

NLS

# SAMPLE DRAFT

*on*

## CIVIL LITIGATION



### Highlights

- ▶ Appeals
- ▶ Judgement
- ▶ .Summary Summons
- ▶ Pre-trial Proceedings
- ▶ .Preliminary Objection
- ▶ Interlocutory Applications
- ▶ Parties and Joinder Applications
- ▶ Fundamental Rights Enforcement Proceedings
- Pleadings ▶
- Final Address ▶
- Election Petition ▶
- Originating Processes ▶
- Matrimonial Proceedings ▶
- Applications pending Appeal ▶
- Pre-Action Counseling & Protocol ▶
- Recovery of Possession of Premises ▶

**TABLE OF CONTENT**

1. (Week 3) General Overview of Civil Litigation	-	3
2. (Week 4) Parties to a Civil Action	-	5
3. (Week 5) Preliminary Matters: Pre-action Issue And Commencement of Action in the Magistrates Court (Lagos)-	19	
4. (Week 6) Commencement of Action in High Court	-	37
5. (Week 7) Interlocutory Application	-	46
6. (Week 8) Summary judgment and judgment by default	-	59
7. (Week 9) Pleadings	-	75
8. (Week 10) Pre-Trial Issues and Pre-trial proceedings	-	90
9. (Week 11) Trial Preparation and Evidence	-	109
10. (Week 12) Trial Preparation and Evidence II	-	111
11. (Week 13) Trial: Examination of Witness	-	111
12. (Week 14) Closing/Final Address and Judgment	-	114
13. (Week 15) Enforcement of Judgment & Applications Pending Appeal	-122	
14. (Week 16) Appeals in Civil Matters	-	134
15. (Week 17) Recovery of Possession of Premises	-	143
16. (Week 18) Election Petition	-	149
17. (Week 19) Matrimonial Causes	-	159
18. (Week 20) Enforcement of Fundamental Rights	-	177

### Week 3

## GENERAL OVERVIEW OF CIVIL LITIGATION

Civil litigation involves rules or procedures that regulate the conduct of civil proceedings in court. It lays the methods whereby such proceedings are commenced and the steps that are to be taken. It also provides for the modes of enforcing the resultant judgment. Civil litigation as a subject deals with the laws, rules, practice and procedure guiding and regulating the conduct of civil actions and proceedings in court.

### Rules of Courts

In practice, every court has its own rules that guide practice and procedure of such court. In this like, there is the Supreme Court Rules made pursuant to **Section 236 of the CFRN 1999**, Court of Appeal Rules made pursuant to **Section 248 of the CFRN 1999**, Federal High Court Rules, State High Court Rules, down to Sharia and Customary Court Rules. As between the statute creating court and rules of court, the statute creating court is superior.

### Courts, Rules Applicable & Its Sources

	Court	Applicable Rules	Source
1	Supreme Court	Supreme Court Rules 1985	Section 236 CFRN 1999
2	Court of Appeal	Court of Appeal Rules 2011	Section 248 CFRN 1999
3	Federal High Court	Federal High Court Rules	Section 254 CFRN 1999
4	National Industrial Court	National Industrial Court Rules	Section 22 NIC Act
5	High Court of the FCT	High Court of the FCT (Civil Procedure) Rules 2018	Section 259 CFRN 1999
6	Sharia Court of Appeal of the FCT	Sharia Court of Appeal Rules of the FCT	Section 264 CFRN 1999
7	Customary Court of Appeal of the FCT	Customary Court of Appeal Rules of the FCT	Section 269 CFRN 1999
8	High Court of States	(Ebonyi State High Court(Civil Procedure)	Section 274 CFRN 1999

		Rules of the various High Courts of the States	
9	Sharia Court of Appeal of States	Sharia Court of Appeal Rules of the States	Section 279 CFRN 1999
10	Customary Court of Appeal of States	Customary Court of Appeal Rules of States	Section 284 CFRN 1999
11	Magistrate/District Court	Magistrate Court Rules/District Court Rules	Magistrate Court Law/District Court Law

### **ETHICAL ISSUES ARISING FROM IMPROPER USE OF THE RULES OF COURT AND WRONG CHOICE OF COURT**

#### **Filing Action in the Wrong Court**

Where an action is filed in the wrong court, the consequences that may arise are:

- ✦ The case will be stroke out
- ✦ Cost may be awarded in favour of the defendant
- ✦ Counsel may be personally liable and made to pay cost to the client
- ✦ Counsel can be sued for professional negligence
- ✦ Action might be statute barred.

**Week 4**  
**PARTIES TO A CIVIL ACTION**

Generally before embarking on litigation, there are preliminary, but important matters that need to be considered first, such as bringing the proper parties before the court. Hence, there must be a plaintiff, who institutes the action and a defendant who is being sued. Under the *Rules of Court of Lagos, 2018 and Abuja 2018*, plaintiffs are referred to as 'Claimants'. In interlocutory proceedings and originating processes (undefended list), parties are referred to as 'Applicant and Respondent', while in cases like matrimonial causes, election petition and company winding up petitions, parties are referred to as 'Petitioners and Respondents'. However, a party cannot play a dual role of being one who is suing and at the same time, one who is being sued. It is a fundamental principle of law that bringing the correct parties before the court is necessary to enable the court determine the issues between the parties effectually, adequately and completely in order to do justice in the matter.

Sample Draft:

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

TITUS ISHAKU BULUS

(An infant, suing by his guardian PRINCE ODATSE).....CLAIMANT

AND

ESSIEN EKPO

(An infant, defending by his guardian, ADAMS EKPO).....DEFENDANT

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE MAITAMA JUDICIAL DIVISION  
HOLDEN AT MAITAMA

SUIT NO \_\_\_\_\_

BETWEEN

TITUS ISHAKU BULUS

(An infant, suing by her guardian PRINCE ODATSE).....CLAIMANT

AND

ESSIEN EKPO

(An infant, defending by his guardian, ADAMS EKPO).....DEFENDANT

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

TITUS ISHAKU BULUS

(An infant, suing by his guardian PRINCE PETERS).....CLAIMANT

AND

ESSIEN EKPO

(defending through his next friend, ADAMS EKPO).....DEFENDANT

**Trustees, Executors and Administrators (Estate of a Deceased)**

Trustees are persons who are given property by the settlor to handle on behalf of persons who are under age known as beneficiaries, for a specified period until the underage becomes an adult e.g. will matters. Executors are persons who carry out the will of a testator, while administrators are involved in case of intestate succession.

**Sample Draft: Action by a Trustee**

IN THE HIGH COURT OF EBONYI STATE  
IN THE ABAKALIKI JUDICIAL DIVISION  
HOLDEN AT ABAKALIKI

SUIT NO \_\_\_\_\_

BETWEEN

EYEKE KENNETH

(Trustee of the Estate of JOHN RASH, deceased).....CLAIMANT

AND

ESSIEN EKPO.....DEFENDANT

**Sample Draft: Action by an Administrator**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

EYEKE KENNETH

(Administrator of the Estate of JOHN RASH, deceased).....CLAIMANT

AND

ESSIEN EKPO.....DEFENDANT

**Sample Draft: Action by an Executor**

IN THE HIGH COURT OF LAGOS STATE

IN THE IKEJA JUDICIAL DIVISION

HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

EYEKE KENNETH

(Executor of the Estate of JOHN RASH, deceased).....CLAIMANT

AND

ESSIEN EKPO.....DEFENDANT

**Incorporated Bodies and Unincorporated Associations**

Incorporated bodies are bodies or clubs formed into Business Company with legal status under *Part A of CAMA*. **Section 37 of CAMA** states that, all companies incorporated under the Act have legal capacity, thus they can sue and be sued under the company's name e.g. "Nigerian Breweries Plc".

**Statutory Bodies;** These are bodies created by statute and are conferred with the performance or discharge of specific duties or functions. As such, they can sue and be sued in the names given to them by the statutes that create them e.g. CBN, INEC, NNPC, CLE, etc. See, ***Ibrahim v Judicial Service Commission***

**Government;** The government does not sue and is not sued in its name. Actions are brought or defended on behalf of the government or any of its departments or agency through the AG of the Federation or State as the case may be. The AG is statutorily conferred with the capacity to sue and be sued for and on behalf of the Government, and it is also a legal personality created under **Section 150** (Federal) and **Section 195**(State) **of the CFRN, 1999**. See, ***AG Abia State & 35 Ors v AG Federation***.

**Charitable Associations/Non-Trading Associations:** these are voluntary associations which are registered through their registered trustees under **Part C of CAMA** e.g. Churches, Mosques and non-governmental organizations. They



can sue and be sued only in their corporate name by which they are registered done through their trustees.

**Sample Draft:**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

THE INCORPORATED TRUSTEES OF CATHOLIC CHURCH.....CLAIMANT  
AND

THE INCORPORATED TRUSTEES OF IGBO UKWU UNION.....DEFENDANT

**Business Name:** a registered business name is not a body corporate and cannot sue or be sued in its name. The right person to sue is the owner of the business name as trading under the name and style of the business name so registered.– *Okechukwu & Sons v. Ndah.*<sup>1</sup>

**Sample Draft:**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE MAITAMA JUDICIAL DIVISION  
HOLDEN AT MAITAMA

SUIT NO \_\_\_\_\_

BETWEEN

EYEKE KENNETH

(Trading under the name and style of S. K. EYEKE& SONS  
GLOBAL).....CLAIMANT

AND

ESSIEN EKPO

(Trading under the name and style of E. E. EKPO  
ENTERPRISES).....DEFENDANT

**Bankrupts and Companies under Liquidation:** A bankrupt has legal capacity to sue and be sued in all personal actions. But, under *Section 58 (1) (b) of the*

---

<sup>1</sup> (1967) NMLR 366



**Bankruptcy Act**,<sup>2</sup> where the action relates to the property of the Bankrupt, he lacks capacity to sue and be sued.

**Sample Draft: Action by Trustee in Bankruptcy**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

EYEKE KENNETH

(Suing as the Trustee in Bankruptcy of SIMON AKPAMA ).....CLAIMANT

AND

ESSIEN EKPO.....DEFENDANT

**Sample Draft: Action by a Liquidator**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

EYEKS NIG LTD

(A company under liquidation suing by MR UDOMA UKPONO UDO, the liquidator of EYEKS NIG LTD).....CLAIMANT

AND

EKPOS NIG LTD.....DEFENDANT

**Death Persons:** Generally, dead persons lack the capacity to sue and be sued either personally or in a representative capacity as from the time of death. See **Oketie & Ors v Olughor**.<sup>3</sup> The only exception is where the action is not of a

---

<sup>2</sup>Cap B2 LFN 2004

<sup>3</sup>(1995) 5 SCNJ 217

personal nature. Thus, personal actions die with the person. See ***actio personalis moritur cum persona***.

**Representative Actions**

A representative action is an action brought by one or more persons as representatives of a group of persons having a common grievance and the same interests in a civil action.

The following conditions are important in a representative action:

1. Common interest and a common grievance.
2. The relief sought must be beneficial to all.
3. The parties to be represented must give express permission or authority to those who are to represent them.
4. Leave of court must be sought to sue in representative capacity.
5. The representative capacity must be reflected on originating processes.

***Application for leave is by Motion Ex parte as follows:***

1. Motion ex parte.
2. Affidavit disclosing the facts surrounding the representation, common interest and grievance. The affidavit would be sworn to by at least one or more of the persons to be represented.
3. Memorandum signed by a majority of the interested parties authorizing the representation.
4. Written address

Sample Draft:

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO. \_\_\_\_\_

BETWEEN

1. AKPU PETERS

2. OKONKWOR PETERS.....CLAIMANT/APPLICANTS

(Suing for themselves and on behalf of the Peters family)

AND

CHIEFESSIEN EKPO.....DEFENDANT/RESPONDENT

**MOTION EX PARTE**

BROUGHT PURSUANT TO ORDER 15 RULE 13 (1) OF THE HIGH COURT RULES OF LAGOS STATE AND UNDER THE INHERENT JURISDICTION OF THE COURT.

TAKE NOTICE that this Honourable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 in the hour of 9 o'clock in the forenoon or soon thereafter as Counsel to the Applicant shall be heard praying this Honourable Court for the following orders:

1. AN ORDER granting leave to the Applicant to commence this action in a representative capacity for themselves and on behalf of the Peters Family.
2. AND FOR SUCH OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances of the case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
S. K. Eyeke, Esq.  
Applicant's Counsel  
Eyeke Kenneth & Co  
15 Democracy Estates,  
Ikeja, Lagos State.

