
 - (b) “**concurring opinion**” means a separate opinion that expresses agreement with another opinion but for a different reason;
 - (c) “**court**” means a court established by law;
 - (d) “**decree**” means the formal expression of any preliminary or final adjudication that, 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;

- (e) “**decree-holder**” means any person in whose favor a decree has been made or passed, or an order capable of execution has been made, and shall include the transferee of a decree;
- (f) “**execution officer**” means any judge, officer of any court or any other person authorized by law to execute judgments;
- (g) “**foreign court**” means a court outside Eritrea;
- (h) “**foreign judgment**” means the judgment of a foreign court;
- (i) “**government pleader**” includes:
 - (i) any officer appointed by the government to perform all or any of the functions imposed by this Code on the government pleader; and
 - (ii) any pleader acting under the directions of the government pleader;
- (j) “**judgment**” means the statement given by a court that expresses the court’s determination of an issue and, for greater certainty, includes any decision, decree or order of the court;

- (k) “**judgment-debtor**” means any person against whom a judgment has been passed or an order capable of execution has been made;
- (l) “**law**” includes proclamations, decrees, orders and any subsidiary legislation made thereunder;
- (m) “**legal representative**” means any person who in law represents a person under disability or the estate of a deceased person;
- (n) “**mesne profits**” of property means 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;
- (o) “**order**” means the formal expression of any decision of a court that is not a decree;
- (p) “**person under disability**” means any person who is not capable under the law;
- (q) “**pleader**” means an advocate and shall include any person authorized to appear and plead for someone else;
- (r) “**prescribed**” means prescribed by regulations under this Code;
- (s) “**process**” means any judicial writ or order issued at the beginning or during the course of the proceedings;

(t) “**registrar**” means the registrar or assistant registrar of a court and includes any clerk of court assigned by the registrar to carry out all or part of the duties of a registrar;

(u) “**share in a share company or corporation**” includes stock, debenture stock, debentures or bonds.

(2) Unless otherwise required by context, terms in male gender include the female gender and *vice versa*.

Art. 3. - Objective.

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

Art. 4. - Access to Justice.

The provisions of this Code shall not detract from the right of every person to have access to a court for the protection and enforcement of his rights.

Art. 5. - Independence and Impartiality of the Judge.

Judges shall be independent and impartial in the exercise of their functions and shall submit to no authority other than that of the Constitution and the law.

Art. 6. - Equality before the Court.

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 race, nationality, language,

sex, ethnic origin, color, property, official position, social or economic status, place of residence, religion, political belief or opinions.

Art. 7. - 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 by the submission of admissible evidence and argument;
 - (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; and
 - (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 Tigrigna, it shall be interpreted by an official interpreter or by any other person the court may appoint for that purpose, and any person so appointed shall before interpreting the evidence take the oath or affirmation in the form provided for by law.
- (4) The court shall ensure that no decision is taken until the requirements of the right of each party to be heard are fully met.

Art. 8. - Public Hearing.

- (1) The general rule is that all court hearings are held in public.
- (2) The public nature of the court hearings does not require the court to make special arrangements for accommodating the public.
- (3) The court, on its own motion or at the request of the parties, may order a hearing, or any part of it, to be conducted *in camera* if it is satisfied that:
 - (a) publicity would defeat the object of the hearing;
 - (b) the hearing concerns the national security of Eritrea;
 - (c) confidential information is involved and publicity would damage that confidentiality;
 - (d) a hearing *in camera* is necessary to protect the privacy of the parties or of other persons, such as children and patients;
 - (e) the court considers this to be necessary in the interests of public order or the administration of justice.
- (4) The hearing, or any part of it that is held *in camera*, shall be conducted in compliance with this Code.

Art. 9. - Settlements.

For the purpose of reaching a settlement between the parties, the court may require at any stage of the proceedings 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 or the corporate body who has the authority to bind the party to a settlement.

Art. 10. - Reasonable Time.

- (1) The court shall ensure that, so far as is practicable and in harmony with the requirement of doing justice, each case is dealt with expeditiously. Upon request or on its own motion the court shall order a party to abstain from causing unreasonable delay. A party who fails to comply with the orders of the court in this respect may be held in contempt of court or subject to other sanctions, such as the preclusion of the belated arguments.
- (2) The court shall give judgment within a reasonable time.

Art. 11. - Majority Vote in Full Court.

- (1) The issues in a case being considered in full court shall be resolved by a majority. No judge may abstain.
- (2) The judge who disagrees with the decision of another judge sitting in the same case may write and file a dissenting or concurring opinion and it shall be released at the same time as the reasons of the majority.

Art. 12. - Delegation.

Where this Code, a judgment, decree or order of the court requires or permits the court to perform an act of a formal or administrative character, the court may delegate to a court officer the authority to perform that act. The court officer may consult the presiding judge before performing the act.

Art. 13. - Recusal.

- (1) Upon motion by any party involved in the case, or upon his own motion, any judge scheduled to hear matters at the pretrial, trial or appeal stages of a case shall recuse himself in any proceedings where:
 - (a) he has a personal interest;
 - (b) he is a relative of any person involved;
 - (c) he has had prior substantial involvement in the case; or
 - (d) for any other reason his independence or impartiality in the proceeding might reasonably be called into question.
- (2) If a judge decides not to recuse himself in accordance with this Article, that decision is subject to immediate appeal, before the continuation of the proceedings, to the court that would hear an appeal of the case after judgment. In the case where the judge is a Justice of the Supreme Court, the appeal shall be heard by other Justices of the Supreme Court.

Art. 14. - Attorney General.

When he has reason to believe that the public interest is affected, the Attorney General may intervene in any suit at any stage of the proceedings.

TITLE II - TIME

Art. 15. - Fixing and Calculating Time Limits.

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

Art. 16. - Meaning of 'Year', 'Month' and 'Day'.

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

Art. 17. - 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 the corresponding month.
- (2) The procedural act may be performed until twenty-four hours of the last day of the period of time.

Art. 18. - 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 is not included and the day on which the period ends is included.

- (3) A specified period of five 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, seven days shall be added to the prescribed period.

Art. 19. - 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. 20. - Extension of Time Limit.

Unless otherwise expressly provided, a period of time fixed by law may not be shortened or extended. Nevertheless an extension may be granted by the court in its discretion

- (a) if a request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

- (b) if a request is made after the expiration of the specified period and the failure to act was excusable.

Art. 21. - Lateness.

Without prejudice to the provisions of Article 22, 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. 22. - Fresh Time Limit.

- (1) Anything that ought to have been done, 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 this Article unless the applicant satisfies the court that he was prevented from observing the time limit by:
 - (a) circumstances of *force majeure*, or other compelling reasons; and
 - (b) the application is made within fifteen days from the moment those events no longer 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 to *force majeure*.

Art. 23. - The Court May Grant Time and Adjourn Hearing.

- (1) At any time, if sufficient cause is shown by the applicant, the court may grant time to the parties

or to any of them and adjourn the hearing of the suit for such time as is necessary.

- (2) The hearing shall be adjourned where the making of the decision is conditional upon the completion of other civil or criminal proceedings.
- (3) On adjourning the hearing the court shall fix a day for continuation 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 begun, the hearing of the suit shall, as far as possible, be continued from day to day until all witnesses have been examined and cross-examined.
- (4) No adjournment shall be granted when any of the pleaders of the parties fails to appear without prior notice within a reasonable time.
- (5) Where a hearing has been adjourned *sine die*, the court shall issue new summonses to the parties and the witnesses.

Art. 24. - Effect of Adjournment.

- (1) On adjourning the hearing, the court shall make such order as is necessary to ensure that 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 remains dormant for a period of two years.

Art. 25. - Purpose of Adjournment Not Carried Out.

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

TITLE III - FOREIGN LAW

Art. 26. - Principle.

Where foreign substantive law is applicable, the court shall determine the existence and contents of such foreign law in conformity with its interpretation and application in the corresponding foreign jurisdiction.

Art. 27. - Relevant Materials.

To determine foreign law as accurately and reliably as possible, the court may consider any relevant materials or sources, including testimony, whether or not submitted by a party or admissible under the rules of evidence.

Art. 28. - Assistance.

For the purposes of determining substantive foreign law, the court may invoke:

- (a) the assistance of the authoritative bodies of the State of Eritrea and of the foreign jurisdiction concerned;

- (b) the assistance of the parties; or
- (c) the services of experts.

Art. 29. - Additional Measures.

If the existence or the contents of the substantive foreign law cannot be determined, Eritrean law shall apply unless, within the restrictions of Eritrean private international law, the parties express their choice for another ascertainable foreign law or for International Uniform Private Law Provisions or for certain General Principles of Private Law.

TITLE IV - PENDENCY, PRIORITY AND *RES JUDICATA*

Art. 30. - Pendency.

- (1) No court shall try any suit where the matter in issue was or is also at issue in a previously instituted civil suit between the same parties, or between parties under whom they or any of them may claim, litigating under the same title, where such suit is pending in any court in Eritrea having jurisdiction in the matter.
- (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 expected that the foreign court will render a decision recognizable in the State of Eritrea within a reasonable time.

Art. 31. - Priority.

- (1) A civil suit may not be instituted in more than one court.

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

Art. 32. - 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 that might and ought to have been made a ground of defense 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 that has not been expressly granted by the judgment 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.

BOOK II - CIVIL PROCEDURE IN GENERAL

TITLE I - JURISDICTION

Chapter 1. - International Jurisdiction

Art. 33. - 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 defined by this Chapter.

Art. 34. - Defendant's Forum.

- (1) Unless otherwise provided by specific provisions of Eritrean law, jurisdiction lies with the Eritrean courts if the defendant has his habitual residence in the State of Eritrea.
- (2) When the defendant is a company or other legal person, jurisdiction lies with the Eritrean courts if the defendant has its principal seat of business, or otherwise carries on business, in the State of Eritrea. The principal seat of business shall be the location of the head office as designated in its articles of association, unless it is shown that the principal seat of its business is elsewhere.

Art. 35. - Jurisdiction by Agreement.

- (1) If the parties have agreed that the courts 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, the Eritrean courts shall have exclusive jurisdiction.

- (2) If the parties have agreed that a foreign court shall have jurisdiction to settle any dispute that 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 that renders information accessible so as to be usable for subsequent reference;
 - (c) in accordance with a usage which is regularly observed by the parties; or
 - (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 under this Chapter, an agreement conferring jurisdiction on a court shall have legal force only if it is entered into after the dispute has arisen.
- (5) An agreement as to jurisdiction shall be considered as a contract in itself, and a court may determine the validity of the agreement separately from the determination of any other issues.

Art. 36. - Contest or Acceptance of Jurisdiction by Defendant.

- (1) An Eritrean court may exercise jurisdiction if the defendant proceeds on the merits without contesting jurisdiction.
- (2) The defendant has the right to contest jurisdiction no later than the time of offering the first written defense on the merits according to this Code.

Art. 37. - Jurisdiction in Particular Matters.

A plaintiff may also bring an action in an Eritrean court in cases relating to the following:

- (1) a contract for the supply of goods, if Eritrea is the place where the goods were supplied, or ought to be supplied, in whole or in part;
- (2) a contract for the provision of services, if Eritrea is the place where the services were provided, or ought to be provided, in whole or in part;
- (3) 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 place, or ought to take place, in whole or in part;
- (4) 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;

- (5) an individual contract of employment, if Eritrea is the place where the employee habitually carries out his work;
- (6) a tort or delict, if Eritrea is the place where the harmful event occurred or threatens to occur;
- (7) real rights in immovable property or tenancies of immovable property, if Eritrea is the place in which the immovable property is situated.

Art. 38. - 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. 39. - Multiplicity of Defendants.

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

Art. 40. - Counter-Claims.

An Eritrean court before which an original claim is pending shall also have jurisdiction over any accessory claim and a counterclaim, and also over any action on a warranty or guarantee connected with the original claim, or in any other third party proceedings connected with the original claim.

Art. 41. - *Forum Necessitatis*.

If the law of the State of Eritrea does not otherwise provide for international jurisdiction in Eritrea in a particular matter, and proceedings abroad are impossible or would be unreasonable,

international jurisdiction may lie with the Eritrean courts if the case is sufficiently linked with the Eritrean legal sphere to make adjudication in the Eritrean courts just and reasonable.

Art. 42. - Provisional and Protective Measures.

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

Chapter 2. - National and Material Jurisdiction

Art. 43. - Principle.

- (1) Every suit shall be tried by a court competent to try it under the provisions of this Chapter, and shall, unless otherwise provided, be instituted in the court of the lowest level competent to try it.
- (2) Every appeal shall be heard by the court competent to hear it under the provisions of this Code.

Art. 44. - Jurisdiction of Community Courts.

Unless expressly provided otherwise, *Community Courts* shall have jurisdiction to try all suits:

- (1) not regarding immovable property, where the amount involved does not exceed 100,000 Nakfas; and
- (2) regarding immovable property, where the amount involved does not exceed 150,000 Nakfas.

Art. 45. - Jurisdiction of Regional Courts.

Unless expressly provided otherwise, Regional Courts shall have jurisdiction to try all suits:

- (1) not regarding immovable property, where the amount involved is between 100,001 and 500,000 Nakfas; and
- (2) regarding immovable property, where the amount involved is between 150,001 and 1,000,000 Nakfas.

Art. 46. - Jurisdiction of High Court.

