

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 can 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.

not be indicated in accordance with the preceding articles, then, for purposes of pecuniary

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.

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.

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. 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.

) 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.

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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 **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.

for refusing to testify or produce evidence.

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.