### **Joinder of Parties**

Joinder of parties usually occurs when at the time of instituting an action, there is failure to join a party who ought to have been joined in the action. Note that joinder of parties is different from joint plaintiffs and joint defendants. It is also different from joinder of causes of action. A person may be joined in a suit either as a plaintiff/claimant or defendant

### **Sample Draft: application for joinder as co-claimant/co-plaintiff in Lagos and Abuja**

IN THE HIGH COURT OF LAGOS/FCT ABUJA  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:-----  
MOTION NO:-----

BETWEEN

CHIGOZIE JUDE.....CLAIMANT/APPLICANT

AND

MOHAMED AWWAL.....DEFENDANT/ RESPONDENT

AND

PRINCE ODATSE PETERS.....PARTY SOUGHT TO BE JOINED

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 15 RULE 1, OF THE HIGH COURT OF LAGOS (CIVIL PROCEDURE) RULES 2019 (OR, for Abuja, ORDER 13 RULE 1 AND ORDER 13 RULE 19 OF THE HIGH COURT OF FCT ABUJA (CIVIL PROCEDURE) RULES, 2018) AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 in the hour of 9 o'clock in the forenoon or soon thereafter as Counsel to the Claimant/Applicant shall be heard praying the court for the following order(s):

1. AN ORDER joining Prince Odatse Peters as a co-claimant in this suit; and
2. SUCH OTHER ORDER OR FURTHER ORDER(s) as this Honourable Court may deem fit to make in the circumstances of this case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
S. K. Eyeke Esq.  
Applicant's Solicitor  
Eyeke Kenneth &Co  
NO 5 Democracy Estate  
Ikeja.

FOR SERVICE ON:

1. THE RESPONDENT,  
Mohamed Awwal  
No 3 Ajah Street  
Victoria Island  
Lagos.
2. Prince Odatse Peters  
Flat 3, Ajamgbadi Estate,

Ikoyi,  
Lagos.

NOTE: the supporting documents are affidavit and written address. If asked to draft application, draft everything: motion, affidavit and written address. Note additional supporting documents in Lagos.

**Sample Draft: application for joinder as co-defendant in Lagos and Abuja**

IN THE HIGH COURT OF LAGOS/FCT ABUJA  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: LD/1288/20  
MOTION NO: M/003

BETWEEN  
CHIGOZIE  
JUDE.....CLAIMANT/RESPONDENT  
AND  
VICTOR EZE .....DEFENDANT/ RESPONDENT  
AND  
PRINCE ODATSE PETERS.....APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 15 RULE 4, AND ORDER 15 RULE 17 (1), OF THE HIGH COURT OF LAGOS (CIVIL PROCEDURE) RULES 2019 (OR, for Abuja, ORDER 13 RULE 4 AND ORDER 13 RULE 19 OF THE HIGH COURT OF FCT ABUJA (CIVIL PROCEDURE) RULES, 2018) AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 in the hour of 9 o'clock in the forenoon or soon thereafter as Counsel to the Claimant/Applicant shall be heard praying the court for the following order(s):

1. AN ORDER joining Prince Odatse Peters as a co-defendant in this suit; and
2. SUCH OTHER ORDER OR FURTHER ORDER(s) as this Honourable Court may deem fit to make in the circumstances of this case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
S. K. Eyeke Esq.  
Applicant's Solicitor  
Eyeke Kenneth & Co  
NO 5 Democracy Estate  
Abakaliki

FOR SERVICE ON:

1. CLAIMANT/ RESPONDENT,  
Chigozie Jude  
No.2 Irvine Layout,  
Abakaliki,  
Ebonyi State.

2. DEFENDANT/RESPONDENT

Prince Odatse Peters  
Flat 3, Ajamgbadi Estate,  
Ikoyi,  
Lagos.

NOTE: the supporting documents are affidavit and written address. If asked to draft application, draft everything: motion, affidavit and written address. Note additional supporting documents in Lagos.

**Misjoinder**

Misjoinder is a situation where a mistake is made by joining as a party, a person who ordinarily ought not to be made a party to the proceedings. See **Okechukwu & Sons v Ndah**. In such a situation, **Order 13 Rule 18 (2) Abuja** and **-ORDER 15 Rule 16(1)(2) Lagos 2019** both provide that at any stage of the proceedings, the court may either suo motu or on application by either party, order that the name or names of persons improperly joined, whether as claimants/plaintiffs or defendants, be struck out.

Sample Draft:

IN THE HIGH COURT OF JUSTICE OF LAGOS/FCT ABUJA  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: LD/27/20  
MOTION NO: M/02

BETWEEN

CHIGOZIE JUDE.....CLAIMANT/RESPONDENT

AND

1. VICTOR EZE.....DEFENDANT/RESPONDENT

2. PRINCE ODATSE PETERS.....DEFENDANT/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 15 RULE 16(1)(2) OF THE HIGH COURT OF LAGOS (CIVIL PROCEDURE) RULES 2019 (OR, for Abuja, ORDER 13 RULE 18(2) AND ORDER 13 RULE 19 OF THE HIGH COURT OF FCT ABUJA (CIVIL PROCEDURE) RULES, 2018) AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 in the hour of 9 o'clock in the forenoon or soon thereafter as Counsel to the Claimant/Applicant shall be heard praying the court for the following order(s):

1. AN ORDER striking out Prince Odatse Peters as a defendant in this suit; and
2. SUCH OTHER ORDER OR FURTHER ORDER(s) as this Honourable Court may deem fit to make in the circumstances of this case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
S.K. EYEKE ESQ.  
APPLICANT'S SOLICITOR  
EYEKE KENNETH & CO  
NO 15 DEMOCRACY ESTATE  
LAGOS STATE

FOR SERVICE ON:

1. THE RESPONDENT,



CHIGOZIE JUDE  
C/O HIS COUNSEL  
CJ P. N AKPU ESQ.  
JURIS CONSULT CHAMBERS  
NO 3 AJAH STREET  
LAGOS

2. THE RESPONDENT,  
VICTOR EZE  
FLAT 3, AMADI ESTATE,  
LAGOS.

**NOTE:** the supporting documents are affidavit and written address. If asked to draft application, draft everything: motion, affidavit and written address. Note additional supporting documents in Lagos

### **THIRD PARTY PROCEEDINGS**

A third party proceeding is a special type of proceeding that favours a defendant only or a plaintiff who has become a defendant by counterclaim. It is an action in which a defendant who is properly sued, claims to that a third party may bear eventual liability either in whole or in part and so he applies for a joinder of such third party to enable him prosecute another action between himself and the third party in the same action between himself and the plaintiff. See **Bank of Ireland v Union Bank of Nigeria Ltd.**

Sample Draft:

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: LD/123/20  
MOTION NO: M/06

BETWEEN  
ESSIEN EKPO.....CLAIMANT  
(do not write respondent cos it is exparte)  
AND  
PRINCE ODATSE PETERS.....DEFENDANT/APPLICANT  
AND

VICTOR EZE.....THIRD PARTY SOUGHT TO BE JOINED

MOTION EX PARTE

BROUGHT PURSUANT TO ORDER 15 RULE 19(1) OF THE HIGH COURT OF LAGOS (CIVIL PROCEDURE) RULES 2019, (OR, for Abuja, ORDER 13 RULE 21(1) OF THE HIGH COURT OF FCT (CIVIL PROCEDURE) RULES 2018) AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 in the hour of 9 o'clock in the forenoon or soon thereafter as Counsel to the defendant/applicant shall be heard praying this Honourable Court for the following order(s):

1. AN ORDER granting leave to the defendant/applicant to issue and serve a THIRD PARTY NOTICE on Mr. Victor Eze in this suit
2. And such further or other order(s) as this Honourable Court may deem fit to make in the circumstances.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
S. K. EYEKE ESQ.  
APPLICANT'S  
SOLICITOR  
EYEKE KENNETH & CO  
15 DEMOCRACY ESTATE  
LAGOSI STATE.

NOTE: it is a motion ex parte, so no address for service.

**WEEK 4 TASKS: LAGOS CAMPUS**

**SCENARIO**

On 5<sup>th</sup> January 2014, Mr Goodday Ebenezer, who trades under a registered business name -Wisebros & Sons- entered into a contract in Lagos with the Agricultural Bank to supply ten thousand tons of cocoa worth N35 Million only to

the Bank for onward exportation to Malaysia. The term of the contract was that a down payment of the sum of N20 million would be made before the exportation and the balance would be paid when the consignment reached the destination. Consequently Mr Goodday Ebenezer received the sum of N20 million and supplied the goods.

Since then the Agricultural Bank has refused to pay Mr Goodday Ebenezer the balance despite letters of repeated demands. Ultimately, on the 20<sup>th</sup> January 2017 the Bank wrote a letter to Mr Goodday Ebenezer informing him of its decision not to pay the balance because the goods supplied were inferior to the standard requested for. .

The claimant on the 5<sup>th</sup> Sept. 2018 instituted the action at the High Court of Lagos State for the recovery of the outstanding balance of N 15 million as damages for breach of contract.. Before the judgment could be delivered Agriculture Bank became a no-going concern and was taken over by the Nigeria Deposit Insurance Corporation – the NDIC, with a view to winding up the Bank. Thereafter the NDIC brought an application to be joined as a defendant and as a necessary party and the court granted the application.

The NDIC thereafter brought a preliminary objection, for among others (1) an order of court dismissing the action because it was statute barred; and (ii) an order of court dismissing the action because it is only the Federal High Court that has the jurisdiction to entertain the matter since Agricultural Bank is in the process of being wound up

1. Groups 1,3, and 5 should prepare the application for joinder of the NDIC as a co-defendant.
2. Group 7, 8 & 9 should prepare an application striking out the name of NDIC (assuming NDIC was originally joined as a party).
3. Groups 2, 4, 6, & 10 should prepare the preliminary objection as raised by the NDIC.
4. Every group shall:
  - i. prepare an application joining Good Havens Insurance PLC (the company that insured the consignment)
  - ii. make a list of likely ethical issues that may arise in acting for and against a party in litigation under duties of lawyer to client, courts, the state and the legal profession.

## Week 5

### PRELIMINARY CONSIDERATIONS BEFORE COMMENCING CIVIL ACTION

- i. **CAUSE OF ACTION:** A cause of action is simply a factual situation, the existence of which entitles one person to obtain from court a remedy against another. See *Madukolu v. Nkemdilim* (1963) 1 All NLR (Pt4) at 587.
- ii. **STATUTORY LIMITATION:** For almost all cases, there is a limitation period within which the proceedings must be commenced. See **PUBLIC OFFICERS PROTECTION ACT**
- iii. **PARTIES:** It is also of immense importance to consider the parties to a proposed action. The claimant & the defendant must be imbued with the legal capacity to sue & be sued.
- iv. **VENUE:** This suggests the location or Judicial division of the court you have identified to commence your action.
- v. **CONDITION PRECEDENT (PRE-ACTION NOTICE):** Where the law requires the service of pre-action notice by the claimant before commencement such condition must be met. **S.11(2) NNPC ACT; AMADI V. NNPC (2000) 10 NWLR (674) 76.**
- vi. **COST OF LITIGATION:** A claimant's counsel should take a critical look at the expected gains from a successful litigation vis-a-vis the cost implication of the litigation before appropriately advising the claimant.
- vii. **ENFORCEMENT & REALISATION OF JUDGMENT:** The claimant's counsel should also assess and consider the legal and practical problems associated with the realization of judgment of the court.
- viii. **ALTERNATIVE DISPUTE RESOLUTION:** A Lawyer must advise his client on the availability of ADR methods. It is mandatory for a Lawyer see **r.15 sub.3 (d) RPC and O. 5 rule 8 Lagos and o.2 r.2 (4) Abuja.**
- ix. **PRE-ACTION-COUNSELLING.** A Lawyer before commencing an action should advise his client on the relative strength and weaknesses of the case. A Lawyer may be punished for filing a suit that amounts to abuse of court process see **or.2 r. 8 Abuja. See also or. 2 r. 9 for NBA seal.**
- x. **EXHAUSTION OF AVAILABLE REMEDIES:** Where a law prescribes a legal line of action for the resolution of an issue, such remedies must be exhausted before litigation, **ARIBISILA V. OGUNYEMI (2005) 6 NWLR (PT. 921) 212.**
- xi. **IMMUNITY:** **S. 308 of the constitution** confers immunity on some classes of elected political office holders from legal processes within the period they occupy such offices.

#### **How to Raise Preliminary Objection**

(There are 2 ways; depending whether it is solely on grounds of law only or on mixed law & facts)

1. By Notice of Preliminary Objection and written address – grounds of law only.
2. By Motion on Notice with affidavit and written address – grounds of mixed law and facts.