- (1) The High Court shall have jurisdiction to try all suits:
 - (a) not regarding immovable property, where the amount involved exceeds 500,000 Nakfas; and
 - (b) regarding immovable property, where the amount involved exceeds 1,000,000 Nakfas.
- (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) trademarks, patents and copyright;
 - (e) expropriation and property;

- (f) the liability of public servants for acts done in the discharge of their official duties; and
 - (g) nationality.
- (3) In all cases the High Court shall decide applications for the enforcement of foreign judgments and arbitral awards.

Art. 47. - Pecuniary Jurisdiction.

- (1) A court shall have pecuniary jurisdiction when the amount or value of the subject matter of the suit is, on the day of the institution of the suit, within the limitations for that court as set out in this Chapter.
- (2) In determining whether it has pecuniary jurisdiction, the court shall look to the amount stated in the statement of claim.
- (3) Where a suit has been instituted in a court competent under the provisions of this Chapter, such court shall remain competent notwithstanding that the amount or value of the subject matter of the suit increases or is reduced due to changes in economic circumstances.
- (4) 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, on its own motion, may order the transfer of the suit to such subordinate court as has pecuniary jurisdiction with regard to the remaining amount.

Art. 48. - Multiple Claims.

- (1) Where one or more plaintiffs have joined 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 Article 107, be based on the amount or value of the aggregate claims.
- (2) Where several claims are made in the same suit, some of which are principals and some accessories, or where alternative claims are made in the suit, the jurisdiction of the court shall depend on the amount or value of the highest principal claim.
- (3) Where a counter-claim is made, the jurisdiction of the court shall depend on the amount or value of the highest 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 refer the case to the competent court.

Art. 49. - Non-monetary Claims.

Unless expressly provided otherwise, where the subject matter of a suit cannot be expressed in money, such suit shall be tried by the Regional Court having local jurisdiction.

Chapter 3. - National and Local Jurisdiction

Art. 50. - Principle.

- (1) Except as provided in this Chapter or under other specific provisions of law, every suit shall be instituted in the court of the place where the

defendant is a habitual resident, 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, carries on business, or personally works for gain.

Art. 51. - 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 Eritrea as the plaintiff may choose, unless it relates to immovable property which the defendant owns in Eritrea, in which case the suit be instituted in the court of the place where such property is located.
- (2) Where the defendant is a foreigner not residing, carrying on business or personally working for gain in Eritrea, but the defendant owns movable or immovable property in Eritrea, the suit may be instituted in the court of the place where such property is located.

Art. 52. - 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:

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

Art. 53. - Suits against a Body Corporate.

- (1) Suits against a business organization shall be instituted in the court of the place where the head office is located, or the place where the branch against which the suit is made is located.
- (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 when such association committee, trust or endowment is required 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.

Art. 54. - 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. 55. - Suits Regarding Contracts.

- (1) Suits regarding contracts may in the discretion of the plaintiff be instituted in the court of the place where the contract was concluded or the place it 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 the Maritime Code or the Commercial Code prescribed in such matters.

- (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 in the place where the insured object is located.
- (4) Suits regarding a 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 located.

Art. 56. - Suits Regarding Immovable Property.

- (1) Unless expressly provided otherwise, 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 damage to immovable property;

shall be instituted in the court of the place where such property is situated.

- (2) In a suit to obtain relief regarding, or compensation for, damage to immovable property held by or on behalf of the defendant, when the relief sought can be entirely obtained through the defendant's personal obedience, such suit may be instituted either in the court of the place where such property is located or in the place where the defendant resides.

Art. 57. - Immovable Property Located Within the 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 that it is unclear within which court's local jurisdiction 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 may 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. 58. - Suits Regarding a Wrong to Persons or Movables.

- (1) Suits for compensation for damages to persons or to movable property may be instituted in the court of the place where such damages were done, or in accordance with the provisions of Article 50.
- (2) Suits regarding collisions at sea shall be instituted in accordance with the provisions of the Maritime Code.

Art. 59. - 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 such cause of action.

Art. 60. - 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. 61. - Change of Venue.

- (1) Whenever it is made to appear to the High Court, at any time before judgment, upon application of either party that:
 - (a) a fair and impartial trial cannot be held in any court subordinate thereto;
 - (b) a 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, that the suit be tried by any Court not otherwise empowered under the provisions this Chapter to try it, but having subject matter jurisdiction to try it, or may order that it 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 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.

Chapter 4. - Disputing Jurisdiction

Art. 62. - Choice of Court.

- (1) When the parties have agreed that a court other than the legally competent court shall have local jurisdiction to settle the dispute that has arisen or possibly will arise between them, the chosen court shall have exclusive jurisdiction, provided that one of the parties invokes the agreement.
- (2) Sub-Article (1) does not apply where one of the parties to the agreement is a natural person not acting in the course of his business or profession.
- (3) An agreement that a court other than the legally competent court shall have subject matter jurisdiction is not valid if the claim exceeds 500 Nakfas, 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; and
 - (b) the agreement to choose another than the legally competent court is concluded after the dispute has arisen.
- (4) A jurisdiction agreement shall be proved 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.
- (6) Nothing in this Article shall be interpreted to permit the parties to agree to a change in subject matter jurisdiction of the courts as prescribed by law and, for greater certainty, the parties may agree only as to the place in which the proceedings will be heard.

TITLE II - PARTIES

Chapter 1. - General Provisions

Art. 63. - Scope of Application.

- (1) The provisions of this Chapter apply to any proceedings under this Code.
- (2) In applying the provisions of this Chapter to appeals, the words “appellant” and “respondent” include “plaintiff” and “defendant” as appropriate.

Art. 64. - Qualifications.

- (1) Any person who is legally capable may be party to a suit.
- (2) No person may be a plaintiff unless he has a sufficient interest in the subject matter of the suit.
- (3) No person may be a defendant unless the plaintiff alleges some claim against him.
- (4) The rules of this Article do not limit in any way the joinder of parties as permitted under this Code.

Art. 65. - 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 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 suit 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 so directs.

Art. 66. - 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, if the court is satisfied 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 sub-Article (1) may apply to the court to be made a party to such suit.

Art. 67. - 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 in which such persons were partners at the time of the occurrence of 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. 68. - 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 this Article, 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 this Article, 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. 69. - Suing Person Carrying on Business in a Name Other Than His Own.

Any person carrying on business in a name other than his own name may be sued in such name as if it were a firm name. Any provision in this Code that 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. 70. - Suits between Partners.

Any provision in this Code that 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.

Chapter 2 - Agents, Pleaders and Interpreters

Art. 71. - Principle.

Any act required or permitted to be done by a party in a court may be done by the party in person or by a legal representative, agent or pleader that is able to answer any material questions relating to the suit.

Art. 72. - Agents in General.

Agents acting on behalf of a party are:

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

Art. 73. - Pleaders.

- (1) 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 authorized by law to make such appointment.

- (2) The authority described in this Article, or a copy thereof, shall be filed together with the pleadings in the suit and shall remain in force until terminated with the leave of the court by a writing signed and filed by the client or the pleader, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.
- (3) For the purposes of sub-Article (2) any application or appeal made in connection with a suit shall be deemed to be proceedings in the suit.

Art. 74. - Persons Authorized to Act for Government.

Persons authorized to act for the Government with respect to any judicial proceeding shall be deemed to be agents by whom any act under this Code may be done on behalf of the Government.

Art. 75. - Suits against Public Servants.

- (1) Where the Government undertakes the defense of a suit against a public servant, the government pleader, upon being authorized to act shall apply to the court and upon such application the court shall cause a note of his authorization to be entered in the record.
- (2) Where no application under sub-Article (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. 76. - Agent of Member of Armed Forces.

- (1) A member of the Armed Forces who is a party to a suit, and cannot obtain leave for the purpose of prosecuting or defending the suit in person, may authorize another person to act on his behalf.
- (2) The authorization 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 authorization shall be countersigned by such commanding or other officer and filed with the court and, when so filed, the counter-signature shall be sufficient proof that the authorization was duly executed, and that the party giving it could not obtain leave of absence for the purpose of acting in person.
- (4) Any person authorized under sub-Article (1) may conduct the suit in person or appoint a pleader to prosecute or defend the suit.

Art. 77. - Agent of Prisoner.

- (1) A prisoner who is a party to a suit, and cannot obtain leave to conduct the suit in person, may authorize any person to act in his place.
- (2) The authorization shall be in writing and shall be signed by the prisoner giving it in the presence of

the superintendent who shall countersign the authorization, which shall be filed with the court.

- (3) Sub-Articles 76 (3) and (4) shall apply to authorizations given under this Article.

Art. 78. - 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. 79. - Interpreter.

- (1) Where necessary, the court may appoint an interpreter to make a translation on behalf of a party and before commencing a translation, the interpreter shall take the oath or affirmation.
- (2) The parties may suggest to the court the names of interpreters, but no party may be appointed as an interpreter even if he possesses sufficient knowledge of the language necessary for the translation.
- (3) The interpreter is obliged to translate fully, correctly and promptly, and he may ask questions to clarify or assist the translation.

Chapter 3. - Multiplicity of Parties and Claims

Art. 80. - Joinder of Causes of Action.

- (1) Unless otherwise provided a plaintiff may join in the same suit several causes of action against the same defendant or defendants.
- (2) Any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may join such causes of action in the same suit.

Art. 81. - 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; or
- (c) claims in which the relief sought is based on the same cause of action.

Art. 82. - Claims by or Against Executor, Administrator, Trustee or Heir.

No claim by or against a person acting as an executor, administrator, trustee or heir 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 he is executor, administrator, trustee or heir.

Art. 83. - Joinder of Plaintiffs.

All persons who claim relief in respect of 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 suits, a common question of law or fact would arise.

Art. 84. - Joinder of Defendants.

- (1) All persons against whom relief is sought, whether jointly, severally or in the alternative, may be joined as defendants where, if separate suits were brought against such persons, a 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 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.
- (5) It shall not be necessary that every defendant be interested as to all the relief claimed in any suit against him.

Art. 85. - 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 might 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.
- (2) 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.
- (3) A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in sub-Article (1) who are not joined, and the reasons why they are not joined.

Art. 86. - Judgment for or Against One or More Parties.

Notwithstanding Article 91, judgment may be given:

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

Art. 87. - 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 of defense 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 defense 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. 88. - Misjoinder and Non-joinder.

- (1) No suit shall be defeated by reason only of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in dispute so far as regards the rights and interests of the parties actually before it.
- (2) Any objection on the ground of misjoinder or non-joinder 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 arises thereafter. Any objection not so raised shall be deemed to have been waived.

Art. 89. - Intervention of Third Party.

- (1) Any person sufficiently interested in a suit between other parties may intervene therein at any time before judgment. The intervention is allowed whenever it is based on a 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 disposition of the action might 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 defense 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 intervention.

Art. 90. - 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, on its own motion or on the application of either party, order a consolidation of such proceedings 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 proceedings be consolidated.
- (3) An application under sub-Article (2) shall be made to the High Court, where the proceedings are pending in courts which are all subordinate thereto, or to the Supreme Court when one or more of the courts in which the proceedings are pending is a division of the High Court on circuit.

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

Art. 91. - Separate Trials.

When more than one cause of action is presented in a suit, or when multiple parties are involved, the court may order separate trials whenever it appears that the claims cannot be tried or disposed of together without unnecessary cost, delay, prejudice or inconvenience.

Art. 92. - Group Action and Public Action.

Group action or public action concerning unfair standard terms may be instituted pursuant to provisions of the Civil Code for such suits.

Chapter 4. - Substitution, Addition and Succession

Art. 93. - Substitution and Addition of Parties.

- (1) Where the court is satisfied that a suit appears to have been instituted in the name of a wrong person as plaintiff, it may order at any time that another person be substituted or added as plaintiff on such terms as it shall fix.
- (2) At any time, on its own motion or on the application of either party and on such terms as it shall fix, the court may order that the name of any party wrongly joined in the suit be struck out and that there be added the name of any person who ought to have been joined as plaintiff or defendant, but no person shall be added as plaintiff or

defendant under this sub-Article without his consent.

- (3) Where a plaintiff or defendant is added, the statement of claim and, if already filed in the court, the statement of defense 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 deems fit, on the original plaintiff or defendant.

Art. 94. - 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 a legal representative.
- (2) All acts undertaken before the legal representative enters the suit shall bind him to the extent that they would have bound the party itself.
- (3) If within one year after the loss of capacity, no application is made under sub-Article (1), the suit shall be abated as far as that party is concerned and the court may award to him the costs that he may have incurred.

Art. 95. - Substitution.

- (1) When an agent, pleader or legal representative for any reason is no longer able or authorized to act on behalf of the party, the party may substitute another for him.
- (2) On its own motion, the court may order at any time the substitution of an agent, pleader, interpreter or legal representative if that person misbehaves before the court or acts improperly on

behalf of the party. In case of the substitution of an agent, the court must receive the consent of the concerned party.

Art. 96. - 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 terminates the legal relationship that is disputed in court, upon application the court shall substitute for this party its legal successor, indicating this in its judgment in the case. Such succession is permissible at any stage of the proceedings.
- (2) All actions performed in the process before the legal successor enters the suit shall be binding upon him to the extent that they would have bound the substituted party.
- (3) If within one year after the death of a party, no application is made under sub-Article (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. 97. - 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 during 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 sub-Article (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. 98. - Questions as to Legal Representatives.

The court shall determine whether any person is the legal representative of a person who lost his capacity to be a party to the suit and the court may appoint an administrator *ad litem* to represent the estate.

