

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. - Pleadings.

- (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 pers 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.

on sufficiently interested in a suit between other parties may intervene **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 as against such defendant only, it may be set aside as 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.