**Sample Draft: Notice of Preliminary Objection**

IN THE HIGH COURT OF LAGOS  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: LD/07/12  
MOTION NO: M/02

BETWEEN:

ALU OLADEJI O.....CLAIMANT/RESPONDENT

AND

IGWEOGU MAXWELL.....DEFENDANT/APPLICANT

**NOTICE OF PRELIMINARY OBJECTION**

BROUGHT PURSUANT TO SECTION 2(1) (A) OF THE PUBLIC OFFICERS PROTECTIONS ACT, AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE that this Honorable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 in the hour of 9 o'clock in the forenoon or soon thereafter as Counsel to the Applicant shall be heard by way of a preliminary objection challenging the competence of this suit and the jurisdiction of this court and shall also be heard praying the court for the following order(s):

1. AN ORDER striking out this suit; and
2. SUCH OTHER ORDER OR FURTHER ORDER(s) as this Honourable Court may deem fit to make in the circumstances of this case.

AND TAKE FURTHER NOTICE that the grounds for the objection are as follows:

1. The suit is statute barred having being commenced outside the statutory period of three months under the Public Officers Protection Act
2. Non service of the requisite pre-action notices on the defendant under the local government law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
S. K. EYEKE ESQ.  
APPLICANT'S  
SOLICITOR

EYEKE KENNETH &  
CO  
15 DEMOCRACY  
ESTATE  
EBONYI STATE.

FOR SERVICE ON:  
THE RESPONDENT,  
ALU OLADEJI  
C/O HIS COUNSEL  
O. M. OGBONNAYA ESQ.  
ONE FAMILY CHAMBERS  
NO 3 AJAH STREET  
VICTORIA ISLAND  
LAGOS

**Pre-Action Counseling/Pre-Action Protocol**

This is to give professional or legal help and advice to clients on certain conditions to be satisfied before filing an action in court. Such condition precedents may be by way of service of pre-action notice or satisfaction of other steps required by law before commencement of action

**Sample Draft of Pre-Action Counseling Certificate:**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

SUIT NO:.....

BETWEEN

OKPARA MICHAEL ..... PLAINTIFF

AND

MAHADI ABDUSSALAM.....DEFENDANT

**PRE-ACTION COUNSELLING CERTIFICATE**

I, EYEKE KENNETH SAMUEL, of EYEKE KENNETH & CO (ZENITH CHAMBERS), legal practitioner representing Okpara Michael, the Claimant in

this suit, certify that I have counseled my client on the strength and weakness of his cause or matter and informed him of the opportunities available for the alternative dispute resolution of this case and the possibility of a reconciliation between the parties being effected either with or without the assistance of such an organization and should this matter turn out to be frivolous, I am prepared to be liable according to the provision of the Rules of this court.

Dated this..... of..... 2021

.....  
EYEKE KENNETH SAMUEL  
Legal Practitioner to the Claimant

.....  
OKPARA MICHAEL  
Claimant

#### COMMENCEMENT OF ACTION IN MAGISTRATE/DISTRICT COURTS

In the South, Magistrate Court (MC) exercises both civil and criminal jurisdiction, while in the North, when it exercises its civil jurisdiction it is referred to as District Court.

#### FORMS OF COMMENCEMENT

By virtue of **O. 1 r 1 & 2 of the Magistrate Court (Civil Procedure) Rules (MCCPR)**, actions are commenced in the MCs in Lagos by two modes, namely:

1. Claim. See **Order 1 Rule 1 & 4 MCCPR**
2. Originating application. See **Order 1 Rule 2 & 8 MCCPR**
3. Small claims court. See **Article 2 Magistrate Court Practice Direction on Small Claims 2018**.



**Sample Draft: Application for Summary Summons and Particulars of Claim**

**EYEKE KENNETH & CO  
LEGAL PRACTITIONERS, SOLICITORS, AND ARBITRATORS**

NO 15 DEMOCRACY ESTATE, IKEJA, LAGOS

EMAIL [Kennethsamuel@gmail.com](mailto:Kennethsamuel@gmail.com)

08102959631

Our Ref: \_\_\_\_\_

Your Ref: \_\_\_\_\_

Date: 08/12/2020

The Registrar,  
Magistrate Court of Lagos State,  
Ikeja Magisterial District,  
Ikeja, Lagos.

ATTENTION: MR. NJOKU CHINEDU (Registrar's name)

Dear Sir,

**APPLICATION FOR SUMMARY SUMMONS  
PURSUANT TO ORDER 2 RULE 1(1) and ORDER 3 RULE 1 OF THE  
MAGISTRATE COURT OF LAGOS (CIVIL PROCEDURE) RULES, 2009**

Kindly refer to the above subject matter.

I, Kenneth Eyeke Samuel of Eyeke Kenneth & Co, counsel to the Claimant in Claim No.....seek to apply for summary summons to be issued against the defendant as per the attached claim and particulars of claim. We undertake to pay the necessary fees.

Thank you for your usual co-operation.

Yours faithfully,

\_\_\_\_\_  
S. K. EYEKE Esq.  
For: Eyeke Kenneth&Co.

Enclosed:

1. Claim dated 8<sup>th</sup> of November, 2020
2. Particulars of claim dated 8<sup>th</sup> of November, 2020.

IN THE MAGISTRATE COURT OF LAGOS STATE  
IN THE LAGOS MAGISTERIAL DISTRICT  
HOLDEN AT LAGOS

SUIT NO: \_\_\_\_\_

BETWEEN

FIRST BANK PLC.....CLAIMANT

AND

JERRY MAIVA CONCEPTS LTD.....DEFENDANT

CLAIM

The Claimant claims its rights to the sum of 3.47 million (Three million, fourhundred and seventeen thousand naira) only from the defendant being its share of the proceeds of a contract jointly performed by the claimant and defendant from March 2019 to December 2020 under a partnership agreement.

The Claimant is also entitled to an order of injunction restraining the defendant from converting 20 vehicles jointly purchased and owned by the parties under the same partnership agreement and a further declaration that the partnership agreement between the parties is still valid and subsisting

PARTICULARS OF CLAIMS

1. The claimant is a limited liability company whose address is No 6 Bank Street, Ajah, Lagos.
2. The defendant is a limited liability company whose address is at No 12 Dzakwa Road, Victoria Island, Lagos.
3. The defendant owes the claimant the sum of 3.47million being the sum accrued to the partnership contract between the claimant and defendant.
4. The partnership agreement states that the vehicles will be used jointly in the running of the business after which the vehicles will be shared equally between the parties. However, the defendant has converted the 20 vehicles purchased for the contract to its sole use contrary to the terms of the contract between the parties. The cars with particulars (Car 1: Nissan Juke; Reg number: GVO8 WFM; Chassis no: 501345; bought from Nissan Motors, Garki II, Abuja; Receipt number: 534)
5. The defendant has failed, refused or neglected to pay the contract price and the claimant's share of the vehicles despite letters of demand written by the claimant to the defendant (add date of the letters)

WHEREOF THE CLAIMANT CLAIMS AS FOLLOWS:

1. A declaration that the contract under the partnership agreement between the parties is still valid and subsisting;
2. The sum of N3.47million which accrued to the claimant being its own share of the proceeds of the contract performed by the parties from March 2019 to December 2019;
3. Interest on the N3.47 million at the rate of 10% per annum from the 1<sup>st</sup> day of December 2019 until judgment and thereafter until the judgment sum is paid (either because this is stipulated in the contract or going commercial rate);
4. An order of perpetual injunction restraining the defendant from converting the 20 vehicles to its sole use;
5. An order directing an equal division of the vehicles between the parties; and
6. The sum of 2million naira for general damages.

Dated this....day of .....2020

.....  
S. K. EYEKE ESQ.  
APPLICANT'S SOLICITOR  
EYEKE KENNETH & CO  
15 DEMOCRACY ESTATE

EBONYI STATE  
FOR SERVICE TO DEFENDANT:  
NO 12 OBAFEMI AWOLowo ROAD,  
VICTORIA ISLAND,  
LAGOS.

**ONLINE ASSIGNMENT ON WEEK 5**

**TOPICS: 1. PRELIMINARY MATTERS: PRE-ACTION ISSUES**

**2. COMMENCEMENT OF ACTIONS IN THE MAGISTRATE COURT**

**INSTRUCTIONS:**

1. Students should please check their Civil Litigation Course Handbooks for the Contents and Outcomes of this topics.
2. Students are to read Case Studies 1 – 3 and should please note the modifications.

**TASKS:**

**Case Study 1**

In April, 2018, the Claimant, Mrs. Kayuba Ada, entered into a contract in Lagos with Agricultural Bank PLC to supply five hundred tons of Cashew nuts worth N10 million only to the Bank for onward exportation to Malaysia. The term of the contract is that down payment of N3 million will be made before the exportation and that the balance will be paid when the goods reach its destination. Subsequently, Mrs Ada received the sum of N3 million and supplied the goods to its destination in Malaysia. Since then, Agricultural Bank has refused to pay her the balance sum despite letters of repeated demands sent. However, on 26th June, 2019 Agricultural Bank wrote a letter to Mrs Ada of its decision not to pay the balance because the goods supplied were of inferior quality. Mrs Ada has now instructed you to commence proceedings against Agricultural Bank claiming the balance of N7 million, N1 million as interest and N2 million as general damages for the psychological trauma she suffered having been deprived from the use of her money.

**Questions:**

- a) State the preliminary matters that you will consider before commencing an action in court in this matter.
- b) In which court will you commence the action? Give reasons for you answer.
- c) State the documents that you will file in court at the time of commencing your action.
- d) Assuming Mrs Kayuba Ada feels that this matter is not going to be contentious, what court process can her counsel require to be issued filing the originating process(es) in (c) above?
- e) Are there any instances when the Claimant counsel will not be able to require that the process in (d) above be issued?

**Case Study 2**

On the 3rd of October, 2019 Mr. Oke Madu entered into Diamond Super Market at No. 4 Koko Drive, Ikoyi, Lagos where he bought a bag of Semovita and paid at the counter. On his way out, Mr. Ade Okoro a Security man at the entrance gate of the super market asked him for the receipt of purchase. He searched the pocket of his trousers without finding the receipt, forgetting that it was in the breast pocket of his shirt, where he

actually kept it. While he was still searching for it, fighting started as Mr Ade Okoro felt that Mr. Oke Madu had no receipt for the purchase because he was wasting his time and he shouted at Madu “You thief, you have stolen the semovita to the hearing of one Miss Chika, another customer of the super market. Miss Chika is a friend to Miss Ndidi who is Mr. Madu’s fiancée. On returning home, Miss Chika informed Miss Ndidi of the events that transpired at the super market. On the basis of this information, Miss Ndidi said she would no longer marry Mr. Oke Madu. However, Mr. Oke Madu eventually saw the receipt in the breast pocket of his shirt and presented it to Mr. Ade Okoro. Nonetheless, Mr. Oke Madu feels insulted and intends to file a suit for defamation of his character against Mr. Ade Okoro. He has instructed you as Counsel to institute an action in court against Mr Ade Okoro for the sum of N10 million general damages for defamation of character

**Questions:**

- a) State the preliminary matters that you will consider before instituting an action in court.
- b) Draft the originating process(s) that you will file in court when instituting the action.
- c) Assuming this action is going to be contentious, what documents will be issued after commencing your action
- d) Where the defendant wants to defend the action, state the various step(s) that he may choose to take in the matter and within what time frame?
- e) What is the life span of the originating process that you have chosen in (b) above?

**Case Study 3**

Sometimes in September, 2019, Mr Jide Smart bought a Toyota Corolla Car from Roniks Motors Ltd. of Victoria Island Lagos for the sum of N8 million. He made only a down payment of N4 million and was allowed to take away the car on the agreement that the balance will be paid within 3 months of the purchase. Jide Smart has refused to pay the balance of N4 million till date despite several demands made by Roniks Motors Ltd. You have now been instructed by Roniks Motors Ltd. to institute an action in court for recovery of their outstanding balance using an informal, inexpensive procedure to ensure a speedy resolution of the matter.