Art. 99. - Death or Loss of Capacity after Hearing.

There shall be no abatement by reason of incapacity to be a party between the conclusion of the hearing and the pronouncement of judgment and judgment shall have the same force and effect as if it had been pronounced before the loss of capacity occurred.

Art. 100. - Insolvency.

- (1) The insolvency of a party in any suit which the assignee or receiver might continue 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.
- (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 on the ground of the party's insolvency, and the court may issue an order dismissing the suit and awarding to the opposite party the cost which he has incurred to be recovered from the party's estate.

- (3) Nothing in this Article shall apply to proceedings in execution of a judgment, decree or order.

Art. 101. - Effect of Abatement or Dismissal.

- (1) Where a suit abates or is dismissed under the provisions of this Chapter, no new suit may be brought on the same cause of action.
- (2) A legal representative or a legal successor or the assignee or the receiver in the case of an insolvent party, may apply for an order to set aside the abatement or dismissal within six months from the date of the abatement or dismissal.
- (3) Where it is proved that the applicant was prevented for any sufficient reason from continuing the suit, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it deems fit.

Chapter 5. - Appearance of Parties, Failure to Appear, Judgment by Default and Opposition

Art. 102. - Appearance Need not be in Person.

- (1) Any act in any court need not be done by a party in person but may be done in accordance with this Title unless the court directs that it is essential for the proper determination of the suit that the act be done personally by the party.
- (2) The absence of any party during the performance of duties assigned by the court to any person, such as a commissioner, local investigator, expert or any officer executing an order of court shall not preclude such person from performing his duties.

Art. 103. - Appearance of One of Several Plaintiffs or Defendants.

Any one of two or more plaintiffs or defendants may be authorized by any other of them to act for another in any suit and such authorization shall be in writing, signed by the party giving it and filed in the case.

Art. 104. - 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 upon a person having the control or management of the partnership, 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. 105. - Power to Require Appearance of Certain Persons.

- (1) At any stage of the suit the court may require the personal appearance of the secretary or any director or other principal officer of a body corporate who is able to answer material questions relating to the suit.
- (2) In any case in which the government pleader is not accompanied by any person on the part of the Government who may be able to answer material

questions relating to the suit, the court may also require the attendance of such a person.

Art. 106. - Parties to Appear at Hearing; Neither Party Appears.

- (1) On the day fixed for the hearing of the case, the parties shall attend court in person or by their respective agents or pleaders and the suit shall then be heard.
- (2) Where neither party appears when the suit is called for hearing, the court shall issue an order that the suit be struck out, in case of appeal, that the appeal is dismissed.
- (3) The provisions of sub-Article (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. 107. - Defendant Fails to Appear.

- (1) When the plaintiff appears and the defendant does not appear when the suit is called 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; and

(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 fault, 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.

(2) No order for the striking out of the suit or the dismissal of the appeal under sub-Article (1)(d) shall be issued 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 for hearing.

Art. 108. - Effect of Striking.

(1) Where a suit is struck out under Articles 106 (2) and 107(1) (d), the plaintiff may bring a new suit on payment of full court fees.

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

Art. 109. - Subsequent Appearance of 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. 110. - Plaintiff Fails to Appear.

Where the defendant appears and the plaintiff does not appear when the suit is called for hearing, the court shall issue an order to dismiss the suit, unless the defendant admits the claim or part thereof, in which case the court shall enter a judgment 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. 111. - Effect of Dismissal.

- (1) Where a suit is wholly or partly dismissed under Article 110, or an appeal is dismissed under Articles 106(2), 107(1) (d) and 110, the plaintiff shall be precluded from bringing a new suit in respect of the same cause of action.
- (2) Nothing in sub-Article (1) shall prevent the 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 issue an order setting aside the dismissal upon such terms as to costs or otherwise as it deems fit, and shall appoint a day for proceeding with the suit.
- (3) No order shall be issued under sub-Article (2) unless notice of the application has been served upon the opposite party.

Art. 112. - Several Parties Failing to Appear.

- (1) Where there is a failure to appear by one or more of several plaintiffs, 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 issue such order as it deems 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, issue such order as it deems fit with respect to the defendants who did not appear.

Art. 113. - Third Party Failing to Appear.

- (1) Where a third party duly summoned to appear 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 judgment issued 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 judgment is ordered against the defendant, the defendant shall be entitled, after satisfying such judgment or, on the granting of an application to this effect, before satisfying such judgment, to judgment against the third party to the extent of the contribution or warranty claimed by the defendant.

Art. 114. - Party Failing to Appear in Person.

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

Art. 115. - Opposing a Default Judgment.

- (1) Within one month after the day when he became aware of a judgment by default given under this Chapter, or after the day on which this judgment

has been served upon him in person, whichever is later, any defendant may apply to the court by which the judgment was rendered for an order to reply.

- (2) The application to oppose the default judgment shall be served upon the original plaintiff who shall have the right to reply.
- (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 for hearing or for filing his defense or reply, the court shall issue an order to grant the opposition against the default judgment upon such terms as to costs, payment into court or otherwise as it deems fit, and shall appoint a day for proceeding with the suit. When the judgment is such that it cannot be set aside against such defendant only, it may be set aside against all or any of the other defendants also.
- (4) That the applicant was absent at the time when the default judgment was entered is not sufficient cause within the meaning of the preceding sub-Article.
- (5) Upon resumption of proceedings after the opposition has been granted, the application to oppose the default judgment shall be considered as the equivalent of a statement of defense.
- (6) As from the moment the application to oppose the default judgment has been filed with the court, and has been duly served upon the original plaintiff, the execution of the default judgment is stayed.
- (7) Sub-Articles (1) to (6) also apply to default judgments on appeal.

BOOK III - SERVICE, PLEADINGS AND EVIDENCE

TITLE I - SERVICE

Chapter 1. - Issue and Service of Summons on Defendant

Art. 116. - Issue of Summons.

- (1) When a suit has been duly instituted in accordance with this Book, a summons shall, unless otherwise provided, be issued to the defendant to appear and answer the claim on a day specified therein. 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 defense.
- (3) The summons shall inform the defendant that the case will proceed on the basis of the statement of claim if he does not appear or if he appears without his statement of defense.
- (4) Every summons shall be in the form prescribed by law and shall be signed by or on behalf of a judge or the registrar and bear the seal of the court.

Art. 117. - Modes of Service.

- (1) Unless otherwise provided, the summons will be served on the defendant by the court and the court may authorize any person, hereinafter referred to as the serving officer, to do this on its behalf.
- (2) The court may order service by any means, provided that such means 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. 118. – Service on Body Corporate and Partners.

- (1) The summons is served in person on a body corporate:
 - (a) by leaving it with the secretary or with any director or other principal officer of the body corporate; or
 - (b) by leaving it or sending it by post addressed to the body corporate at its registered office or, if there is no registered office, at the place where the body corporate carries out its activities.
- (3) The summons is 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 principal place of business.

- (4) In case of a partnership that 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 liquidator's office or his habitual residence.

Art. 119. - 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 effective as service on the defendant in person.
- (2) Where in a suit to obtain relief or compensation respecting for wrong to immovable property, and the summons cannot be served in person on the defendant while this defendant has no agent authorized 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 territorial 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 sub-Article, the master of a ship shall be deemed to be the agent of the owner or charterer.
- (4) Where a pleader is authorized 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 effective 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. 120. - Service on a Member of Defendant's Family.

Where in a suit the defendant cannot be found, and he has no agent authorized 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. 121. - Defendant Who Cannot be Found.

Where the serving officer, 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. The provisions of this Chapter concerning substituted service shall apply.

Art. 122. - 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 acknowledgment of service on the original summons.
- (2) Where such person refuses to sign the acknowledgment, Article 121 shall apply, but the court may, if it thinks fit, rule that such person has

been duly served and dispense with the requirements of Article 124 (2).

- (3) Where the summons is served upon the defendant, his agent or pleader, an acknowledgment 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. 123. - Endorsement of Time and Manner of Service.

Where the summons has been served under Article 122(1), the serving officer or any other person authorized 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. 124. - Substituted Service.

- (1) Where the court is satisfied that there is reason to believe that the defendant is 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 Article 121, the court may, on the application of the plaintiff, issue a fresh summons and order substituted

service under sub-Article (1). When the plaintiff's application has not been made within three months from such return, Article 107(1) (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. 125. - Serving Officer.

- (1) Where a summons is delivered or sent to any person for service as mentioned in Article 117, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed evidence of service.
- (2) Where, for any reason service is impossible, the summons shall be returned to the court with a full statement of such reason and of the steps taken to ensure service, and such statement shall be deemed evidence of non-service.

Art. 126. - 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 likely to be found.
- (2) The court to which a summons is sent under sub-Article (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. 127. - 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 addressed to the defendant at the place where he is residing and sent to him by post or, if his residence is not known, notice of the summon shall be given by publication in such newspaper circulating in Eritrea as the court may direct.

Chapter 2. - Issue and Service of Summons on Witness

Art. 128. - Expenses of Witness.

- (1) The party applying for a witness summons may, before the witness summons is granted, and within a period of time to be fixed, have to pay into court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the witness for attendance at court.
- (2) In determining the amount payable under sub-Article (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 necessary for the case.
- (3) The sum so paid into court shall be tendered to the witness at such time, in such manner and in such amount as the court shall direct.

Art. 129. - 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 for that purpose.

- (2) Where a witness must attend at court 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 accommodation 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 the court may order both such levy and discharge.

Art. 130. - Mode and Proof of Service.

- (1) Every summons served under this Chapter shall be served as nearly as may be in the same manner as a summons to a defendant. The provisions of the previous Chapter as to proof of service shall apply, notwithstanding the provisions of this Code 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 a reasonable time for preparation and for

travelling to the place at which his attendance is required.

Art. 131. - Witness in a Foreign Country: Letter of Request.

- (1) Where a party wishes to obtain the evidence of a witness 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 may be found.
- (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 for 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; and
 - (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 sub-Article (3).

Chapter 3. - Service of Process Other Than Summons and of Other Papers

Art. 132. - Application by Analogy.

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

TITLE II - PLEADINGS

Chapter 1. - General Provisions

Art. 133. - Suit Commenced by Statement of Claim.

- (1) Except for 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 this Book.

Art. 134. - Register of Suits.

Except as provided in Article 159, the registrar shall cause the particulars of every suit to be recorded in the register of civil suits. Such entries shall be numbered in every year according to the order in which the statements of claim are received.

Art. 135. - Court Fees.

- (1) No statement of claim shall be received under Article 160 except after payment of the prescribed court fee.
- (2) The prescribed court fee shall also be paid upon the filing of a statement of defense containing a counter-claim.

Art. 136. - Framing of Suit.

- (1) As a far as practicable every suit shall 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 plaintiff's claim 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 relief, but if he omits except with the leave of the court, to sue for all such relief, he shall not afterwards sue for any relief so omitted.

Art. 137. - Contents of Pleading.

- (1) Pleading shall mean a statement of claim, statement of defense, 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 concise form of material facts on which he relies for his claim or defense.
- (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 to complete its statement.
- (6) Sub-Article (5) also applies in the following Articles.

Art. 138. - 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 stated in his pleading.

Art. 139. - New Fact.

The plaintiff and defendant, as the case may be, shall state in 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 defense 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. 140. - New Ground of Claim or New Allegation.

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

Art. 141. - Denial to be Specific.

It shall not be sufficient for a defendant in his statement of defense 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 address specifically each allegation of fact of which he does not admit the truth, except damages.

Art. 142. - 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 legal sufficiency of such contract.

Art. 143. - 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. 144. - 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. 145. - 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 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.

Art. 146. - 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 as a fact and to refer generally to such circumstances without setting them out in detail.
- (2) Where a person pleading as provided in this Article 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. 147. - Legal Presumptions.

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

Art. 148. - Amendment of Pleading.

- (1) The court may at any time before judgment, when it is satisfied that there is a compelling reason, allow either party to 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 questions in dispute between the parties.

- (2) A party who has obtained leave to amend and who 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 defense, 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) At any time the court may order to be struck out or amended in any pleading any matter that is unnecessary or vexatious or that may tend to prejudice or delay a 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. 149. - 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. 150. - 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 act on his behalf.

Art. 151. - Statement of Truth.

- (1) Unless otherwise expressly provided by law, every pleading shall be endorsed by an affirmation of the truth of facts and claims asserted therein and such affirmation shall be made by the party or by the party's pleader.
- (2) In suits by or against a corporation, any pleading may be signed and endorsed as required in this Article 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 for this purpose, and shall be endorsed as required in this Article 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, it shall suffice that any pleading be signed and endorsed by any one of such persons.
- (5) The court may order a party who has failed to endorse any pleading to correct the failure.
- (6) If a party fails to observe an order under this Article, 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 to the court for an order to strike out the pleading.

Chapter 2. - Statement of Claim and of Defense

Art. 152. - 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; and
 - (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 stating 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. 153. - 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; and
 - (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 sub-Article (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. 154. - Relief to be Stated.

- (1) The statement of claim shall state specifically the relief claimed by the plaintiff either simply or in the alternative, but it shall not be necessary to ask for general or other relief that may be granted by the court according to law.
- (2) Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, those grounds shall be stated separately and distinctly.

Art. 155. - 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 the nature and location of 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. 156. - 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. 157. - 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. 158. - 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, that would accrue to the plaintiff in consequence of a judgment being given in his favor.