**Questions:**

- a) In which court will you commence the action? Give reasons for your answer.
- b) State the conditions that must be fulfilled by the claimant before an action can be commenced in the court in (a) above.
- c) What step(s) will the court take once the above conditions in (b) above have been met by the claimant?
- d) Who will effect the service of the summons on the defendant and within how many days should service be effected?
- e) Where the defendant wants to defend the action, state the various step(s) that he may choose to take in the matter and within what time frame

**WEEK 5 TASKS: KANO CAMPUS**

1. After reading the topic, students should make short notes on each of the following IN THEIR OWN WORDS.

a. The Civil Jurisdiction (Territorial, Monetary & Subject Matter) of the Magistrates' Courts of Lagos. See s. 28 MCL (Lagos) 2009. Noting its jurisdiction in Tenancy matters. b. Mode[s] of commencing actions in the Magistrates' Courts of Lagos. c. Conditions for the issuance of Summary Summons. d. The steps to be followed to commence an action to recover the sum of N9 million from Bagauda Nigeria limited being the outstanding sum for the office equipment supplied to its new Lagos Headquarters office by Chad-Hall Furniture Nigeria Ltd before the Magistrates' Court of Lagos State. e. Highlight the formal parts of a Particulars of claim. f. Draft the Particulars of Claim in (d) above. g. Write Short notes on i. ADR in the Magistrates' Court of Lagos. ii. Life Span of Summonses iii. Options open to defendants after service of Ordinary and Summary Summonses on them. h. Highlight briefly the conditions for approaching the Small Claims Court, including the procedure commencing and prosecuting an action in the Court. i. Write short notes on all the preliminary matters that should be considered before commencing an action. j. Reflect and succinctly comment on the relevance of letter writing skills, interviewing and counselling skills as well as lawyers duty of accountability on the preliminary considerations highlighted in (h) above. k. Identify the preliminary issues you will consider before commencing an action in the following scenarios;

**Case Study 1:** In March, 2016, the Plaintiff, Mrs. Kayuba Ada, entered into a contract in Lagos with Agricultural Bank PLC to supply five hundred tons of Cashew nuts worth N10,000,000.00 (Ten million Naira) only to the Bank for onward exportation to Malaysia. The term of the contract is that down payment of N3, 000,000.00 will be made before the exportation and that the balance will be paid when the goods reaches its destination. Subsequent to this, Mrs Ada received the sum of N3, 000,000.00 and supplied the goods which the Bank accepted and forwarded to its destination in Malaysia. Since then, Agricultural Bank has refused to pay Mrs Ada the balance sum despite letters of repeated demands sent. However, on 1st June, 2017, Agricultural Bank wrote a letter to Mrs Ada of its decision not to pay the balance because the goods supplied were inferior to the standard requested for. Mrs Ada has now instructed you to commence proceedings against Agricultural Bank claiming the balance of N7,

000,000.00, N4, 000,000.00 special damages and N3, 000,000.00 as general damages.

**Case Study 2:** On the 3rd of October, 2015 Mr. Oke Madu entered Diamond Supermarket at No. 10 Ogui Road, Enugu where he bought a bag of Semovita and paid at the counter. On his way out, Mr. Okoro, a security man at the entrance gate of the supermarket asked him for the receipt of purchase. He searched the pocket of his trousers without finding the receipt, forgetting that it was in the breast pocket of his shirt, where he actually kept it. While he was still searching for it, fighting started as Okoro felt that Mr. Madu had no receipt and was merely wasting his time. He shouted at Madu “You thief, you have stolen the semovita” to the hearing of one Chika, another customer of the supermarket. Chika is a friend to Miss Ndidi who is Mr. Madu’s fiancée. On returning home, Miss Chika informed Miss Ndidi of the events that transpired at the supermarket. On the basis of this information, Ndidi said she would no longer marry Mr. Madu. However, Mr. Oke Madu eventually found the receipt in the breast pocket of his shirt and presented it to Mr. Okoro. Nonetheless, Mr. Madu intends to file a suit for defamation of character against Mr. Okoro and the supermarket.

**Case Study 3:** City Links Transport Company Limited is a thriving transport company with a fleet of buses. Mr. Darlington Okoye (a.k.a. Osama) is one of the drivers of the Company. On the 14th of February, 2017, Dr. Henry Obama, a Consultant Physician at the National Hospital, Abuja, was travelling, from Lokoja to Abuja in his brand new Mercedes Benz ML 340 SUV car with Registration Number ABJ 999 BW, which he bought for Eight Million Naira (N8,000,000. 00) only. On getting to Gin Junction, near Gwagwalada, in the Federal Capital Territory, Dr. Henry Obama who was then driving at a speed of 120 KM per hour noticed a motor cycle rider attempting to cross the road and applied his break to avoid hitting him. Immediately, Dr. Henry Obama was hit from behind by a bus belonging to City Links Transport Company Limited and driven by Mr. Danlington Okoye (a.k.a Osama). Dr. Henry Obama’s car was badly damaged as a result of the accident. In fact, it was a write-off. Dr. Henry Obama also sustained serious injuries and had to be rushed to the University of Abuja Teaching Hospital, Gwagwalada, Abuja, where he received treatment and was discharged after one week. The treatment, in all, cost him one Hundred Thousand Naira (N100, 000.00) only, for which the hospital issued him a bill and a receipt. Dr. Henry Obama has now instructed you to commence an action for negligence against



Mr. Darlington Okoye (a.k.a Osama) and City Links Transport Company Limited claiming general damages to the tune of Five Million Naira (N5,000,000.00) only, and special damages of Eight Million and One Hundred Thousand Naira (N8,100,000.00) only for his damaged car and treatment.

**Case Study 4:** On 1st April, 2002 Mr. Kunle Komolafe was employed as a medical doctor in the medical department of First Atlantic Petroleum Company Nigeria Ltd, a subsidiary of Nigeria Petroleum Corporation (NNPC). In 2016, he was elevated to the post of General Manager, Medical Department. Upon his appointment and as part of his total package he was given a 4 bedroom Duplex in the official quarters of his employers at First Atlantic Petroleum Staff Quarters, Lekki Phase 1, Lagos as a service tenant. His housing allowance was deducted at the beginning of each year as rent for his occupation of the property. On 28th February, 2017, his appointment with First Atlantic Petroleum Company Nig. Ltd. was terminated with immediate by a letter of same date which did not state any reason for the termination. A cheque for the sum of N1,750,000.00 was enclosed as payment for 3 months salary in lieu of notice. Also, in the same letter, he was asked to vacate his official quarters immediately. On that same day, some men acting as agents of the Company entered into the premises of Mr. Kunle Komolafe and threw out some of his properties in an attempt to forcefully evict him from the property. Fortunately for Mr. Kunle Komolafe, he was able to resist all attempts made to forcefully evict him. Presently, he still remains in occupation of the property. Mr. Kunle Komolafe has instructed you to commence an action to challenge the termination and attempted eviction.

**Case Study 5:** Crown Kitchen Ltd commenced proceedings against K & T Ltd seeking a declaration that the contract between them and the partnership entered into by the parties was still valid and subsisting. Crown Kitchen also sought an order of perpetual injunction restraining K & T Ltd from converting 20 vehicles to its sole use and sought an order directing a sharing of the vehicles between the parties. Crown Kitchen Ltd also sought for payment of the sum of N2.17 million being proceeds of a contract performed by the parties from March 2011 to December 2016. The agreement between the parties had been entered into in Ikeja, although the actual performance of the contract was intended to be in Ikoyi, Lagos where K & T had its offices. A clause in the Agreement stipulated that the parties shall submit to conciliation before resorting to litigation.

**Case Study 6:** Dr Vincent Brown was the candidate of National Nigerian Party at the May 2017 rerun election for Delta North Senatorial District, Delta State. Chief Ben Okagbue contested the same election on the platform of Unity Congress Party. The Independent National Electoral Commission declared Chief Okagbue as the winner of the election having scored the highest number of votes cast in the constituency. Dr Brown is not satisfied with the outcome of the election and has decided to challenge the election of Chief Okagbue on the grounds of irregularity, indictment of Chief Okagbue by the Economic and Financial Crimes Commission and previous conviction of Chief Okagbue for offence of receiving stolen property by a High Court sitting in Asaba in 2006.

**Case Study 7:** Mr Kwesi Apiah is an international Ghanaian trader who regularly carries goods to and from Nigeria. He holds the ECOWAS passport with which he had been entering Nigeria since 2011 without any Visa. However, sometime in February, 2017 and in view of the security challenges in Nigeria, the Nigerian Government gave a directive to the Nigerian Immigration Service not to allow any foreigner to enter Nigeria unless such a foreigner holds a valid Nigerian Visa. On the 2nd of May, 2017, while Mr Kwesi Apiah was in Nigerian on one of his regular trips, he was arrested by men of the Immigration Service for being in Nigeria without a valid Visa. He has since remained in custody and all his goods have been confiscated.

**Case Study 8:** Mr. Smart Apanishile, a mass communication graduate and a registered member of the Nigerian Union of Journalists, was an employee of Newslime Limited (a media and communications company) from 2003 till 2016. While in employment, he initiated the idea of starting a magazine to publish reports on the maritime industry and was subsequently appointed the Editor of PACIFIC WATCH Magazine, Published by Newslime Limited. Under Smart's leadership the magazine became a household name in the maritime industry and a substantial source of income for Newslime Limited. Mr Smart later rose to become a deputy director in the company. In January 2017, Mr Smart was invited for an interview for the post of Director but was not given the post. Disappointed, Smart began to plan his exit. He registered a company, Pacific Watch Limited in March 2017 with the sole object of media and communication. He resigned from Newslime Ltd with effect from 1st April, 2017. Pacific Watch Ltd started the publication of OCEAN TIDES Magazine to cover events in both the Maritime & Oil and Gas industry. The first publication of OCEAN TIDES was released in

June 2017. Pacific Watch Ltd is in the process of registering OCEAN TIDES at the Trade Mark Registry.

The Acknowledgment and Acceptance was received on June 1st, 2017. Meanwhile, Newslite Ltd has now applied to register Pacific Watch as a trade mark. Pacific Watch Ltd intends to commence proceedings to protect the infringement of its name against Newslite Ltd Limited whilst Newslite intends to commence proceedings for breach of contract in restraint of trade against Pacific Watch Limited. Mr Smart's contract of employment with Newslite Ltd required that he should not engage in any trade similar to that of his employer. See *SWEET CRUDE LTD v SWEET CRUDE NIGERIA LTD & CAC* suit No FHC/L/CS/1457/13 reported in The Guardian, Wednesday, 23rd April, 2014 pg 29.

**Case Study 9:** Chief Joseph Lambe is the holder of the statutory right of occupancy in respect of the choice piece of land at Lambe Close, Banana Island, Ikoyi, Lagos State by virtue of the Certificate of Occupancy No. CO/111/2001 issued to him by Lagos State Government sometime in 2007. Royal Estates Limited, a real estate development company, desirous of buying the property from Chief Lambe, entered into negotiation with him. N750m was agreed as the purchase price. A contract of sale was thereafter executed by both parties on 1st June 2016. Some of the clauses in the agreement are as follows: 1. The purchaser shall pay to the seller the sum of N75m being 10% of the purchase price as deposit before the execution of this contract. 2. Upon the execution of this agreement, the seller shall hand over possession of the land to the purchaser and the purchaser shall be at liberty to commence construction work on the land immediately. 3. Balance of the agreed purchase price shall be paid on or before 1st November, 2016

After payment of the deposit and execution of the contract of sale, the purchaser moved into possession and started construction of a 10 storey residential apartments on the land but did not pay balance of the purchase price as agreed. On the 1st December, 2016, the seller wrote a letter to the purchaser demanding that the purchaser pay the balance of purchase price or give up possession of the land. A similar letter was written on the 5th of January, 2017. On the 8th January 2017, the seller wrote another letter terminating the contract of sale and demanding that the purchaser vacate the land within 7 days of service of the

letter. However, on the 9th of January, the purchaser paid the balance of purchase price which was promptly returned by the sellers.

In addition to the N75m paid as deposit, the purchaser has spent N100m on construction works on the land consisting of N15m for building plans and approvals, N10 for quantity surveying and N75m for piling and foundation works. The projected annual income from the developed property is N100m. The purchaser is therefore not happy and has now instructed you to commence proceedings to ensure that the contract stands or adequate monetary compensation is paid by the seller.

**Case Study 10:** Several landed properties belonging to the Federal Government and used as staff quarters across the country were sold to the employees/occupiers sequel to the Federal Government Monetisation Policy. Many of the properties are in Lagos. After the sale of the properties, Lagos State Government demanded that the purchasers pay land use charge and other property taxes to the State. Following complaints by the purchasers, Federal Government instructed you to commence an action on behalf of the Government for declaration and injunction against the Lagos State Government.

**Case Study 11:** Preparatory to the forthcoming gubernatorial election in Anambra State, Chief Rufus Okeke of Grand Peoples Alliance Party (GPAP) contested the primary election of the party and scored the majority of the votes. However, the Party forwarded to the Independent National Electoral Commission, INEC, the name of Dr. Ben Okafor who has been financing the Party and the Party's candidate for the election notwithstanding that Ben Okafor did not participate at the primary election. Chief Rufus Okeke has briefed you to institute an action for redress.

## Week 6

### COMMENCEMENT OF ACTION IN HIGH COURT

#### Writ of Summons

By **Order 2 Rule 2(1) Abuja** and **Order 5 Rule 1 Lagos** a writ of summons shall be used for commencing all civil actions in the High Court or FHC except where there is an express constitutional or statutory provision to the contrary. A writ of summons commands a defendant to enter appearance within a specified period (14 days in Abuja and 42 days in Lagos) otherwise judgment may be entered against him. Actions commenced by writ of summons usually involves and requires the filing and exchanging of pleadings, calling of witnesses (if any), and a long trial.

#### **Documents to Accompany a Writ of Summons**

In Lagos, **Order 5 Rule 2(1) Lagos/Order 2 Rule 2 Abuja**.

1. Statement of claim;
2. List of witnesses to be called at the trial;
3. Written statements on oath of the witnesses, except witnesses on subpoena;
4. Copies of every document to be relied on at the trial; and
5. Pre-action Protocol Form 01 (Lagos) or Certificate of Pre-Action Counselling (Abuja)

#### Sample Draft of Writ of Summons

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: \_\_\_\_\_

BETWEEN

CRUNCHES NIGERIA LIMITED.....CLAIMANT

AND

TOMIKE NIGERIA LIMITED.....DEFENDANT

TO:

TOMIKE NIGERIA LIMITED, 217/219, MOSHOOD ABIOLA WAY, IGANMU,  
IKEJA LAGOS.

IN THE: IKEJA LOCAL GOVERNMENT AREA OF LAGOS STATE OF NIGERIA.

You are hereby commanded that within forty-two (42) days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of the CLAIMANT and take notice that in default of your so doing, the claimant may proceed therein and judgment may be given in your absence.

DATED THIS 19<sup>TH</sup> DAY OF DECEMBER, 2020

---

Registrar

N.B

This writ is to be served within six (6) calendar months from the date thereof, or, if renewed, within three (3) calendar months from the date of the last renewal, including the day of such date and not afterward. The Defendant may enter appearance personally or by legal practitioner either by handing the appropriate forms, duly completed, at the registry of the High Court of the judicial division in which the action is brought or by sending them to the Registry by registered post.

**ENDORSEMENT**

The Claimant claims against the Defendant:

1. **AN ORDER OF DECLARATION** that the contract between the claimant and defendant is valid and subsisting;
2. **AN ORDER FOR DAMAGES** in the sum of ₦3,470,000.00 (Three Million, four Hundred and Seventy Thousand Naira) being the proceed from the contract jointly performed with the defendant which sum the defendant has failed and/or refused to pay over to the claimant despite repeated demands; and
3. **AN ORDER OF PERPETUAL INJUNCTION** restricting the defendant from converting the 20 vehicles to its sole use.

This writ was issued by EYEKE KENNETH ESQ of EYEKE KENNETH & CO. CLAIMANT'S SOLICITORS of NO. 15 DEMOCRACYESTATE, VICTORIA ISLAND, LAGOS.

**Indorsed as to Service**

This Writ was served by me, AYISAT OLUWATOMINIS, on the Defendant accompanied by:

- (a) A Statement of Claim;
- (b) A list of witnesses to be called at the trial;
- (c) Written statements on oath of the witnesses except witnesses on subpoena;
- (d) Copies of every document to be relied on at the trial;
- (e) Pre-action protocol Form 01

The writ was served personally on the 19<sup>th</sup> Day of December, 2020.

Indorsed the 19<sup>th</sup> Day of December, 2020

.....  
Chief Bailiff  
High Court of Lagos State

Before the Writ is issued the following certificate must be indorsed on it:

The Registry, High Court of Lagos State  
In the Ikeja Judicial Division.

The sealing thereof has been produced to me, Michael Samuel, this 19<sup>th</sup> day of December, 2020.

.....  
Registrar



**Certificate of Pre-Action Counselling/Pre-Action Protocol Form 01**

**Certificate of Pre-Action Counselling:** By **Order 2 Rule 2 & 8 Abuja**, the certificate of pre-action counseling is one of the documents to be filed along with the writ and frontloaded in Abuja. The rule provides that: A certificate of pre-action counselling signed by counsel and the litigant shall be filed along with the originating processes where proceedings are initiated by counsel, showing that the parties have been appropriately advised as to the relative strength or weakness of their respective cases, and the counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous, as in Form 6

**Sample Draft of Pre-Action Counseling Certificate**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE MAITAMA JUDICIAL DIVISION  
HOLDEN AT MAITAMA

SUIT NO \_\_\_\_\_

BETWEEN

REJOICE IKOKWU.....CLAIMANT

AND

AMAEFULE BENJAMIN.....DEFENDANT

**CERTIFICATE OF PRE-ACTION COUNSELLING**

I, Eyeke Kenneth of Zenith Chambers, No 3 Ajayi Crescent, Abuja, certify that as the legal practitioner representing Rejoice Ikokuwu, the Claimant/Defendant, has counseled my client on the strength and weakness of his cause or matter and informed him/them of the opportunities available for the alternative dispute resolution of this case and the possibility of a conciliation between the parties being effected either with or without the assistance of such an organization and should this matter turn out to be frivolous, I am prepared to be liable as per the provisions of the rules of this court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Eyeke Kenneth Esq  
Legal Practitioner to Claimant

\_\_\_\_\_  
Rejoice Ikokuwu  
Claimant

**Pre-Action Protocol Form 01:** In Lagos, the one required is the pre-action protocol form 01. It is form 01 in the appendix to the Lagos rules. NOTE: In Abuja, both claimant and defendant are required to file certificate of pre-action counselling. So, when drafting, be careful to know the party you are drafting for, whether plaintiff or defendant, and then draft accordingly. In Lagos, however, the pre-action protocol form 01 is only filed by the claimant's counsel, and not by the defendant. In Lagos, by **Order 19 Rule 1(2) Lagos**, appearance and the statement of defence must be entered and filed within forty-two (42) days from the date of service of the writ and statement of claim.

**Sample Draft of Pre-Action Protocol Form 01**

IN THE HIGH COURT OF LAGOS  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO \_\_\_\_\_

BETWEEN

ONAH TOCHUKWU SYLVESTER.....CLAIMANT

AND

EMEKA NASARA.....DEFENDANT

**STATEMENT OF COMPLIANCE WITH PRE-ACTION PROTOCOL**

I, Eyeke Kenneth Samuel, claimant's legal practitioner, make oath and state as follows:

1. I have complied with the directions of the Pre-action Protocol as set out in Order 1 Rule 1(4)(ii) (e) of the High Court Rules.
2. I have made attempts to have this matter settled out of Court with the Defendant and such attempts were unsuccessful. Such attempts include:
  - (a) Negotiation held on the 2<sup>nd</sup> day of November 2020, which ended in a deadlock.
  - (b) Attempts to reconvene another meeting to try to negotiate, which was never successful.
  - (c) Mediation organized and headed by Dr James Agaba, which also ended in a deadlock.
3. I have by a Written Memorandum to the defendant, set out the claimant's claim and options of settlement.

Dated at Lagos this 9<sup>th</sup> day of December, 2020

BEFORE ME

---

COMMISSIONER FOR OATHS

**Filing Memorandum of Appearance:** an appearance if entered by completing and filing in the Court's Registry, a document referred to as a "Memorandum of Appearance" provided in the **Appendix to the Rules** in Lagos and **Form 12** in Abuja. The defendant or his counsel if he acts by one, files the appropriate Form in as many copies as there are claimants to be served including extra copies for the court's file

**Sample Draft of Memorandum of Appearance**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE MAITAMA JUDICIAL DIVISION  
HOLDEN AT MAITAMA

SUIT NO \_\_\_\_\_

BETWEEN

ONAH TOCHUKWU SYLVESTER.....CLAIMANT

AND

EMEKA NASARA.....DEFENDANT

MEMORANDUM OF APPEARANCE

OR

MEMORANDUM OF CONDITIONAL APPEARANCE

OR

MEMORANDUM OF APPEARANCE UNDER PROTEST

KINDLY cause an appearance to be entered for Mr Emeka Nasara, sued as defendant in this action

**OR**

KINDLY cause a conditional appearance to be entered for Mr Emeke Nasara, sued as defendant in this action

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020

---

S. K. EYEKE ESQ.  
APPLICANT'S SOLICITOR  
EYEKE KENNETH & CO  
15 DEMOCRACY ESTATE

FOR SERVICE ON:  
The Claimant  
C/o His Counsel  
Bankole Olanrewaju & Co  
No 3 Adeyomo Street  
Victoria Island  
Lagos.

**Sample Draft of Originating Summons in High Court in Abuja**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE MAITAMA JUDICIAL DIVISION  
HOLDEN AT MAITAMA

SUIT NO \_\_\_\_\_

BETWEEN

EMEKA NASARA..... CLAIMANT

AND

ONAH TOCHUKWU SYLVESTER.....DEFENDANT

**ORIGINATING SUMMONS**

LET ONAH TOCHUKWU SYLVESTER of No 13, Area 2, Maitama, Abuja, within forty two (42) days (or 30days if defendant is to be served outside jurisdiction) after the service of this summons on you, inclusive of the day of such service, cause an appearance to be entered for you to this summons which is issued on the application of EMEKA NASARA of No 63 Area 4 Maitama, Abuja, and who will seek for the determination of the following questions:

**QUESTIONS FOR DETERMINATION**

1. Whether the Claimant has a valid contract with the defendant in view of Clause 4 of the agreement between the plaintiff and the defendant dated 13/02/2019; OR

2. Whether the provisions of Section 145 of the CFRN 1999 as amended imposes a duty or a discretion on the President to transmit a written declaration to the President of the Senate and Speaker of House of Representatives in the event of the President proceeding on vacation or is otherwise unable to discharge the functions of his office.

RELIEFS SOUGHT BY THE CLAIMANT

AND after the determination of the issues, the Claimant prays as follows:

1. A DECLARATION that there is no valid contract between the Claimant and the Defendant; OR
2. A DECLARATION that Section 145 of the 1999 CFRN as amended imposes a duty on the President to transmit a written declaration to the President of the Senate and the Speaker of the House of Representatives whenever he is proceeding on vacation or is otherwise unable to discharge the functions of his office.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Registrar/Authorized Person

THIS SUMMONS was taken out by S. K. Eyeke Esq., legal practitioner to the Claimant, whose address for service is No 5 Maitama Road Abuja.

NOTE:

1. The Defendant may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms duly completed at the Registry of the High Court of the Federal Capital Territory, Abuja or by sending them to that office by Registered Post. (Note, for Bar Part II, put appropriate name of court.)
2. If the defendant does not enter appearance within the time prescribed and at the place mentioned above, such order will be made and proceedings may be taken as the judge may think just and expedient.

FOR SERVICE ON:

The Defendant,  
ONAH TOCHUKWU SYLVESTER  
No 13, Area 2, Maitama, Abuja.

**Sample Draft of Originating Summons in High Court in Lagos**

IN THE HIGH COURT OF LAGOS  
IN THE IKOYI JUDICIAL DIVISION  
HOLDEN AT IKOYI

SUIT NO \_\_\_\_\_

BETWEEN

EMEKA NASARA..... CLAIMANT

AND

ONAH TOCHUKWU SYLVESTER.....DEFENDANT

**ORIGINATING SUMMONS**

LET ONAH TOCHUKWU SYLVESTER of No 23, Ikoyi, in the Lagos Judicial Division, within twenty-one (21) days (or 30 days if outside jurisdiction) after the service of this summons on you, inclusive of the day of such service, cause an appearance to be entered for you to this summons which is issued on the application of EMEKA NASARA of No 33 Bourdillon, Lagos, and who will seek for the determination of the following questions:

**QUESTIONS FOR DETERMINATION**

1. Whether the claimant has a valid contract with the defendant in view of Clause 4 of the agreement between the Claimant and the defendant dated 13/02/2015; OR
2. Whether the provisions of Section 145 of the CFRN 1999 as amended imposes a duty or a discretion on the President to transmit a written declaration to the President of the Senate and Speaker of House of Representatives in the event of the President proceeding on vacation or is otherwise unable to discharge the functions of his office.