Art. 159. - 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 law;
- (b) it is not accompanied by the annexes required by this Book; or
- (c) it is not verified in the manner as required by the Code.

Art. 160. - 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) endorse the statement of claim;
- (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. 161. - 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 the Civil Code.
- (3) On rejecting a statement of claim under this Article, the court shall record its order, setting forth the reasons for such rejection.

Art. 162. - Effect of Rejection.

- (1) Where a statement of claim is rejected the registrar shall:
 - (a) return the statement of 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; and
 - (b) 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 register of civil suits.
- (2) The rejection of a statement of claim under Articles 159 and 161 of this Code shall not preclude the plaintiff from filing a new statement of claim with respect to the same cause of action.

Art. 163. - Service of Statement of Claim.

Where there are no reasons for rejecting a statement of claim, 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 defense 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 defense.

Art. 164. - Contents of Statement of Defense.

Every statement of defense, to which there shall be attached any annexes required, shall contain:

- (a) the name and place of the court in which the defense 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 defense and generally of any ground of defense 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; and
- (f) precise details of the counter-claim, if any, in which case the provisions of this Code concerning counter-claims shall apply.

Art. 165. - 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. If an allegation is made with numerous factual circumstances, a general denial shall not be sufficient.
- (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 defense, 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. 166. - 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 defense give the particulars as to the debt sought to be set-off.
- (2) The statement of defense shall have the same effect as a statement of claim in a cross-suit so as to enable the court to give final judgment with respect both to the original claim and to the set-off.

Art. 167. - Defense or Set-off Founded upon Separate Grounds.

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

Art. 168. - Counter Claim by Defendant.

A defendant may, in addition to his right of pleading set-off under Article 166, set-up by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff. Provided such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

Art. 169. - Examination of Statement of Defense.

- (1) On the day fixed under Article 163 the court shall examine the statement of defense and the provisions of Article 159 shall apply by analogy in appropriate cases.
- (2) Where the statement of defense is not rejected, the court shall examine whether it contains a counter-claim or claim of set-off and the provisions of this Book shall apply by analogy in appropriate cases so far as concerns such counter-claim or claim of set-off.
- (3) Where a statement of defense is not submitted or is rejected under this article, the case shall be proceeded with in accordance with the provisions of the following Chapter notwithstanding such non-submission or rejection.

Art. 170. - Further Pleadings.

- (1) Where a statement of defense containing a counter-claim or claim of set-off is not rejected, 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 sub-Article (1) the court shall declare the pleadings closed.

Art. 171. - Notice to Admit Documents.

- (1) Either party may, by notice in the form prescribed, 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.

Chapter 3. - First Hearing

Art. 172. - Examination of Parties.

- (1) At the first hearing of the suit, the court shall, after ascertaining 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 sub-Article (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 order by summons 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 reduced to writing by the court and shall form part of the record.

Art. 173. - 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 admissions of fact during examination, apply to the court for such judgment 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 judgment as it thinks fit.

Art. 174. - 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 give judgment or make such other order as it thinks fit.

Art. 175. - 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 Article 176 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. 176. - Decision on Objection.

- (1) The court shall decide any objection taken 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 dismiss the suitor make such other order as it thinks fit.
- (3) Unless the suit is otherwise barred by law, the dismissal of the suit shall not 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 dismissed 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. 177. - 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 dispute, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

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

Art. 178. - 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 defense.
- (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. 179. - Materials from Which Issues May be Framed.

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

- (1) allegations made in the pleadings;
- (2) the contents of documents produced by either party; or

- (3) 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 Article 172.

Art. 180. - 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 that 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. 181. - 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.

Art. 182. - Power to Amend and Strike Out Issues.

- (1) At any time before judgment the court may 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 strike out, at any time before judgment, any issues that appear to it to be wrongly framed or pleaded.

Art. 183. - 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. 184. - Judgment on Agreement Executed in Good Faith.

- (1) Where the court is satisfied, after making such inquiry as it deems proper
 - (a) that the agreement 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 judgment in terms of the agreement.

Art. 185. - 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 judgment.
- (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 judgment for or against such defendant and the suit shall proceed only against the other defendants.

Art. 186. - 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 judgment accordingly.

Art. 187. - Failure to Produce Evidence.

- (1) Where evidence which should have been produced is not so produced due to the fault of either party, the court may at once pronounce judgment 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 judgment as it would have pronounced if the instrument had been produced.

TITLE III - EVIDENCE

Chapter 1. - General Provisions

Art. 188. - Requirement for proof.

- (1) Unless otherwise stipulated by law, the court shall base its decision solely on facts that have been proved or otherwise established in accordance with this Title.
- (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 that are not at the party's disposal.

Art. 189. - Judicial Notice.

No party shall be required to prove undisputed facts of common knowledge, and the court shall take judicial notice of the existence of such facts.

Art. 190. - 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. 191. - Burden of Proof.

- (1) The party who alleges facts or rights 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 party 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. 192. - Means and Assessment of Evidence.

- (1) Evidence may be provided by any means that is not prohibited by law.
- (2) The assessment of evidence is left to the discretion of the court unless otherwise provided by law.

Art. 193. - Presumptive Evidence.

The court is obliged to accept presumptive evidence.

Art. 194. - General Principles of Admissibility.

- (1) If an objection is made to the admission of any proposed evidence, the court shall determine the admissibility of that evidence by taking into account its relevance, reliability and probative value, and any prejudice that its admission might cause to a fair trial or to a fair evaluation of the testimony of a witness.
- (2) No evidence shall be admitted in any proceeding if the court is satisfied that such evidence was obtained in violation of the Constitution of Eritrea or any other law.
- (3) In any case where the admissibility of evidence under the preceding sub-Article is challenged, the party presenting the evidence shall bear the burden to prove that the evidence was obtained in a manner that is consistent with the Constitution and the law.

Art. 195. - Best Evidence.

- (1) The court shall consider the reliability of all evidence produced by the parties and, for greater certainty, the court shall consider whether evidence is given by witnesses who testify to relevant factors within their personal knowledge, and any other evidence shall be subject to strict scrutiny by the court in accordance with Article 194.
- (2) The court shall admit, and may order, the evidence of experts if the court is satisfied that it is relevant, that it is necessary for assisting the court to make findings of fact and that the person who is proposed to give such evidence is properly qualified as an expert in the matters on which he is to give evidence.

Art. 196. - Privilege.

- (1) Privileged communications may not be introduced in evidence by any person unless the person or entity whose communications are protected by privilege informs the court that the privilege is voluntarily waived, in whole or in part, with respect to those communications.
- (2) In accordance with this Article, the following persons may assert a privilege over communications that would otherwise be relevant and admissible at trial under the provisions of this Code:
 - (a) any person, in communication with his or her spouse;
 - (b) a child in communication with one of his parents, including any person recognized in

law as standing *in loco parentis* in relation to that child;

- (c) a parent, including any person recognized in law as standing *in loco parentis*, in communication with his child;
- (d) a patient, in communication with a physician for the purpose of therapeutic treatment;
- (e) a client, in communication with his counsel for the purpose of obtaining legal advice;
- (f) a penitent or parishioner, in communication with his spiritual adviser for the purpose of obtaining pastoral or spiritual guidance; or
- (g) a member of the national government, concerning communications relating to matters of national security.

Art. 197. - Objections to Evidence.

Where a party objects to the admission of any evidence or the putting of a question to a witness, the court shall decide forthwith on the admissibility of such evidence.

Chapter 2. - Documentary Evidence

Art. 198. - Proof 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 other means unless it is proved by the party relying upon such document that the document evidencing this right has been destroyed, stolen or lost.

Art. 199. - 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 authorized by law to provide evidence of observations made or acts performed by them. Instruments that may be drawn up by officials, 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. 200. - Authentic Instruments.

Authentic instruments provide presumptive evidence against third persons of all that the official, within the scope of his authority, has stated in his observations. 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. 201. - Copies of Authentic Instruments.

If issued by a competent official, first copies and full copies of authentic instruments have the same probative value as the original instruments.

Art. 202. - Appearance of Authenticity.

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

Art. 203. - Probative Value of Statements in Authentic and Private Instruments.

An authentic or private instrument provides, in respect of the statement by a party about which the instrument is intended to prove in favor 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. 204. - Signature on Private Instrument.

- (1) A private instrument, the 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 made the signature. A statement to the effect that the authenticity of the signature has not been acknowledged shall suffice.
- (2) If the party who challenges the authenticity of the private instrument refuses to cooperate in establishing whether it is his signature on the document, the court may draw such inferences as it finds justified in the circumstances.

Art. 205. - 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. Neither proof by witnesses nor any presumption is admissible against such statements.

Art. 206. - Trade Books.

- (1) Entries in trade books are not evidence in favor of those who made the entries.
- (2) They may be evidence against those who made the entries, but a party wishing to avail himself thereof may not sever them so as to eliminate entries contrary to his claim.

Art. 207. - Domestic Records and Papers.

- (1) Domestic records and papers are not evidence in favor of the person who wrote them.
- (2) Such records and papers may be 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 favor of the person for the benefit of whom they state an obligation.

Art. 208. - Criminal Acts.

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

**Chapter 3. - Production, Impounding and Return of
Documentary Evidence**

Art. 209. - When Documentary Evidence 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, on which they intend to rely, and which has not already been filed in court, and all documents which that the court orders to be produced.
- (2) The court shall receive the documents so produced, which shall be accompanied by an accurate list thereof.
- (3) Except with leave of the Court, no document that should be produced at the first hearing may be received at a later stage in the suit on behalf of the party who should have 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 used to refresh a witness's memory.

Art. 210. - Court Orders to Produce Documents.

- (1) At any stage the court may order the parties or third persons to produce documents and 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 sub-Articles (2) and (3), under the same obligations and has the same rights as a witness.
- (5) The court shall receive the documents so produced, which shall be accompanied by an accurate list thereof.
- (6) Except with leave of the court, no document that 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. 211. - Rejection of Irrelevant or Inadmissible Documents.

At any stage the court may reject any document which it considers irrelevant or otherwise inadmissible and when doing so the court shall record the grounds of such rejection.

Art. 212. - Endorsements on Documents.

- (1) Subject to sub-Article (2), 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, the particulars aforesaid shall be endorsed on the copy.

Art. 213. - Endorsements on Copies.

- (1) Where a document produced in the suit is an entry in a letter book 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, mark the entry and cause the book or account in which it occurs to be returned to the person who produced it.

Art. 214. - 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 relevant particulars, together with a statement of its having been rejected, and the endorsement shall be signed or initialed by the court.

Art. 215. - 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 Article 212, 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 who have produced them.

Art. 216. - Court May Order Any Document to be Impounded.

Notwithstanding any other provisions, 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 directs.

Art. 217. - Return of Admitted Documents.

- (1) Any person, whether a party to the suit or not, who seeks the return of 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 this Code for such substitution; 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. 218. - Court May Send for Records.

- (1) On its own motion or on the application of any of the parties to a suit, the court may 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 sub-Article (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 enable the court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Art. 219. - Preliminary Disclosure of Documents.

- (1) A disclosure of documents contemplated in this Chapter 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. 220. - Things in Evidence.

The provisions of this Chapter that apply to documents shall, so far as may be, apply to all material objects that may be produced as evidence.

Chapter 4. - Witness Evidence

Art. 221. - 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 Chapter.

- (4) The examination of witnesses shall take place at a sitting of the court.
- (5) Parties may also appear as witnesses.

Art. 222. - Preliminary Examination of Witnesses.

At any stage of the proceedings after the institution of an action, the court may order examination of witnesses at the request of one of the parties where there is good reason to believe that the witness will be unable to testify at a later date.

Art. 223. - Form of Questions.

- (1) Questions put in direct examination shall only relate to facts that are relevant to the issues to be decided and to such facts of which the witness has personal knowledge, and no leading questions may be put to a witness in direct examination without permission of the court.
- (2) Questions put in cross-examination shall only relate to relevant issues before the court, including what might be erroneous, doubtful or untrue in the answers given in direct examination and leading questions may be put to a witness in cross-examination.
- (3) A party may only ask questions on reexamination for the purpose of clarifying matters that have been raised in cross-examination.

Art. 224. - Absence of Cross-Examination.

Failure to cross-examine on a particular point does not constitute an admission of the truth of any fact asserted by a witness for the opposite party.

Art. 225. - Duty to Testify.

- (1) Anyone who has been legally summoned as a witness is obliged to give evidence.
- (2) 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. 226. - Parties to be Present.

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

Art. 227. - 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. 228. - 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) The summons shall be served 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. 229. - 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 determine whether the summons has been duly served.
- (2) Where the court has reason to believe that the evidence to be given or document to be produced by such witness is material:
 - (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; or
 - (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. 230. - 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. 231. - Witness Who Refuses to Testify or Produce Evidence.

- (1) Where a person, who is summoned to give evidence as a witness:
 - (a) refuses to be sworn;
 - (b) having been sworn, refuses to answer the questions that are put to him; or
 - (c) refuses to produce any tangible evidence that he has been required to produce, without offering a reasonable excuse for his refusal,

the court may adjourn the proceedings and commit the person to prison for a period not exceeding eight days or for the period during which the proceedings are adjourned, whichever is the lesser.

- (2) No witness may refuse to answer a question that is put to him on the ground that the answer might tend to incriminate him, but any answer that he gives may not be used directly or indirectly against him in any other criminal or civil proceedings.
- (3) A witness who is the mother, father, brother, sister or spouse of the accused shall not be punished for refusing to testify or produce evidence.