**RELIEFS SOUGHT BY THE CLAIMANT**

AND after the determination of the issues, the Claimant prays as follows:

1. A DECLARATION that there is no valid contract between the claimant and the defendant; OR
2. A DECLARATION that Section 145 of the 1999 CFRN as amended imposes a duty on the President to transmit a written declaration to the President of the Senate and the Speaker of the House of Representatives whenever he is proceeding on vacation or is otherwise unable to discharge the functions of his office.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Registrar

THIS SUMMONS was taken out by S. K. Eyeke Esq., legal practitioner to the claimant, whose address for service is No 5 Democracy town, Lagos

NOTE:

1. The defendant may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms duly completed at the Registry of the High Court of Lagos State or by sending them to that office by Registered Post. (Note, for Bar Part II, put appropriate name of court.)
2. If the defendant does not enter appearance within the time prescribed and at the place mentioned above, such order will be made and proceedings may be taken as the judge may think just and expedient.

FOR SERVICE ON:

The Defendant,  
ONAH TOCHUKWU SYLVESTER  
No 23, Ikoyi,  
Lagos.

**WEEK 6 TASKS: KANO CAMPUS**

1. Prepare the necessary processes for the commencement of the action in the case study below.
2. Assuming the trucks had been seized on a Sunday the 7th of February, 2017 though the company had concluded arrangement to make necessary payment of the instalment for the month of January, 2016 on Monday the 8th of February, 2016. Prepare the necessary originating processes to be filed on behalf of the company for the interpretation of clauses 7 and 8 of the letter of offer. (No other facts are in dispute between the parties).
3. Assuming the transaction took place in Lagos State, draft the processes you would have drafted in 1 above.

4. Assuming the transaction took place in Lagos State and the accrued principal and interest is now N200m, explain in numbered paragraphs the procedure you will adopt to obtain judgment after trial by the quickest means possible under the rules on behalf of the Bank.

5. Would your answer in 4 above be different if the transaction took place in the Federal Capital Territory, Abuja?

6. Assuming the defendant in 3 above could not be served with the originating process 5 months after filing and you realised that the process may not be served until the 7th month, prepare the necessary application to ensure that the process remains valid until the time of service.

7. Assuming all efforts to get the defendant in 4 above to be served with the originating processes has proved abortive due to the fact the defendant has been evading service, prepare necessary application to ensure that the processes are served on the defendant.

8. Prepare the memorandum of appearance to be filed by the defendants in 1 above.

9. Draw up and briefly explain the ethical implications of: a. commencing an action by wrong procedure, b. none or improper service of originating processes and c. Delay in raising objection to non-compliance with the rules.

### **CASE STUDY**

KAS Transport Ltd with registered office at No 1, KAS Close, Wuse, FCT Abuja, carries on the business of haulage of petroleum products and other goods across Nigeria. The company is the holder of current account No. 0020035790 with the Abuja Branch of Matrix Bank PLC, one of the commercial banks in Nigeria with registered/head office at No 114, Marina, Lagos. The Abuja Branch of the Bank is located at Plot 5, Bank Street, Garki, Abuja.

By a letter of offer dated 28th October, 2014 duly accepted by the company, a credit facility in the sum of N60, 000,000 (Sixty Million Naira) was granted to the company by the Bank payable over a period of twenty four months at the interest of 20% per annum for the purpose of part-financing the acquisition of 6 trucks for movement of petroleum products by the company. Pursuant to that agreement, 6 DAF trucks were purchased with registration Nos. XU215JJJ, XU216JJJ, XU217JJJ, XU218JJJ, XU219JJJ and XU210JJJ. The trucks were registered in the joint names of the company and the bank but remained in the exclusive possession of the company.



Clause 7 of the letter of offer stipulates that the company shall pay principal and interest by 24 equal instalments whilst clause 8 provides that failure to pay any instalment within 7 days of its falling due shall entitle the Bank to repossess the trucks.

When the company found it difficult to pay the required instalments, it entered into negotiation with the Bank sometime in January, 2015 for the purpose of spreading the payment over a period of 48 months instead of 24. Whilst this negotiation was going on, the Bank's debt recovery agent, Flash Services Ltd seized the truck and detained them for 3 months in an open yard where they were exposed to vagaries of weather. Eventually an agreement was reached to spread payment over 36 months and the trucks were released to the company but by this time all the tyres had gone bad, several of the engine parts had become unserviceable and several body parts had started falling apart. Therefore, the trucks no longer have the capacity to earn any income which can be used to repay the loan. The company contends that it had been deceived into entering into the new agreement as the state of the trucks had been concealed from it.

The company is therefore contemplating suing the Bank for N100m damages for negligence in its handling of the trucks and fraudulent misrepresentation.

**Week 7**  
**INTERLOCUTORY APPLICATIONS**

Generally, interlocutory applications are applications made in course of pending proceedings. That is, they are applications that are made to court while an action is pending in court and may be made at any stage of an action. An interlocutory application may be made at any stage of an action. They are provisional, interim, intervening applications made between the commencement and end of a suit to decide some points or matter but not a final decision of the whole controversy.

Interlocutory application follows the cause or event in the proceedings and therefore where the cause or event necessitates filing or making an interlocutory application, an aggrieved party will be perfectly entitled to do so in the court – **Ezegbu v FATB Ltd.**

Once an action has been commenced, all subsequent applications are referred to as interlocutory applications – **Nalsa Teem Associates Ltd. v NNPC** and **Kotoye v Saraki**. It is worthy of note that interlocutory injunction may come after judgment e.g. judgment debtor asking for payment of judgment debt by installment. Interlocutory applications before the court as a general rule are meant to be determined before the substantive action.

**Sample Drafts of Motions, Affidavit and Written Address**

**Motion Ex Parte**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: JIG/01/2020

MOTION NO \_\_\_\_\_

BETWEEN

MRS MERCY CHINDA..... CLAIMANT/APPLICANT

AND

1. PURITY BANK PLC

2. NIGERIAN DEPOSIT INSURANCE  
CORPORATION.....DEFENDANTS

**MOTION EX-PARTE**

BROUGHT PURSUANT TO ORDER 43 RULE 1 OF THE LAGOS STATE HIGH

COURT CIVIL PROCEDURE RULES 2019 AND UNDER THE INHERENT  
JURISDICTION OF THE COURT

TAKE NOTICE that this honourable Court shall be moved on the \_\_\_\_\_ day  
of \_\_\_\_\_ 2020 at the Hour of 9 O'clock in the forenoon or so soon  
thereafter as Counsel to the Claimant/Applicant may be heard praying the court  
for the following RELIEFS:

1. AN ORDER OF INTERIM INJUNCTION restraining the 2<sup>nd</sup> Defendant from  
winding-up the 1<sup>st</sup> Defendant pending the hearing of the Motion on Notice already  
filed before this court.
2. AND FOR SUCH FURTHER ORDER OR ORDERS as the honourable Court  
may deem fit to make in the circumstances.

Dated this..... Day of..... 2020.

\_\_\_\_\_  
EYEKE KENNETH ESQ  
APPLICANT'S SOLICITORS  
EYEKE KENNETH & CO  
(ZENITH CHAMBERS)  
No. 1 Akins way, Victoria Island  
Lagos

**Sample of Motion on Notice for Interlocutory Injunction**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISIO  
HOLDEN AT IKEJA

SUIT NO: HIC/02/2020  
MOTION NO \_\_\_\_\_

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 43 RULE 1 OF THE HIGH COURT CIVIL  
PROCEDURE RULES OF LAGOS STATE 2020 AND UNDER THE INHERENT  
JURISDICTION OF THE COURT

TAKE NOTICE that this honourable Court will be moved on the \_\_\_\_\_ day  
of \_\_\_\_\_ 2020 at the hour of 9 O'clock in the forenoon or so soon  
thereafter as Counsel to the Claimant/Applicant may be heard for:

1. AN ORDER OF INTERLOCUTORY INJUNCTION restraining the  
Defendant/Respondent from converting the 20 vehicles to their sole use, pending  
the determination of the substantive suit.
2. AN ORDER OF INTERLOCUTORY INJUNCTION restraining the  
Defendant/Respondent from interfering with the proceeds of the contract  
between the Claimant/Applicant and Defendant/Respondent pending the  
determination of the substantive suit.
3. AND FOR SUCH FURTHER ORDER OR ORDERS as the honourable court  
may deem fit to make in the circumstances.

Dated this..... Day of..... 2020

\_\_\_\_\_  
EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria Island Lagos

**FOR SERVICE ON:**

Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos.

**Sample of Affidavit in support of Motion on Notice**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HIC/02/2020  
MOTION NO \_\_\_\_\_

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE**

I, Nwibo Nelson, Adult, Male, Christian, Managing Director to AYORINDE NIGERIA LTD, and Nigerian Citizen of No. 64 Billionaire Estate, Lagos State do hereby make oath and state as follows:

1. I am the Managing Director to the Claimant/Applicant in this suit.
2. By virtue of my position, I am conversant with the fact and circumstances of the suit and other related facts,
3. That I have the authority of the Claimant/Applicant to depose to this affidavit.
4. A contract was made between the Claimant/Applicant and Defendant/Respondent which contract was evidenced in writing dated 14<sup>th</sup> day of January, 2019. The agreement is hereby attached as EXHIBIT A1.
5. Twenty (20) vehicles were purchased only for the purpose of implementing the contract and the 20(twenty) vehicles are parked at the Defendant/Respondent's premises.
6. The sum of N3.47 Million accrued as the proceeds of the contract on the 18<sup>th</sup> day of January, 2020 the receipt which the Claimant/Applicant acknowledged. The receipt is hereby attached as EXHIBIT A2.
7. The Defendant converted the 20 (twenty) buses to its sole use and for other purposes different from the terms of the contract.
8. I believe that irreparable damage or injury will be caused to the Claimant/Applicant if the application is not granted.
9. The Claimant/Applicant undertakes to pay all damages caused to the Defendant/Respondent if this application ought not to have been granted.

10. I swear to this affidavit in good faith believing same to be true and correct to the best of my knowledge and in accordance with the Oath Act.

.....  
DEPONENT

Sworn to at the High Court Registry, Lagos State  
This \_\_\_\_\_ day of \_\_\_\_\_ 2020

BEFORE ME

.....  
COMMISSIONER FOR OATHS

**Sample of Written Address in Support of Motion**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HIC/02/2020  
MOTION NO \_\_\_\_\_

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**WRITTEN ADDRESS**

**INTRODUCTION**

My Lord, before this honourable court is an application for a motion on notice dated 21<sup>st</sup> day of January, 2020 and filed on the 21<sup>st</sup> day of January, 2020. My Lord, the motion is brought pursuant to Order 43 Rule 1 High Court Civil Procedure Rules of Lagos State 2019 and the inherent jurisdiction of the court. My Lord, the motion is praying this honourable court to grant an interlocutory injunction restraining the Defendant/Respondent from..... (State the reliefs sought in the motion)

My Lord, this motion is supported by a 10-paragraph affidavit deposed to by one Mr Nwibo Nelson. My Lord, we rely on all the paragraphs of the affidavit particularly paragraphs 3-11.

**SUMMARY OF FACTS**  
(State the Facts in brief)

**ISSUES FOR DETERMINATION:**

**LEGAL ARGUMENT**

My Lord, it is an established principle of Law that before an application of this nature can be granted, certain factors must be established which include: Legal Issue, balance of convenience, substantial issue to be tried.... These have been well established in the case of Obeya Memorial Hospital v. A.G. Federation & Anor(1987) 7 SC (Pt.1) 52.

My Lord, we wish to submit that considering the fact deposed to in the affidavit already before this court, the Claimant/Applicant has a legal right and substantial issue to be tried.

**CONCLUSION**

We therefore urge the court to grant this application. We respectfully, submit.

Dated this..... day of..... 2020.

---

EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria IslandLagos

**FOR SERVICE ON:**

Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos.

**LIST OF AUTHORITIES CITED**

1. Obeya Memorial Hospital v. A.G. Federation & Anor. (1987) 7 SC (Pt.1) 52

**WEEK 7 ASSIGNMENT - INTERLOCUTORY APPLICATIONS**

1. In 2010, Chief Chike Okeke purchased a land known as No. 4A Bode Thomas Industrial Layout, Aguda, Lagos from Chief Idowu Williams. Chief Chike Okeke was unable to develop the land due to a protracted illness. Chief Idowu Williams, subsequently sold the property to Ginisia International Company Limited. Ginisia wants to construct an industrial gas reservoir on the land and has concluded plans to move to site immediately. Chief Okeke intends to build a Sports Centre on the land. Chief Okeke has approached you to institute an action to protect his title to the land.

**Answer the following questions:**

- a) What application(s) would you file in order to preserve the “res” pending the determination of the suit you have just instituted on behalf of Chief Chike Okeke.
- b) Draft the application in (a) above with the supporting documents
- c) Move the application you have so drafted in (c) above.
- d) Assuming you are the judge before whom the application drafted in (b) above is brought and moved. What are the factors you will consider in granting or refusing the application?

2. Mr. Zamzam Pofi died intestate on 1st January, 2020 leaving behind two children namely: Rikici Zamzam (35) and Hakuri Zamzam (30). The title document to his only property is in the possession of his solicitor, Mr. Shaakkaa Mangu. While his letters of administration is still being processed, his two sons have been disturbing Mr. Shaakkaa Mangu about the title document. Rikici Zamzam the elder son is laying claim to the title document being the first son while the second son Hakuri is equally laying claim that by Mwahavul custom, it is the second son who is entitled to the title document. Mr. Shaakkaa Mangu is in a dilemma as to who to give the title document and he does not want to give it to the wrong person and neither does he want to continue to hold it. He has approached you for an advice.

**Now answer the following questions:**

- a) What kind of procedure is referred to in the scenario above?
- b) Assuming you are counsel to Mr. Shaakkaa Mangu, what will be your advice to him with respect to the title document?
- c) List the facts that must be deposed to in the affidavit to be filed.



- d) Assuming Rikici Zamzam had gone to the High Court of the Federal Capital Territory seeking a declaration that he is entitled to the title document, what step will you take as Counsel to Hakuri Zamzam to prevent Mr. Shaakkaa Mangu from giving the title document to him pending the outcome of the suit?
- e) Draft the document to achieve the steps in (d) above without the supporting documents.

3. Akare-iya and Gbarima are neighbouring communities in Eko LGA, Lagos State. For years, the two communities have been locked in a bitter dispute over a large parcel of land at the border of the two communities. Sometimes in 20019, Chief Akare, the traditional ruler of Akare-lya agreed with his Council of Chiefs to retain your legal services to file an action against Gbarima community, seeking a declaration of title to the land. Hon. Akin Tunde, a member of the Council of Chiefs came to your office to brief you. You have filed the action and upon being served with the originating process, Chief Olode, the traditional ruler of Gbarima and members of his cabinet mandated Chief Alarinde to brief A.J Adetutu (SAN), to file their defence. A.J Adetutu (SAN) intends to apply to terminate the action in limine on the ground that the High court has no jurisdiction over the matter, because it is a boundary dispute, which should be determined only by National Boundary Commission.

**Answer the following questions:**

- a) Draft the application asking leave of court to institute this action in a representative capacity. Do not draft the supporting documents. Your name for this process is A.B Smart Esq.
- b) Assuming after the suit has been instituted and the bailiff cannot effect personal service of the originating process on the defendants as counsel to the claimants what step will you take?
- c) Draft the necessary application to achieve the step taking in (b) above without the supporting document.
- d) Assuming the defendants upon being served intend to submit to the jurisdiction of the court, within what time limit are the defendants expected to enter the appearance and file a defence and what documents should they file for this purpose?
- e) Assuming the defendants were out of time in filing the processes in (j) above, draft the necessary application to regularized your position without the supporting documents.

3. Mr. Frodd Moses entered into a contract for the supply of medical equipment to Tacha Hospital Limited in Abuja in January 2019. The contract sum of N20 Million was to be paid upon delivery of the equipment. Mr. Frodd Moses had since delivered but despite several letters of demand, the hospital has refused to pay the contract sum. Mr. Frodd Moses has recently heard that the hospital is selling off its assets and moving them out of Abuja.

**You have been approached by Mr. Frodd Moses for an advice.**

- a) What step will you take to ensure that Tacha Hospital Limited does not take its assets out of Abuja?
- b) Draft the application and affidavit in support of the step you will take in (a) above.

**WEEK 7 TASK: KANO CAMPUS**

**CASE STUDY**

Mr. Sani Bala and Ms. Angelina Okeke graduated from the Kano campus of Nigerian Law School in 2010. When they were at the law school, they were very close that all their friends wished they could eventually be couples. Immediately after their graduation, they decided to settle in Lagos to establish their law firm. As they were in need of money, Mr. Sani Bala met his uncle Salisu Kayode who agreed to give them the sum of N5, 000,000.00 as loan. An agreement was executed for the loan between Sani and his uncle that the money would be paid within the first year of the establishment of the law firm. Sani and Angelina being lawyers, also signed a separate agreement between them that the payment of the loan obtained from Salisu would be made by them. Angelina was given the sum of Two Million Five Hundred Thousand to purchase all the necessary pieces of furniture for the law firm and to register it with the CAC. Sani was also given the sum of Two Million Five Hundred Thousand and tasked with securing a convenient place for the law firm and use the money for payment of two years rent. Sani successfully secured a place for the law firm at No 123, Shittu Akinwunmi Street, Obalande and paid the two years rent. However, to the dismay of Sani Ms. Angelina converted the money for her own use by travelling to Dubai for shopping, Kenya for tourism and India for medical checkup.

- a. As it has been difficult to locate Angelina's precise whereabouts since the dispute so that the originating processes are served on her, what steps will you take to ensure that Angelina is eventually served; draft the application?
- b. Assuming Angelina was eventually served but is out of time to file her defence, prepare the necessary application without the supporting processes.
- c. Assuming also you are Counsel to Sani who wants to oppose Angelina's application in (b) above, draft the relevant processes for doing so.
- d. Sani discovered that Angelina had bought two plots at Agege with their money but immediately she learned about the action against her, she advertised in a local daily that the plots are on auction. As counsel to Sani, what necessary steps will you take to prevent her from auctioning the plots?
- e. After judgement in the case and upon execution by attaching a Mercedes Benz Car – C - Class found in Angelina's house, her cousin Mr. John Tsoho is laying claim of the ownership of the car and has threatened to take legal action against the court official who executed the judgement. Advise the court official on the procedure and steps to take to absolve himself from any liability.

IN THE FEDERAL/STATE HIGH COURT  
IN THE LAGOS COURT DIVISION  
HOLDEN AT LAGOS

RUFUS IBRAHIM ON BEHALF OF OGWUGWU FAMILY OF OBALENDE..... PLAINTIFF/CLAIMANT  
Vs

MR & MRS GRACE & FRANCIS GARBA ..... CORESPONDENTS

BROUGHT PURSUANT TO ORDER 39 RULE 1 AND THE INHERENT POWERS OF THE COURT

Let it be Known by All that this Honourable Court will be moved this Monday at the hour of 9 o'clock in the forenoon or so soon thereafter as counsel may be heard on behalf of the Plaintiff/Claimant praying this Honourable Court for:

1. What the Plaintiff/Claimant lawyer will ask the court so that he be given order to stop the defendant from building on the land in this case at No. 1 Aso Drive, Obalende, Ikeja, Lagos.

Dated 12th day of January, 2019  
PP: M.M. BAWA & CO  
C/O No. 14 PARK ROAD  
ZARIA

1. The above motion was purportedly drafted by a lawyer as a motion for an interim injunction, insisting that he was taught that way in the law school. Redraft it in terms of its mandatory and conventional portions.
2. The motion was purportedly filed the 12th January 2020, can the affidavit in support be filed on the 18th of January, 2020? Support your answer with legal authority.
3. The attached motion was filed on 12th January, 2020 and fixed for hearing the following day. The respondents were served on the evening of 12th of January, 2020. If you were the respondent's counsel, what will you do on the hearing date?
4. The 'Advanced Copies' of the attached motion was served on the respondent. The court has determined to hear the motion based on these 'advanced copies'. What is the legal implication of doing so?
5. While moving this motion, Counsel did not cite any legal authority in support. He kept saying 'it is trite law'. What is the legal and ethical implication of doing so?
6. Surprisingly again, the motion has not been supported with any affidavit. State the legal implications, supporting your answer with legal authorities.

**CLASS ASSIGNMENTS - WEEK 7 - INTERLOCUTORY APPLICATIONS 1**  
**- YOLA CAMPUS**

In 2010, Chief Chike Okeke purchased a land known as No. 4A Bode Thomas Industrial Layout, Aguda, Lagos from Chief Idowu Williams. Chief Chike Okeke was unable to develop the land due to a protracted illness. Chief Idowu Williams, subsequently sold the property to Ginisia International Company Limited. Ginisia wants to construct an industrial gas reservoir on the land and has concluded plans to move to site immediately. Chief Okeke intends to build a Sports Centre on the land. Chief Okeke has approached you to institute an action to protect his title to the land.

Answer the following questions: a) What application(s) would you file in order to preserve the "res" pending the determination of the suit you have just instituted on behalf of Chief Chike Okeke. b) Draft the application in (a) above with the supporting documents c) Move the application you have so drafted in (c) above. d) Assuming you are the judge before whom the application drafted in (b) above

is brought and moved. What are the factors you will consider in granting or refusing the application?

2. Mr. Zamzam Pofi died intestate on 1st January, 2020 leaving behind two children namely: Rikici Zamzam (35) and Hakuri Zamzam (30). The title document to his only property is in the possession of his solicitor, Mr. Shaakkaa Mangu. While his letters of administration is still being processed, his two sons have been disturbing Mr. Shaakkaa Mangu about the title document. Rikici Zamzam the elder son is laying claim to the title document being the first son while the second son Hakuri is equally laying claim that by Mwahavul custom, it is the second son who is entitled to the title document. Mr. Shaakkaa Mangu is in a dilemma as to who to give the title document and he does not want to give it to the wrong person and neither does he want to continue to hold it. He has approached you for an advice.

Now answer the following questions: a) What kind of procedure is referred to in the scenario above? b) Assuming you are counsel to Mr. Shaakkaa Mangu, what will be your advice to him with respect to the title document? c) List the facts that must be deposed to in the affidavit to be filed. d) Assuming Rikici Zamzam had gone to the High Court of the Federal Capital Territory seeking a declaration that he is entitled to the title document, what step will you take as Counsel to Hakuri Zamzam to prevent Mr. Shaakkaa Mangu from giving the title document to him pending the outcome of the suit? e) Draft the document to achieve the steps in (d) above without the supporting documents.

3. Akare-iya and Gbarima are neighboring communities in Eko LGA, Lagos State. For years, the two communities have been locked in a bitter dispute over a large parcel of land at the border of the two communities. Sometimes in 20019, Chief Akare, the traditional ruler of Akare-lya agreed with his Council of Chiefs to retain your legal services to file an action against Gbarima community, seeking a declaration of title to the land. Hon. Akin Tunde, a member of the Council of Chiefs came to your office to brief you. You have filed the action and upon being served with the originating process, Chief Olode, the traditional ruler of Gbarima and members of his cabinet mandated Chief Alarinde to brief A.J Adetutu (SAN), to file their defence. A.J Adetutu (SAN) intends to apply to terminate the action in limine on the ground that the High court has no jurisdiction over the matter,

because it is a boundary dispute, which should be determined only by National Boundary Commission.

Answer the following questions: a) Draft the application asking leave of court to institute this action in a representative capacity. Do not draft the supporting documents. Your name for this process is A.B Smart Esq. b) Assuming after the suit has been instituted and the bailiff cannot effect personal service of the originating process on the defendants as counsel to the claimants what step will you take? c) Draft the necessary application to achieve the step taking in (b) above without the supporting document. d) Assuming the defendants upon being served intend to submit to the jurisdiction of the court, within what time limit are the defendants expected to enter the appearance and file a defence and what documents should they file for this purpose? e) Assuming the defendants were out of time in filing the processes in (j) above, draft the necessary application to regularized your position without the supporting documents.

4. Mr. Frodd Moses entered into a contract for the supply of medical equipment to Tacha Hospital Limited in Abuja in January 2019. The contract sum of N20 Million was to be paid upon delivery of the equipment. Mr.Frodd Moses had since delivered but despite several letters of demand, the hospital has refused to pay the contract sum. Mr. Frodd Moses has recently heard that the hospital is selling off its assets and moving them out of Abuja. You have been approached by Mr. Frodd Moses for an advice. a) What step will you take to ensure that Tacha Hospital Limited does not take its assets out of Abuja? b) Draft the application and affidavit in support of the step you will take in (a) above.

## Week 8

### SUMMARY JUDGMENT PROCEDURE

A summary judgment is one entered in favour of the Plaintiff or Claimant summarily, without going a full trial, i.e. hearing of evidence, address by counsel before the court's judgment. Such judgment is based on the writ of summons, statement of claim, and sometimes statement of defence. In some instances, there may be no pleadings but just affidavit by the Plaintiff and counter affidavit by the Defendant.