Art. 232. - 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 sufficient 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 sub-Article (1) is applicable as well, transfer the examination to an equivalent court in the witness's place of residence.

Art. 233. - Participation in Judgment.

The member or members of the court who examined the witnesses shall participate in the judgment of the case.

Art. 234. - Exclusion of Witnesses.

The court shall order the exclusion of any witness from the courtroom, except the parties, until he is called to testify.

Art. 235. - Recall of Witnesses.

Whenever a pleading is amended or substituted in the course of trial, or when otherwise necessary in the interests of justice, the court shall allow the parties to recall and examine, with reference to any amendment or substitution, any witnesses who have been examined previously and may also call any further evidence that might be relevant to the amended or substituted pleading.

Art. 236. - Additional Witnesses.

- (1) At any time before making a decision, the court may call any witness whose testimony it considers necessary in the interests of justice.
- (2) A party may call any witness whose name does not appear on the list of witnesses if the court is satisfied that he is a material witness who could not have previously been identified as such by the party and the application for a summons is not being made for the purpose of delaying the case.

Art. 237. - 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 Chapter, examine such witness itself or assign the examination to the court where the witness lives.
- (2) The High Court may proceed under sub-Article (1) upon application of:
 - (a) a certificate signed by the diplomatic representative of the foreign country in Eritrea and transmitted to the High Court through proper channels; or
 - (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 the proper channel which transmitted the request, along with the letter of request for transmission to the foreign court.

Chapter 5. - Expert Evidence

Art. 238. - Appointment of Experts.

If the court considers it necessary or expedient, at the request of one of the parties or on its own authority, the court may 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. 239. - 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. 240. - Investigation by Experts and 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 party

requesting the expert unless the court has ordered otherwise.

- (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. 241. - Written Report.

- (1) The written report shall be substantiated. Each of the experts may express a dissenting opinion. A copy of the report shall be sent to each of the parties.
- (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. 242. - 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 conclusion of the original of the written report or at the conclusion 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 as directed by the court. 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.

Chapter 6. - Local Investigations or Visits

Art. 243. - 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.
- (4) The court may proceed beyond the area of its territorial 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 discretion be chargeable to one or both parties.

Chapter 7. - Affidavits

Art. 244. - Power to Order Proof by Affidavit.

- (1) At any time and for sufficient reason the court may 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 desires the production of a witness for cross-examination, and that such witness can be produced, no order under sub-Article (1) shall be made.

Art. 245. - Attendance of Deponent.

- (1) Upon 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. 246. - Matters to which Affidavits Shall be Confined.

- (1) Affidavits shall be confined to such facts within the personal knowledge of the deponent, 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. 247. - Oath or Affirmation.

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

Chapter 8. - Furnishing of Proof

Art. 248. - Order for Other Evidence.

- (1) Where the court is satisfied that evidence other than that produced by the parties is required for the proper determination of the suit, it shall give an interlocutory judgment ordering the production of such evidence as it considers necessary.

- (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; and
 - (d) the date for submitting the documents to the court and the exchange thereof between the parties.

Art. 249. - 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. 250. - 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. 251. - 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. 252. - Manner of Giving Evidence by Witness.

- (1) The party entitled to begin shall call his witnesses who, after taking an oath or affirmation, shall be examined-in-chief by the party beginning, cross-examined 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.

Art. 253. - Oral evidence in open court.

Witnesses shall give evidence orally in open court unless the court directs otherwise and gives reasons for doing so.

Art. 254. - Additional questions by the court.

The court may at any time put to a witness any question which appears necessary for the proper determination of the suit.

Art. 255. - 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. 256. - 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. 257. - 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 in his possession or control, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Art. 258. - 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. 259. - 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. 260. - 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. 261. - 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 sub-Article (1) shall apply by analogy to evidence taken in a suit that has been transferred.

Art. 262. - Exhibits.

All exhibits shall be marked and numbered by the registrar of the court and they shall be kept by the registrar in a safe place and shall not be withdrawn without an order of the court. No order of release shall be granted by the court unless it is satisfied that such release would not prejudice the trial or otherwise be contrary to the public interest.

BOOK IV – JUDGEMENT, COST AND DISCONTINUANCE OF SUITS

TITLE I - JUDGMENT

Chapter 1. - General Provisions

Art. 263. - Judgment When Pronounced.

- (1) After the evidence has been concluded and the address and reply, if any, have been made, the court shall render judgment.
- (2) The court shall pronounce judgment 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 plaintiff and the defendant of the date when judgment will be pronounced.
- (3) The court shall postpone its judgment if both parties request the court to do so.

Art. 264. - Pronouncement of Judgment in Open Court.

Judgment shall be pronounced in open court.

Art. 265. - Form and Pronouncement of Judgment.

- (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, is 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. 266. - Contents of Judgment.

- (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 judgment 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 judgment can be executed by the personal obedience of the judgment-debtor, the time within which it shall be executed;
 - (g) such particulars as are necessary to determine execution. An Appellate Court may itself give the necessary directions for the execution of its judgment or may delegate the execution thereof to the court which first heard the case; and

- (h) the date of the judgment.
- (2) The reasons for the decision shall be expressed sufficiently so as to enable the parties to understand the basis of the decision, as well as, in case the decision is subject to appeal, for review 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 judgment 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.
- (4) The judgment 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. 267. - 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 set forth the legal grounds for its judgment.

Art. 268. - Copies of Judgment.

- (1) Certified copies of the judgment 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 set forth on the certified copies.
- (2) A certified copy of the judgment issued by an Appellate Court shall be sent to the court which issued the judgment appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Chapter 2. - Irregularities and Mistakes

Art. 269. - 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, of its own motion or on the application of either party, may set aside such proceedings either in whole or in part as irregular, or amend them or make, on such terms as it deems appropriate, such other order as may be appropriate.

Art. 270. - Correction of Mistakes.

The court may at any time on its own motion or on the application of either party, correct any clerical or arithmetical mistakes in any summons, judgment, 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.

Art. 271. - 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) 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. 272. - 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 new action in the proceedings after knowledge of the irregularity or has taken such action under protest,

it shall record its order setting forth its reasons for allowing the application and issue such order as it deems appropriate: 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 action taken in the proceedings prior to the occurrence of the irregularity shall not be affected.

- (2) Where the court considers that the conditions set forth in this Article are not fulfilled, it shall issue

its order setting forth its reasons for dismissing the application, and the proceedings shall continue as though such application had not been made.

Art. 273. - 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.
- (2) Notwithstanding the previous sub-Article, an Appellate Court may, at any time on its own motion, correct any irregularity having occurred in the proceedings in which the judgment 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. 274. - Validation of Proceedings.

No proceedings in which an irregularity has occurred shall be void where there is no appeal from the judgment issued in such proceedings, or where such judgment is confirmed by the Appellate Court.

TITLE II - COSTS

Chapter 1. - General Provisions

Art. 275. - Costs.

- (1) If the court decides to issue an order for costs:
 - (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; or
 - (b) the court may in its discretion issue a different order.
- (2) Court fees shall be on the basis of a tariff determined by the Government. For other expenses incurred, up to 100,000 Nakfas, cost shall be 4% of the amount in dispute; for incurred expenses greater than 1,000,000 Nakfas, it shall be 2%. Lawyers' expenses shall be on the basis of the official receipts. If the court deems the official receipts to be excessive, the court may determine the expense which it deems reasonable. If the amount in dispute is indeterminable the court may determine the amount of expenses which it deems reasonable.
- (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 issue for costs, the court must consider all the circumstances, including the conduct of the parties, whether a party has succeeded in 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 issuing an order under sub-Article (2) (b), the court shall state its reasons in writing.

- (5) The conduct of the parties as referred to in sub-Article (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; and
 - (d) whether a plaintiff who has succeeded in its claim, in whole or in part, exaggerated his claim.

Art. 276. - Bill of Costs.

- (1) Where the court has ordered the unsuccessful party to pay the costs, the successful party shall prepare an itemized 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. 277. - 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 the court determines were not reasonably incurred or were not reasonable and proportionate to the amount of the suit.
- (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. 278. - Compensatory Costs.

- (1) Where in any suit or proceeding, a party objects to a claim or defense 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 defense is subsequently disallowed, abandoned or withdrawn in whole or in part as against the objector, the court may, if it deems appropriate, and after recording its reasons for holding such claim or defense false or vexatious, issue an order for the payment to the objector, by the party by whom such claim or defense was put forward, of costs by way of compensation up to an amount not exceeding 5,000 Nakfas.
- (2) No person against whom an order has been made under this Article shall, by reason thereof, be exempted from criminal proceedings under 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 defense held to be false or vexatious.

Art. 279. - Appeal.

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

Chapter 2. - Security for Costs

Art. 280. - 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 sub-Article (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 sub-Article (2).

Art. 281. - 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 sub-Article (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 it deems appropriate, 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.

Chapter 3. - Suits by Paupers

Art. 282. - Suits May be Instituted by Paupers.

- (1) Any suit may be instituted by a pauper on the conditions set forth in this Chapter.
- (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-Article (1) and may apply for leave to sue as a pauper.

Art. 283. - Contents of Application.

- (1) An application under 282 shall be supported by an affidavit.
- (2) The applicant or his agent shall file the application together with the statement of claim.

Art. 284. - Examination of Applicant.

- (1) On the filing of an application made in proper form, the court may, if it deems appropriate, 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 deems appropriate, 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 set forth.

Art. 285. - Rejection of Applicant.

The application shall be rejected where it appears from the application or upon examination required by this Code that:

- (a) the applicant is not a pauper;
- (b) there is no cause of action;
- (c) the applicant has, within two months 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. 286. - Evidence of Pauperism.

- (1) Where the court sees no reason for rejecting the application, 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 to disprove his claim of pauperism.
- (2) Notification of the day fixed under sub-Article (1) shall be given to the opposite party not less than ten days prior to the hearing.

Art. 287. - Procedure at Hearing.

- (1) On the day fixed for hearing, 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 rejected.
- (3) The court shall then allow or refuse to allow the applicant to sue as a pauper.

Art. 288. - 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 in whole or in part the court fee or other fees or charges in proceedings connected with the suit, as the court may direct.

Art. 289. - Validity of Certificate.

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

Art. 290. - Revocation of Pauper Status.

- (1) The court may, on its own motion, or on the application of the defendant of which notice has been given to the plaintiff, order the revocation and discharge of the certificate 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's certificate is revoked and discharged for the reasons set forth in the preceding sub-Article, 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. 291. - 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. 292. - Bar of Subsequent Applications.

An order refusing to allow the applicant leave to sue as a pauper or revoking his certificate 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. 293. - 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 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 the Penal Code.

Art. 294. - 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.

TITLE III - DISCONTINUANCE OF SUITS AND PAYMENT INTO COURT

Chapter 1. - Compromise

Art. 295. - 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 Title, the provisions of the Civil Code shall apply to compromise agreements, in particular as regards the effect of, appeal from and invalidation of such agreements.

Art. 296. - 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 basis on which a compromise agreement may be made.

Art. 297. - 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. 298. - 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 after being satisfied that its terms are not contrary to 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.

Chapter 2. - Withdrawal and Abandonment

Art. 299. - Principle.

- (1) The 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, confess judgment or wholly or partly abandon his defense.

- (3) The abandonment of a claim or a defense, 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 defense.
- (4) The other party may, subject to the court's discretion, 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 to withdrawal of the suit under this Article, in any new suit the party who withdrew the suit shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Art. 300. - 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 deems appropriate, dismiss the suit and record an order setting forth its reasons, to that effect.

Chapter 3. - Payment into Court

Art. 301. - 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. 302. - 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 in 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. 303. - 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 judgment accordingly.
- (2) In directing by whom the costs of each party are to be paid, the court shall apply the provisions of this Book.

**BOOK V - SPECIAL PROCEDURE AND
PROVISIONAL OR INTERLOCUTORY MEASURES**

TITLE I - FAST TRACK PROCEDURES

Chapter 1. - Money Debt Collection Procedure

Art. 304. - Application.

- (1) An application for a money debt collection judgment 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 state it is a “Money debt collection procedure”.

Art. 305. - Decision on Application.

- (1) Based on the application and the submitted documents, the court shall consider whether the application for the money debt collection judgment is admissible and well founded.
- (2) If the court determines 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 issue a judgment for money debt collection against the debtor and determine the sum found to be due from him to the creditor.
- (4) Any decision under this Chapter shall be made or given on such terms as to costs or otherwise as the court deems appropriate.

Art. 306. - Service.

- (1) The service of the money debt collection judgment 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, or
 - (b) enter an objection to the judgment within fifteen days after service.
- (3) The debtor shall also be notified that if he does not enter an objection within time allowed, the judgment against him shall not be subject to appeal, and shall have the effect of *res judicata* and shall become enforceable in the same way as a judgment in an ordinary procedure.

Art. 307. - 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.

Chapter 2. - Accelerated Procedure

Art. 308. - Scope of Application.

- (1) The provisions of this Chapter 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 be dealt with in accordance with the provisions of this Chapter.

Art. 309. - Institution of Proceedings.

- (1) Any person legally entitled to institute proceedings under this Chapter 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. 310. - Dismissal of Application.

- (1) The application shall be dismissed where:
 - (a) the applicant is not qualified to make the application;
 - (b) the application is not made in the form or within the time specified by this Code for the commencement of proceedings; 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 be *res judicata*, but shall be a bar to the making of a fresh application on the same grounds.

Art. 311. - 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 judgment or written order, as the nature of the case may require.
- (2) Unless otherwise provided for in this Chapter or the law under which the application is made, the court shall make its decision on the basis of the application.
- (3) Nothing in the preceding sub-Article 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. 312. - Consequential Orders.

- (1) Any decision under this Chapter shall be made or given on such terms as to costs or otherwise as the court deems appropriate.
- (2) No decision under this Chapter 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. 313. - Issue of Certificate.

- (1) On making its decision in favor of the applicant, the court shall, where the applicant so requires, provide him with a dated and signed certificate stating in a concise form the contents of such decision.
- (2) The provisions of the preceding sub-Article shall apply in matters concerning change of name, refusal to draw up records or to celebrate a marriage, prior permission to sue, withdrawal of interdiction, opposition to marriage, widowhood 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.
- (3) Where an application is made for the correction or cancellation of records or entries in registers or for approval or confirmation or registration or certification, the court may, without further proceedings, but after having ordered such investigation 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.

Art. 314. - Appeal.

- (1) Unless otherwise provided for by the law under which the application is made, no appeal shall lie from any decision under this Chapter.
- (2) When an appeal lies from a judgment given under this Chapter it shall be made within ten days from the issuance of such judgment and such judgment shall not be enforced until the period for the appeal has expired or the appeal has been decided.

TITLE II - SPECIAL PROCEDURES

Chapter 1. - Interpleader

Art. 315. - Definition

A suit of interpleader is a suit wherein a person in possession of property or owing money that 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 or money.

Art. 316. - 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 this Code for any other suit 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. 317. - 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 entitled to any order in the suit.

Art. 318. - 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. 319. - 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 jurisdiction over all parties until the final disposition 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. 320. - Agents and Tenants May Not Institute Interpleader Suits.

Nothing in this Chapter shall be deemed to enable agents to interplead their principals, or tenants to interplead their landlords.

Art. 321. - 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 thereto to 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 sub-Article (2), the depositor shall give the registrar an affidavit stating the reason for the deposit and deductions, if any, and that notice under sub-Article (1) has been given but not answered. A copy of the affidavit shall be served on the person or persons concerned in the same manner as a summons.
- (4) Any sum of money or other property deposited under sub-Article (2) may at any time be withdrawn by any person who, on application, satisfies the court that he is entitled thereto.

Chapter 2. - Special Cases

Art. 322. - 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 deems appropriate 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. 323. - 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 deems appropriate 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.

Art. 324. - Setting Aside of Resolution.

- (1) An application to set aside a resolution 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 judgment cannot be given on the application, it shall cause a copy thereof to be served on the corporate body 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, 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. 325. - 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,

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. 326. - Dissolution of Partnership or Corporate Body.

An application for the dissolution of a partnership or corporate body or for the termination of an endowment or trust shall, where appropriate, be in the form provided for such cases.

Art. 327. - Amalgamation of Endowments.

- (1) Where an application for the amalgamation of two or more endowments is made, the court shall cause a copy thereof to be served on the responsible Ministry, 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. 328. - Opposition to Marriage.

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

Art. 329. - 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.

TITLE III - PROVISIONAL REMEDIES

Chapter 1. - Arrest before Judgment

Art. 330. - 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 under 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 judgment 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 judgment 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. 331. - Amount of Security.

- (1) Where the defendant fails to show 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 judgment that may be passed against him in the suit, or make such order as it deems appropriate in regard to the sum which has been paid by the defendant.
- (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. 332. - 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 deems appropriate, 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 new security.
- (4) Where the defendant is unable to find new 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 judgment that may be issued against him.

Art. 333. - Refusal to Furnish Security.

In cases of refusal to comply with an order to furnish security, the court may order the defendant to be detained until he complies with the order or until the decision of the suit or, where a judgment is issued against the defendant, until the judgment has been satisfied. The defendant may not be so detained for more than six months.

Chapter 2. - Attachment before Judgment

Art. 334. - 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 judgment that may be passed against him:
 - (a) is about to dispose of his property, in whole or in part; or
 - (b) is about to remove his property, in whole or in part, 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, or 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 judgment, 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 property, in whole or in part, so specified.

Art. 335. - 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 judgment 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 deems appropriate.

Art. 336. - 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 judgment.
- (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 judgment against the defendant from applying for the sale of the property under the attachment in execution of such judgment.
- (3) Where any claim is preferred to property attached before judgment, such claim shall be investigated in the same manner as a claim to property attached in execution of a judgment for the payment of money.
- (4) Where an order is made for attachment before judgment, the court shall order the attachment to

be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

- (5) Where property has been attached under this Article and a judgment is subsequently issued in favor of the plaintiff, it shall not be necessary upon an application for execution of such judgment to apply for a reattachment of the property.

Chapter 3. - Temporary Injunctions

Art. 337. - When Temporary Injunction May be Granted.

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

- (a) 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 judgment; or
- (b) 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 the wasting, damaging, alienation, sale, removal or disposition of the property as the court deems appropriate, until the disposal of the suit or further orders.

Art. 338. - 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 deems appropriate.

Art. 339. - Failure to Comply With Injunction.

- (1) In case of disobedience, or of breach of any terms of the injunction, 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.
- (2) No attachment under the preceding sub-Article 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 deems appropriate, and shall pay the balance, if any, to the party entitled thereto.

Art. 340. - Notice to Opposite Party.

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

Art. 341. - 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. 342. - Injunction to Corporate Body Binding on its Officers.

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

Chapter 4. - Interlocutory Orders

Art. 343. - Interim Sale.

On the application of any party to a suit, the court may order the sale, by any person named in such order, and in such manner and on such terms as it deems appropriate, of any movable property, being the subject matter of such suit, or attached before judgment 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. 344. - Detention, Preservation and Inspection.

- (1) The court may, on the application of any party to a suit, and on such terms as it deems appropriate:

- (a) issue 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 may order 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 of this Code as to execution of process shall apply to persons authorized to enter under the preceding sub-Article.

Art. 345. - Notice to Opposite Party.

- (1) An application by the plaintiff for an order 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 by the defendant.

Art. 346. - Suspension of Sale.

- (1) Where a party in possession of land or tenure which is 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 prior 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 deems appropriate.

- (2) The court in its judgment may award against the defaulter the amount paid under sub-Article (1), with interest thereon at such rate as the court deems appropriate, 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 judgment passed in the suit.

Art. 347. - 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. 348. - 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 deems appropriate such orders as it considers necessary or expedient in the circumstances, including orders for the custody of a minor or the payment of alimony.

Chapter 5. - Appointment of Receivers

Art. 349. - 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 judgment;
 - (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; or
 - (d) confer upon the receiver all such powers, as to bringing or 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 deems appropriate.

- (2) Where an application is made for an order under sub-Article (1), the court shall have regard to the amount of the debt claimed by 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 deems appropriate.

Art. 350. - Remuneration.

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

Art. 351. - Receiver's Duties.

Every receiver shall:

- (a) furnish such security, if any, as the court deems appropriate, 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 willful default or gross negligence.

Art. 352. - 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; or
- (b) occasions loss to the property by his willful default or gross negligence,

the court may direct his property 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.

Chapter 6. - Affixing of Seals and Making of Inventories

Art. 353. - Principle.

- (1) The provisions of this Chapter shall apply, where the court determines that seals should be affixed for the purpose of preserving property which may be or is the subject of proceedings in court.
- (2) No seal when affixed shall be removed without an order of the court. Any interested party may apply to the court for the removal of a seal.

Art. 354. - 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 on 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 deems fit to carry out such order.

Art. 355. - 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. 356. - 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; or
 - (c) any property required for the use of a party to the suit that is specifically exempted from sealing by the court.
- (2) Where any property is committed to the use of any person under the preceding sub-Article, the official sealer shall make and deposit in court an inventory of all such property.

Art. 357. - 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 issue such order for the disposal of such documents as it deems appropriate.

Art. 358. - 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. 359. - Making of Inventory.

- (1) The court may 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 deems fit to carry out such order.
- (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 by the court, 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 VI - APPEAL, EXTRAORDINARY REVIEW, THIRD-PARTY OPPOSITION AND REVISION

TITLE I - APPEAL

Chapter 1. - Judgments Subject to Appeal

Art. 360. - Principle.

- (1) A final judgment may be subject to a first appeal in accordance with the provisions of this Code.
- (2) There shall be no right of second appeal except in accordance with the provisions of this Code.

Art. 361. - Appellate Jurisdiction.

- (1) A first appeal may be made as of right from the decision of
 - (a) a Community court to the Regional court in whose territorial jurisdiction such Community court lies;
 - (b) a Regional court to the High Court; or
 - (c) the High Court to the Supreme Court.
- (2) If the appellate court confirms the judgment of the lower court the decision shall be final as to the appellant except as provided in Article 362(1).
- (3) Where the first appellate court reverses the judgment of the lower court the respondent on the first appeal may appeal further to the court of the next level and the decision of the second appellate court shall be final as to both parties except as provided in Article 362(1).

- (4) In case of disagreement among the judges hearing an appeal, the decision of the majority of the judges shall be the decision of the court. A judge or the judges who disagree with the majority opinion may write dissenting opinions expressing their views.
- (5) Where an appeal lies from a judgment or order, but a remedy under this Code is available in the court which gave such judgment or made such order, no appeal may be lodged unless such remedy has been exhausted.

Art. 362. - Special Appellate Jurisdiction of the Supreme Court.

- (1) In addition to the appellate jurisdiction set out in Article 361, the Supreme Court may grant leave to hear an appeal from final judgment by any party to a case in which an issue concerning the constitutionality of any law is raised, or in which an interpretation of a significant constitutional or legal principle is required for making a decision in the case.
- (2) Where the Supreme Court hears an appeal, it may consider all of the issues in the case.
- (3) An appeal under this Article shall be subject to the requirements and limitations set out in this Title.

Art. 363. - Interlocutory Appeals.

- (1) Unless otherwise expressly provided by this Code or any other law, no appeal shall lie from any decision or order of any court on interlocutory matters, such as preliminary objections, the admissibility or inadmissibility of oral or documentary evidence or permission to sue as an

indigent, but any such decision or order may be raised as a ground of appeal when an appeal is made against the final judgment.

- (2) Notwithstanding sub-Article (1), an order or judgment under 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, shall be immediately appealable.

Art. 364. - Grounds of Appeal.

- (1) A first appeal may be filed on the ground that:
 - (a) the court made an error in any decision taken during the course of trial; or
 - (b) the final judgment cannot reasonably be supported by the evidence.
- (2) A second appeal may be filed only on the ground that the first court of appeal made an error.

Chapter 2. - Form and Time of Appeal

Art. 365. - Notice of Appeal and Memorandum of Appeal.

- (1) Notice of appeal shall be filed in writing by the appellant or his pleader within fifteen (15) days of the judgment to the registry of the court that gave the judgment under appeal. On receipt of a notice of appeal, the registrar shall cause the judgment appealed to be copied and served upon the appellant or his pleader. Such copy shall be dated and the date on which it is handed to the appellant or his counsel shall be certified by the registrar.

- (2) The memorandum of appeal shall be filed within sixty days of receipt of the copy of the decision appealed.
- (3) Every memorandum of appeal shall be lodged by filing in the registry of the Appellate Court, upon payment of the prescribed court fee.

Art. 366. - Contents of Memorandum of 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 judgment appealed from, the date of such judgment 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 there shall be a certified copy of the full record of the proceedings in which the judgment appealed from was delivered and of such judgment.
- (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:

- (a) the nature of such evidence;
 - (b) the names and addresses of the witnesses to be called, if any;
 - (c) 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.
- (4) The appellant and the respondent shall respectively provide sufficient copies of the memorandum of appeal for service on each of the other parties.

Art. 367. - Grounds for Appeal.

- (1) The memorandum of appeal shall state concisely the grounds of appeal, under enumerated headings, and shall conclude with a statement of the remedy sought.
- (2) The appellant or respondent 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.
- (3) The appellate court may decide the case on a ground not raised by a party, but before doing so must give the party negatively affected an adequate opportunity to contest the case on that ground.

Art. 368. - New Facts and Arguments.

- (1) Except as allowed by Article 367, no party may argue any fact that was not in evidence in the court

which gave the judgment appealed from, except where such evidence was not available at the time of the previous proceedings. A party must seek leave of the appellate court to adduce such evidence.

- (2) An appellate court may allow amendment of a memorandum of appeal or cross appeal to raise additional arguments or consider additional evidence. In so doing it may order the payment of additional costs, require the service of additional copies, or impose such other conditions it may think fit.

Art. 369. - Rejection or Amendment of Memorandum.

- (1) Where the memorandum of appeal is not drawn up as required by this Chapter, the Court may:
 - (a) reject the memorandum;
 - (b) return the memorandum to the party submitting it, for amendment within a time to be fixed by the court; or
 - (c) may have the memorandum 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 is amended, the court shall make a record of the amendment.

Art. 370. - Multiple Plaintiffs or Defendants.

Where there are multiple plaintiffs or defendants in a suit, and the judgment appealed from proceeds on any ground common to more than one plaintiff or defendant, any one of the plaintiffs or defendants may appeal from the whole judgment, and thereupon the Appellate Court may reverse or vary the judgment in favor of any of the plaintiffs or defendants, as the case may require.

Art. 371. - Register of Appeals.

Every Appellate Court shall keep a book called the Register of Appeals wherein the particulars of all 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. 372. - Appeal Filed Out of Time.

- (1) The registrar shall refuse to accept a memorandum of appeal filed after the expiry of the time required, and shall inform the party that he may within ten days file an application for leave to appeal out of time.
- (2) The registrar shall also refuse to accept the memorandum where the memorandum of 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. 373. - Application for Leave to Appeal Out of Time.

- (1) An application for leave to appeal out of time shall be in writing, and shall show good cause why the party did not appeal within the time set out in this Chapter.
- (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 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. 374. - Decision on Application.

- (1) On being satisfied that the failure to appeal was for good cause, the court shall record an order granting the application, and the party shall file his memorandum of appeal within ten days of such order.
- (2) There shall not be good cause within the meaning of the preceding sub-Article where the failure to appeal in time is due to the fault or negligence of the appellant's pleader.
- (3) A note of any application under this article and of the decision thereon shall be entered in the Register of Appeals.

Art. 375. - No Appeal.

No appeal shall lie from a decision dismissing or granting an application under the preceding Article.

Chapter 3. - Stay of Proceedings and of Execution

Art. 376. - Stay by Lower Court.

During the period before the expiration of the time allowed for filing an appeal, the court which issued an appealable judgment or order, on application of a party and upon finding sufficient cause, may order a stay of execution of such judgment or order.

Art. 377. - Stay by Appellate Court.

- (1) The appellate court, for good cause shown, may order that further proceedings in the case being appealed, or the execution of any judgment or order made in the case, be stayed pending further order of the court.
- (2) Absent an order for a stay under sub-Article (1), the filing of an appeal under this Code shall not operate as a stay of any judgments, orders, or proceedings.

Art. 378. - Stay by President of Court.

Nothing in this Chapter shall prevent the President of the courts referred to respectively 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 expiration of the stay ordered, the execution officer shall execute the judgment or order after the expiration of the stay.

Art. 379. - Conditions for Ordering Stay.

- (1) No order for stay of execution shall be made under the provisions of this Chapter unless the court or President making it finds that:

- (a) substantial loss may result to the party applying for stay of execution unless the order is made;
 - (b) the application has been made without unreasonable delay; and
 - (c) money has been deposited, security given or a surety produced by the applicant for the due performance of such judgment or order as may ultimately be binding upon him.
- (2) An application for a stay shall be decided after the parties have been heard, except that the court may, on an application supported by affidavit, make an ex parte order for stay of execution pending such hearing.

Art. 380. - Security for Order for Execution.

- (1) If judgment has already been executed, the appellate court, for good cause shown, may order the party in whose favor the judgment was executed to provide a security to ensure full restitution should the judgment be reversed by the appellate court.
- (1) As an alternative to granting a stay of execution, the appellate court, for good cause shown, may order the party in whose favor the judgment was executed to provide a security to ensure full restitution should the judgment be reversed by the appellate court.

Chapter 4. - Hearing of Appeal

Art. 381. - Summary Dismissal of Appeal.

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 after hearing the appellant and examining the record of the previous proceedings, without calling on the respondent to appear, if it thinks fit and agrees with the judgment appealed from.

Art. 382. - Setting Hearing Date and Right of Reply.

- (1) Unless the Appellate Court dismisses the appeal summarily, 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 even if 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.

Art. 383. Cross Appeal

- (1). The respondent may, on the payment of the prescribed court fee, take any cross appeal to the decree or order which he could have taken by way of appeal notwithstanding that he did not appeal from any part of the decree or order.

- (2). A cross appeal shall be in the form of a memorandum of appeal and shall be filed in 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) If the respondent submits a memorandum of cross appeal within the time prescribed, the court shall:
 - (a) cause a copy of the memorandum of cross appeal to be served forthwith, and at the expense of the respondent, on any party who may be affected by the cross appeal or on the party's pleader, unless the respondent files with the cross appeal a written acknowledgement from such party of having already received a copy; and
 - (b) fix a new day of hearing the appeal and cross appeal.
- (4) At any time before 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. 384. - Hearing Procedure.

- (1) On the day fixed for hearing the appeal, the appellant shall first be heard in support of the appeal.
- (2) The court shall then, if it does not dismiss the appeal at once, hear the respondent in opposition to the appeal, and then the appellant shall be entitled to reply.

- (3) The court may require the respondent to submit a written reply to the memorandum of appeal and the appellant to submit a written counter-reply. If the respondent has already submitted a written reply before the hearing, the court may order or, upon request, allow, 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 provisions of this article apply to the cross appeal.

Art. 385. - Remand of Case by Appellate Court.

- (1) The Appellate Court may, if it thinks fit, order that a case be remanded and may further order what issue or issues shall be tried in the case so remanded.
- (2) Where a case is remanded under this article, the Appellate Court shall send a copy of its judgment and order to the lower court with directions to determine the suit under its original number in the register of civil suits.
- (3) The evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Art. 386. - Judgment on the Record.

Where the evidence in the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may reframe the issues, if necessary, and may finally determine the matter, even if the judgment of the court below was based wholly

upon some ground other than that on which the Appellate Court bases its judgment.

Art. 387. - Remand to Court Below.

- (1) When it appears to the Appellate Court that in order to reach a just determination of the merits of the case it is necessary to determine any issue or question of fact which had not previously been determined by the court below, the Appellate Court may refer the case to the lower court to determine such issues or facts, and may direct such court to take any additional evidence required.
- (2) The lower court shall proceed to try such issues and questions and shall return the case to the Appellate Court together with a record of the evidence heard, its findings, and the reasoning in support of the findings, which shall then form part of the record in the suit.

Art. 388. - Objections to Findings of Lower Court.

- (1) Either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding returned under Article 389 (2).
- (2) After the expiration of the time fixed for presenting the objections the Appellate Court shall proceed to determine the appeal.

Art. 389. - Additional Evidence.

- (1) The parties to an appeal shall not be entitled to produce additional evidence in the Appellate Court unless the Court so orders.

- (2) An Appellate Court, on its own motion or in response to a motion by a party, may issue an order allowing the presentation of additional evidence, including the testimony of witnesses, if it finds that:
 - (a) the lower court has refused to admit evidence which ought to have been admitted;
 - (b) a document must be produced or a witness examined to enable the Court to pronounce judgment; or
 - (c) for any other cause necessary to a just and fair disposition of the case.
- (3) Any decision made under sub-Article (2) shall state the reasons upon which it is based.

Art. 390. - Mode of Taking Additional Evidence.

- (1) When the Appellate Court orders the taking of additional evidence, it may take such evidence itself, or it may direct the lower court or any other subordinate court to take such evidence and send it to the Appellate Court.
- (2) An order for the taking of additional evidence shall specify the points to which the evidence is to be confined, and the record of the case shall reflect the points so specified.

Art. 391. - Pronouncement of Judgment.

The Appellate Court, after hearing the parties or their pleaders and considering any part of the record it deems appropriate, shall pronounce judgment.

Art. 392. - Powers of the Appellate Court.

- (1) The judgment may confirm, vary or reverse the judgment or order from which the appeal is preferred.
- (2) Where the parties to the appeal agree as to the form which the judgment in appeal shall take, or as to the order to be made in the appeal, the Appellate Court may pass a judgment or make an order accordingly.

Art. 393. - Application for Restitution.

- (1) When the Appellate Court varies or reverses a judgment, in whole or in part, and returns the case to the lower court for further proceedings, a party may apply for, and the lower court shall order, restitution to the extent necessary to place the parties in the position which they would have occupied but for such judgment.
- (2) For the purpose of sub-Article (1), the court may make such orders as are appropriate, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits.
- (3) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-Article (1).

TITLE II - EXTRAORDINARY REVIEW

Art. 394. - Application.

- (1) A party may apply to the Supreme Court for leave to review any interlocutory decision made by a court during the course of proceedings.
- (2) An application for review may also be made under this Article to the Supreme Court in any case where all rights of appeal have been exhausted and no application for appeal out of time is permitted.
- (3) Leave may be sought and granted on the sole grounds that the decision in issue reflects manifest error of principle or gross unfairness that cannot be remedied by final judgment or by appeal in the matter without causing further prejudice or unfairness to a party or the parties.

Art. 395. - Remedy.

If the Court grants leave in accordance with Article 394 it may also grant such remedy as it considers appropriate in the circumstances to ensure the orderly progress and disposition of proceedings.

TITLE III - THIRD-PARTY OPPOSITION

Art. 396. - 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 judgment 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 judgment within sixty days of the day the opposing party became aware of such judgment and before such judgment is executed.

Art. 397. - 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 which issued the judgment being opposed.

- (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 judgment opposed was given;
 - (d) the name of the court which gave the judgment opposed to, the date of such judgment 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 judgment opposed to may, where appropriate, be filed together with the petition. On good and sufficient grounds being shown, the court may order the execution to be stayed.

Art. 398. - Effect of Opposition.

- (1) On the filing of a petition, 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 judgment 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 judgment opposed to, but only in as far as the interests of the opposing party are affected by this judgment.

TITLE IV - REVISION

Art. 399. - Grounds for Revision.

Notwithstanding the provisions of this Code concerning *res judicata*, any party considering himself aggrieved by a judgment or order from which an appeal lies, but from which no appeal has been taken, or by a judgment or order from which no appeal lies, may, on payment of the prescribed court fee, apply for a revision of judgment, where:

- (a) subsequent to final judgment, he discovers new evidence or a material 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 judgment; and
- (b) had such matter been known at the time of the giving of the judgment, it would have materially affected the substance of the judgment or order.

Art. 400. - Time of Revision.

- (1) An application for revision shall be filed within sixty days when the ground for revision did arise and the applicant became aware of it, but before ten years after the judgment the revision of which is sought was rendered.
- (2) The provisions concerning appeals out of time shall apply when a petition under this Article is made out of time.

Art. 401. - Competent Court.

- (1) The application for revision shall be made to the appellate court that would have jurisdiction on appeal from the court below.
- (2) Where the Supreme Court decided the case and either upheld the judgment of the lower court or reversed it and issued a final ruling, the application shall be made to the court whose judgment was reviewed by the Supreme Court.

Art. 402. - Form and Contents of the Application.

An application for revision shall contain the same particulars as a memorandum of appeal and shall be supported by an affidavit containing strict proof of the fulfillment of the conditions set forth for the formation of an appeal.

Art. 403. - 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 judgment 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 deems appropriate.
- (2) No appeal shall lie from any decision of the court granting or rejecting an application for revision.

Art. 404. - Stay of Proceedings.

The application for revision does not stay the execution of the judgment. However, the court which hears the application may, if good grounds are shown by the applicant, issue a stay of the execution of judgment, but only insofar as the proceedings are reopened.

Art. 405. - Revision of the Judgment.

If the court grants the pleaded ground for revision, it shall render a new judgment, revising the contested judgment.

BOOK VII - ATTACHMENT AND EXECUTION OF DECREES

TITLE 1 - EXECUTION OF DECREES PASSED IN ERITREA

Chapter 1. - Courts Executing Decrees

Art. 406. - Principle.

A decree may be executed in accordance with the provisions of this Title either by the court which issued it or by the court to which it is sent for execution. Nothing in this Title shall affect the provisions of the Maritime Code regarding the arrest, detention and sale of ships.

Art. 407. - Transfer of Decree.

- (1) The court which issued a decree may, by order in the form prescribed, or its own motion, or on the application of the decree-holder when execution is sought, send it for execution directly to another court where:
 - (a) the judgment-debtor resides, carries on business or personally works for gain within the local limits of the jurisdiction of such other court;
 - (b) the judgment-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 issued the decree;
 - (c) the decree directs the sale or delivery of immovable property located within the local limits of the jurisdiction of such other court; or

- (d) the court which issued the decree considers, for any other reason to be recorded, that the decree should be executed by such other court.
- (2) Nothing in the preceding sub-Article shall prevent a court from directing attachment or sale of immovable property notwithstanding that the entire property is not located within the local limits of its jurisdiction.

Art. 408. - 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. 409. - 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 issued by itself.
- (2) The court to which a decree is transferred shall certify to the court which issued such decree the fact of execution or, where the former court fails to execute the same, the circumstances attending such failure.

Art. 410. - 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. 411. - Stay of Execution.

- (1) The court to which a decree has been transferred shall, on good and 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 issued 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 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 deems appropriate.

Art. 412. - Binding Effect.

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. 413. - 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 issued, the court may, on such terms as to security or otherwise as it deems appropriate, stay the execution of the decree until the pending suit has been decided.

Chapter 2. - Application and Process for Execution

Art. 414. - Making and Contents of Application.

- (1) Where the holder of a judgment wishes to execute it, he shall apply to the court which passed such judgment to issue process for its execution. .

- (2) The application may be made upon the passing of the judgment, unless the judgment-debtor was given time to satisfy the judgment by his personal obedience, in which case the application may not be made until the judgment-debtor is in default.
- (3) The application, to which there shall be attached a certified copy of the judgment 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 judgment 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. 415. - Particulars in Application for Attachment.

- (1) An application for the attachment of any movable property belonging to the judgment-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 judgment-debtor shall contain:
 - (a) a description of such property, 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. 416. - Application for Execution by Joint Decree-holder.

- (1) Where a decree has been passed jointly in favor 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 finds good and sufficient cause for allowing the decree to be executed on an

application made under sub-Article (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. 417. - Application for Execution by Transferee of Decree.

- (1) Where a decree, or if a decree has been issued jointly in favor of two or more persons, is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court that issued it.
- (2) Subject to the provisions of sub-Articles (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 to the transferor and the judgment-debtor, and the judgment 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 has been transferred to one of them, the transferee judgment-debtor cannot execute against the other judgment-debtor or debtors.

Art. 418. - 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 fulfillment of any condition imposed on any person under an order of the court, 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, provided that such notice as the court in case deems appropriate shall be given to him.

Art. 419. - Death of Judgment-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. 420. - Execution When Barred.

No application for execution shall be submitted after the expiration of ten years from:

- (a) where the judgment 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 judgment; or
- (b) the date of the judgment sought to be executed.

Art. 421. - Procedure on Receiving Application for Execution.

- (1) On receiving an application for execution the court shall ascertain whether 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 the preceding sub-Article, 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 this Article shall be dated and signed or initialed by the presiding judge.

Art. 422. - 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 judgment 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. 423. - Objection by the Judgment-debtor.

If the judgment-debtor, having received a copy of the execution order, prefers to submit objections, the court shall consider the application and order as it deems appropriate.

Art. 424. - Examination of the Judgment-debtor.

- (1) Upon request of the judgment-creditor, or on its own motion, the court may summon and examine the judgment-debtor under oath as to his means or for any other reason it deems necessary.
- (2) Where the judgment-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.
- (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. 425. - Judgment-debtor Unable to Pay.

No order shall be issued where the court considers that the judgment-debtor is unable to pay the amount due under the judgment or any installment thereof, but the court may at any subsequent time issue process on being satisfied that the judgment-debtor has become able to pay such amount or installment.

Art. 426. - 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-Article (1) may be issued pending the making of an application for execution.

Art. 427. - Particulars in Warrant of Arrest.

- (1) Every warrant issued shall direct the officer entrusted with its execution to bring the judgment-debtor before the court unless the judgment-debtor satisfies the decree by personally appearing in court.
- (2) No warrant of arrest shall be executed where satisfaction is obtained in accordance with sub-Article (1).

Art. 428. - Where Detention May be Ordered.

Where after the examination:

- (1) the judgment-debtor refuses without good cause to comply with the decree; or
- (2) the court is satisfied that the judgment-debtor, although able to comply with the decree, has willfully 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.

Art. 429. - Release from Detention.

- (1) The court shall order that the judgment-debtor be released from detention:
 - (a) upon the amount due under 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-Article (1) may not be rearrested in execution of the same decree.

Art. 430. - Effect of Detention or Release.

A judgment-debtor arrested or released shall not, merely by reason of his arrest or release, be discharged from the whole or any part of his debt.

Art. 431. - Endorsement of Order.

- (1) The execution officer shall endorse on the order the day 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 for 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 about the alleged inability and may, if it deems appropriate summon and examine witnesses as to such inability and shall record the result.

TITLE II - MODES OF EXECUTION

Chapter 1. - General Provisions

Art. 432. - 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 possible, correspond with the amount due under the decree.

Art. 433. - 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-Article (1), notice thereof shall be given to the decree-holder.

Art. 434. - 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 judgment-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-Article (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. 435. - 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-Article (1) shall apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.
- (3) The provisions of sub-Article (1) shall not apply unless:
 - (a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same position 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 favor of one or more of such persons.

Art. 436. - Execution in Case of Cross-claims Under Same Decrees.

Where application is made to a court for the execution of a decree involving cross-claims 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. 437. - Decree for Specific Movable Property.

A decree for any specific movable property or any share therein may be executed by the seizure of the movable property or share and the delivery thereof to the decree-holder or to such person as he appoints to receive delivery on his behalf.

Art. 438. - Decree for Specific Performance or Injunction.

- (1) Where the party against whom a decree for the specific performance of a contract or for an injunction has been issued has had an opportunity of complying with the decree and has willfully failed to do so, the decree may be executed by the attachment and sale of his property and the court shall award the proceeds to the decree-holder in such an amount as it deems appropriate.
- (2) Nothing in sub-Article (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. 439. - 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 judgment-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 deems appropriate.
- (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 on his behalf, shall execute the document so delivered.
- (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 deems appropriate as to the payment of the expenses of the registration.

Art. 440. - 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 such possession by a 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 to put the decree-holder in possession.

Art. 441. - 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.

Chapter 2. - Attachment of Property

Art. 442. - Property Not Liable to Attachment.

The following property shall not be liable to attachment or sale at any stage of the proceedings:

- (1) the necessary wearing-apparel, cooking vessels, bed and bedding of the judgment-debtor and his family;
- (2) tools, books, instruments or implements of any kind used by the judgment-debtor in his profession, art or trade;
- (3) where the judgment-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;

- (4) such amount of food and money as may, in the opinion of the court, be necessary for the judgment-debtor and his family for a period of six months;
- (5) pensions and alimonies;
- (6) three-fourth of the judgment-debtor's salary, provided that the entire salary shall be exempt from liability to attachment where it does not exceed a reasonable amount prescribed by the court and the judgment-debtor has no other income;
- (7) any other property declared by or in accordance with any law to be exempt from liability to attachment or sale; and
- (8) 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. 443. - 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 judgment-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. 444. - 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 judgment-debtor, the attachment shall be made by actual seizure, and the execution officer shall, subject to the provisions of sub-Article (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. 445. - 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 at or near 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. 446. - 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-Article 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 deems appropriate, 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 by which 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. 447. - Attachment of Property Not in Possession of Judgment-debtor.

- (1) Where the property to be attached is a debt not secured by a negotiable instrument or a debt owing to the judgment-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 transferring the same 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 judgment-debtor.

- (4) A copy of the order made under sub-Articles (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-Article (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.

Art. 448. - Attachment of Share in Movable.

Where the property to be attached consists of the share or interest of the judgment-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 changing it in any way.

Art. 449. - 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 installments, as the court may direct.

- (2) A copy of an order made under sub-Article (1) shall be sent to the employer of the judgment-debtor and the amount due under the order, or the monthly installments, as the case may be, shall thereupon be withheld from the judgment-debtor's salary and remitted to the court.
- (3) Where the attachable proportion of the judgment-debtor's salary is already being withheld and remitted to a court in pursuance to a previous and unsatisfied order of attachment, the employer of the judgment-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. 450. - Attachment of Negotiable Instruments.

Where the property to be attached is a negotiable instrument not deposited in a court, nor in the possession 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 order of the court.

Art. 451. - 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 judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Art. 452. - Attachment of Immovable Property.

- (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-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 the 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. 453. - 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 judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed.

Art. 454. - Order for Payment of Coin or Currency Notes to Party Entitled Under Decree.

Where the property attached is 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. 455. - 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 good and sufficient reason adjourn the proceedings to a further date.
- (2) Upon the dismissal of such application the attachment shall cease.

Chapter 3. - Investigation of Claims and Objections

Art. 456. - Investigation of Claims to Attached Property.

- (1) Where any claim is presented against, 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 designed to cause unnecessary delay.

- (2) Any claim or objection under sub-Article (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 as of 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. 457. - 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 deems appropriate from attachment.
- (2) Where the court is satisfied that such property is liable to attachment, it shall disallow the claim or objection.

Art. 458. - Continuance of Attachment Subject to Claim of Encumbrance.

Where the court is satisfied that the property is subject to a mortgage or right *in rem* in favor of some person not in possession, and deems appropriate to continue the attachment, it may do so, subject to such mortgage or right *in rem*.

Art. 459. - Suits to Establish Right to Attached Property.

Where a claim or an objection is disallowed, 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 final.

Chapter 4. - Sale Generally

Art. 460. - 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.
- (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 judgment-debtor and after hearing the decree-holder.

Art. 461. - Proclamation of 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 judgment-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 encumbrance 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.

Art. 462. - Application for Sale.

- (1) An application for an order for sale shall be accompanied by a statement signed and verified in the manner prescribed for the signing and verification of pleadings and containing, so far as they are known or can be ascertained by the person

making the verification, all relevant particulars of the application.

- (2) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it deems 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. 463. - Mode of Making Proclamations.

- (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by law.
- (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. 464. - Time of Sale.

No sale hereunder shall, without the consent in writing of the judgment-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 a newspaper, from the date of such publication, whichever is the later.

Art. 465. - 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. 466. - 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, a second sale by auction shall be held after the issuance of a fresh proclamation in the manner and within the time specified for the first auction.
- (2) The beginning value for the second auction shall be half of the estimated value for the first auction.
- (2) Where no bidder presents himself at the second auction, the court may, notwithstanding any provision to the contrary, authorize the decreeholder 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. 467. - Defaulting Purchaser Answerable for Loss on Resale.

- (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 new 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 judgment-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. 468. - 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 judgment-debtor or any other person whose interest are affected, set aside the sale.

Art. 469. - 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-Article (1), it shall be set aside.

Chapter 5. - Sale of Movable Property

Art. 470. - 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. 471. - Special Provisions Relating to Growing Crops.

- (1) Where the property to be sold is a growing crop and the nature of the crop allows it to be 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 nature of the crop does not allow it to be 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. 472. - 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. 473. - Irregularity Not to Vitate 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 specified property and for compensation in default of such recovery.

Art. 474. - 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 held 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. 475. - 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 held is required to transfer such negotiable instrument or share, 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 effective for all purposes as if the same had been signed by the party himself.

Art. 476. - Vesting Order in Case of Other Property.

In the case of any movable property not hereinbefore provided for, the court may issue an order vesting such property in the purchaser or as the purchaser may direct, and such property shall vest accordingly.

Chapter 6. - Sale of Immovable Property

Art. 477. - Postponement of Sale to Enable Judgment-debtor to Raise Amount of Decree.

- (1) Where an order for the sale of immovable property has been issued, if the judgment-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 judgment-debtor, the court may, on his application, postpone the sale of the property covered by the order for sale on such terms and for such period as it deems appropriate to enable the judgment-debtor to raise the amount.
- (2) In such case the court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, 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 judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money, 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. 478. - 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, the court may dispense with the requirements of sub-Article (1).

Art. 479. - 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.

Art. 480. - Procedure in Default of Payment.

In case of default of payment within the period prescribed, the deposit may, if the court deems appropriate, 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. 481. - 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 successful bid shall be deemed to be the bid of the co-sharer.

Art. 482. - 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 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. 483. - 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 ratable 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. 484. - 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. 485. - When Sale to Become Absolute or be Set Aside.

- (1) Where no application is made 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 issue 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-Article (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. 486. - Delivery of Property Occupied by Judgment-debtor.

Where the immovable property sold is occupied by the judgment-debtor or by some person on his behalf or by some person claiming under a title created by the judgment-debtor, and subsequently the property is attached and a certificate in respect thereof has been granted, 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, remove any person who refuses to vacate the same.

Art. 487. - Delivery of Property Occupied by Tenant.

Where the property sold is occupied by a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under Art. 485 (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 judgment-debtor has been transferred to the purchaser.

Chapter 7. - Resistance to Delivery of Possession

Art. 488. - 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. 489. - Resistance or Obstruction by Judgment-debtor.

Where the court is satisfied that the resistance or obstruction was occasioned without good cause by the judgment-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 judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a period not exceeding thirty days.

Art. 490. - Resistance or Obstruction by *Bona Fide* Claimant.

Where the court is satisfied that the resistance or obstruction was occasioned by any person, other than the judgment-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 judgment-debtor, the court shall make an order dismissing the application.

Art. 491 - Dispossession by Decree-holder or Purchaser.

- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession or 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.

**Art. 492. - Provisions not Applicable to Transferee
*lite pendente.***

Nothing in the preceding Chapter 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. 493. - Orders Conclusive Subject to Regular Suit.

Any person not being a judgment-debtor against whom an order is made under the preceding Chapter 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.

Chapter 8. - Execution of Foreign Judgments

Art. 494. Principle

- (1) Unless otherwise expressly provided for by international conventions, foreign judgments may not be executed in Eritrea except in accordance with the provisions of this Chapter.
- (2) No foreign judgment shall be executed in Eritrea unless an application to this effect is made.

- (3) An application under sub-Article (2) shall be made to the division of the High court situate in the Region where execution is to take place.

Art. 495. Form of Application

An application for the execution of a foreign judgment shall be in writing and shall be accompanied by:

- (a) a certified copy of the judgment to be executed; and
- (b) a certificate signed by the President or the registrar of the court having given judgment to the effect that such judgment is final and enforceable.

Art. 496. - Conditions for Allowing Application.

Permission to execute a foreign judgment shall not be granted unless:

- (1) the execution of Eritrean judgments is allowed in the country in which the judgment to be executed was issued;
- (2) the judgment was issued by a court duly established and constituted;
- (3) the judgment-debtor was given the opportunity to appear and present his defense;
- (4) the judgment to be executed is final and enforceable; and
- (5) execution is not contrary to public order or morals.

Art. 497. - 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. 498. - 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 Eritrea as though it had been issued by an Eritrean court.

BOOK VIII - FINAL PROVISIONS

Art. 499. - Disciplinary Powers.

Any president of a court or presiding judge may take such action as may be necessary to ensure order in court and the administration of justice in accordance with the provisions of this Code and may summarily punish with a fine any party, pleader or other person who is guilty of improper conduct in the course of any proceedings.

Art. 500. - Summary Punishment of Certain Offences.

Any court may summarily punish flagrant offences of contempt of court in accordance with the Penal Code.

Art. 501. - Regulations.

The appropriate authorities shall make regulations concerning any matter which may or shall be prescribed by this Code.