#### DIFFERENCES BETWEEN ORDER 11 SUMMARY JUDGMENT AND UNDEFENDED LIST

	ORDER 11 SUMMARY JUDGMENT		UNDEFENDED LIST
1	Applies to all suits in which the defendant has no defence	1	Applies only to recovery of debt and liquidated money demand
2	Mode of application is via motion on notice. See <i>Order 43 Rule 1(1) &amp; 3(1) Lagos; Order 49 Rule 1(1) Abuja</i>	2	Mode of application is via motion ex parte. See <i>Cash Affairs Ltd. v. Inland Bank (Nig.) Plc (2000) 5 NWLR [Pt. 658] 568</i>
3	Statement of claim and deposition of witnesses are to accompany writ of summons. See <i>Order 11 Rule 1 Lagos/Abuja</i>	3	No requirement for statement of claim and deposition of witness to accompany statement of claim. See <i>Order 35 Rule 1 Abuja</i>
4	Suits are entered under summary judgment procedure by the Registrar	4	Suits are entered under the undefended list procedure by the Judge in Chambers. See <i>Order 35 Rule 1(1) Abuja</i>
5	Where the matter is transferred to the general cause list after the defendant has disclosed a defence on the merit, hearing will have to be by pleadings	5	Where the matter is transferred under the general cause list after the defendant has disclosed a defence on the merit, hearing can be by affidavits of parties without requiring pleadings. See <i>Order 35 Rule 3(1) Abuja</i>
6	Application is brought under Order 11 of the Extant Rules (Lagos & Abuja)	6	Application is brought under Order 35 of Abuja Rules
7	Where the defendant wants to defend, there is no requirement for filing notice of intention to defend	7	Where the defendant wants to defend, there is requirement for filing notice of intention to defend. See <i>Order 35 Rule 3 Abuja</i>

**Sample Drafts Application for Summary Judgment**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: CIV/552/2020  
MOTION NO \_\_\_\_\_

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 13 RULE 1 AND ORDER 43 RULE 1 HIGH COURT OF THE LAGOS STATE (CIVIL PROCEDURE) RULES 2019 AND UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE that this Honourable Court shall be moved on the 6<sup>th</sup> day of December, 2020 at the hour of 9 O'clock in the forenoon or so soon thereafter as Counsel to the Claimant/Applicant may be heard for:

1. AN ORDER FOR SUMMARY JUDGEMENT IN FAVOUR OF THE CLAIMANT/APPLICANT AGAINST THE DEFENDANTS/RESPONDENTS.
2. AND FOR SUCH FURTHER ORDER OR ORDERS as the honourable court may deem fit to make in the circumstances.

**GROUND FOR THE APPLICATION**

TAKE FURTHER NOTICE that the ground of this application is that the Defendants/Respondents having been served with all relevant originating processes in this suit has no defence.

Dated this 4<sup>th</sup> day of December, 2020



EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria Island Lagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**Sample of Affidavit in Support of Application for Summary Judgement**

IN THE HIGH COURT OF JUSTICE OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: CIV/552/2020  
MOTION NO \_\_\_\_\_

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE**

I, Nwibo Nelson, Adult, Male, Christian, Managing Director to AYORINDE NIGERIA LTD, and Nigerian Citizen of No. 64 Ilupeju Estate, Lagos State do hereby make oath and state as follows:

1. I am the Managing Director to the Claimant/Applicant in this suit.
2. By virtue of my position, I am conversant with the fact and circumstances of the suit and other related facts,
3. That I have the authority of the Claimant/Applicant to depose to this affidavit.
4. A contract was made between the Claimant/Applicant and Defendant/Respondent which contract was evidenced in writing dated 14<sup>th</sup> day of January, 2019. The agreement is hereby attached as EXHIBIT A1.

5. Twenty (20) vehicles were purchased only for the purpose of implementing the contract and the 20(twenty) vehicles are packed at the Defendant/Respondent's premises.
6. The Sum of ~~N~~3.47 Million accrued as the proceeds of the contract performed from 14<sup>th</sup> January, 2019 to 20<sup>th</sup> January, 2020, the receipt which the Claimant/Applicant acknowledged. The receipt is hereby attached as EXHIBIT A2.
7. The Defendant converted the 20 (twenty) buses to its sole use and for other purposes different from the terms of the contract.
8. The Defendant/Respondent's right will not be affected in any way if this application is granted.
9. I swear to this affidavit in good faith believing same to be true and correct to the best of my knowledge and in accordance with the Oath Act.

.....  
DEPONENT

Sworn to at the High Court Registry, Lagos State  
This 4th Day of December, 2020

BEFORE ME

.....  
COMMISSIONER FOR OATHS

**Sample of Written Address for Summary Judgment**

IN THE HIGH COURT OF JUSTICE OF LAGOS STATE

IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: CIV/552/2020  
MOTION NO \_\_\_\_\_

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

WRITTEN ADDRESS

INTRODUCTION

My Lord, before this honorable court is an application for summary judgment dated and filed on 4<sup>th</sup> day of December, 2020. My Lord, the motion is brought pursuant to Order 13 Rules 1 and Order 43 Rule 1 of the High Court Civil Procedure Rules of Lagos State 2019 and the inherent jurisdiction of the court. My Lord, the motion is praying this honorable court as follows:

1. Specific performance in respect of the ₦3, 470, 000 (Three Million Four Hundred and Seventy Thousand Naira) that accrued as the proceeds of the contract performed between the parties from 14<sup>th</sup> January 2019 to 20<sup>th</sup> January,2020; and
2. General damages of ₦6, 000,000 (Six Million Naira) arising from delay of the defendant to pay the balance.

My Lord, this motion is supported by a 9-paragraphs affidavit deposed to by one Nwibo Nelson. My Lord, we rely on all the paragraphs of the affidavit particularly paragraphs 4-7.

**SUMMARY OF FACTS**

The Claimant and Defendant entered into a contract and a partnership agreement on the 14<sup>th</sup> day of January, 2019 that deals with the purchase and supply of 20 vehicles. The contract was entered into in Ikeja though the performance was meant to be in Ikoyi Lagos where the Defendant (S and E Ltd) had its offices. The sum of N3.47 million was realized as proceeds of the contract performed by the parties from 14<sup>th</sup> January 2019 to 20<sup>th</sup> January 2020. The Defendant breached the agreement between the parties by refusing to hand over the sum of N3.37 million due to the Claimant from the contract and also converted the 20 vehicles from the contract for its sole use.

## ISSUES FOR DETERMINATION

1. Whether the defendant has no defence to the action.

## LEGAL ARGUMENTS

My Lord, it is evidence from the above that the agreement was made to pay the sum of N3, 470, 000 (Three Million Four Hundred and Seventy Thousand Naira) to the Claimant as part of his share for the profit that accrued from the contract between the parties. This sum has not been paid to the claimant which necessitate this action. It has been established without controversy from the given evidence that the claimant is entitled to the sum of N3, 470,000 (Three Million four Hundred and Seventy Thousand Naira) as part of its proceed from the contract and also entitle to 10 vehicles out of the 20 vehicle the Defendant wants to convert to its sole use.

Again, the length of time taken before this action is instituted coupled with the value of the sum involved in this matter and the cost of this action resulting from the breach of the defendant, the claimant is entitled to the sum of N5,000,000 (Five Million Naira) as general damages.

Flowing from the above arguments, it is the believe of the claimant/applicant that the defendants have no defence to the action as held in the case of *Iron Products Ltd. v. SAC (1992) 4 NWLR (PT. 238) 734*.

## CONCLUSION

In conclusion, based on the detail argument canvassed in favour of the claimant/applicant above and the facts contained in the pleadings coupled with unequivocal pieces of evidence, we urge the court to grant the application and the claims of the claimant/applicant as follows:

1. An Order for the payment of the sum of N3, 470,000 (Three Million Four Hundred and Seventy Thousand Naira) as part of its proceed from the contract between the parties; and
2. Order for the payment of damages of N5,000,000 (Five Million Naira) arising from delay of the defendant to pay the balance.

We respectfully, submit.

Dated this 4<sup>th</sup> day of December, 2020

---

EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS

EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
Island Lagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**LIST OF AUTHORITIES CITED**

1. Iron Products Ltd. v. SAC (1992) 4 NWLR (PT. 238) 734
- 2.....

**Undefended List Application**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA      SUIT NO: CIV/552/2020  
MOTION NO \_\_\_\_\_

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**MOTION EX-PARTE**

BROUGHT PURSUANT TO ORDER 35 RULE 1 OF THE HIGH COURT OF  
THE FEDERAL CAPITAL TERRITORY ABUJA (CIVIL PROCEDURE) RULES  
2018 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE  
COURT

TAKE NOTICE that this Honourable Court may be moved on the 6<sup>th</sup> day of  
December, 2020 at the hour of 9 O'clock in the forenoon or so soon thereafter as  
counsel for the Applicant may be heard praying this Honourable Court for the  
following orders:

1. AN ORDER OF COURT PLACING THIS WRIT OF SUMMONS ON  
THE UNDEFENDED LIST
2. AND FOR SUCH ORDER FURTHER ORDERS this Honourable Court may  
deem fit to make in the circumstances.

Dated this 4<sup>th</sup> day of December, 2020

\_\_\_\_\_  
EYEKE KENNETH, ESQ  
COUNSEL TO  
CLAIMANT/APPLICANT  
EYEKE KENNETH & CO  
Plot 76 Democracy  
Extension, Abuja

**Sample of Affidavit in Support of Application to Place Writ on The  
Undefended List**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

SUIT NO:.....  
MOTION \_\_\_\_\_

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT

**AFFIDAVIT IN SUPPORT OF MOTION EX-PARTE UNDER THE  
UNDEFENDED LIST**

I, Nwibo Nelson, Adult, Male, Christian, Managing Director to AYORINDE NIGERIA LTD, and Nigerian Citizen of No. 64 Ilupeju Estate, Lagos State do hereby make oath and state as follows:

1. I am the Managing Director to the Claimant/Applicant in this suit.
2. By virtue of my position, I am conversant with the fact and circumstances of the suit and other related facts,
3. That I have the authority of the Claimant/Applicant to depose to this affidavit.
4. A contract was made between the Claimant/Applicant and Defendant/Respondent which contract was evidenced in writing dated 14<sup>th</sup> day of January, 2019. The agreement is hereby attached as EXHIBIT A1.

5. The sum of ~~N~~3.47 Million accrued as the proceeds of the contract performed from 14<sup>th</sup> January, 2019 to 20<sup>th</sup> January, 2020, the receipt which the Claimant/Applicant acknowledged. The receipt is hereby attached as EXHIBIT A2.
6. The defendant has afterwards refused to pay the Claimant the sum of money due to him from the contract even after several demands.
7. I know that the defendant has no defence to the claim
8. I swear to this affidavit solemnly and conscientiously believing same to be true and correct and in accordance with the Oaths Act.

.....  
DEPONENT

Sworn to At the F.C.T. High Court Registry, Abuja  
This 4<sup>th</sup> day of December, 2020.

Before me

.....  
COMMISSIONER FOR OATH

**Written Address in Support of Application to Place Writ on The Undefended List**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

SUIT NO:.....  
MOTION \_\_\_\_\_

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**WRITTEN ADDRESS IN SUPPORT OF MOTION EX-PARTE UNDER THE UNDEFENDED LIST**

**INTRODUCTION**

My Lord, before this honourable court is an application for leave to place this suit under the Undefended List. The motion is dated and filed on the 4<sup>th</sup> day of December, 2020. My Lord, the motion is brought pursuant to Order 35 Rule 1 of the High Court (Civil Procedure) Rules of Federal Capital Territory, 2018 and under the inherent jurisdiction of the court.

My Lord, this motion is supported by an 8-paragraph affidavit deposed to by one Nwibo Samuel My Lord, we rely on all the paragraphs of the affidavit particularly paragraphs 4-7.

**STATEMENT OF FACT**

The case arose as a result of the refusal of the defendant to pay the claimant the agreed sum of N3, 470, 000 which was properly reflected in the contract agreement which they entered into on 14<sup>th</sup> January 2019. This money duly accrued from the proceeds of the contract which the defendant ought to give the Claimant as part of his share in the contract.

**ISSUE(S) FOR DETERMINATION**

The sole issue for determination is: Whether the defendant has no defence to this suit.

**LEGAL ARGUMENTS**



My Lord, it is the believe of the Claimant/Applicant that the Defendant has no defence to the action. We shall be relying on the authority of the Supreme Court as held in *Iron Products Ltd. v. SAC (1992) 4 NWLR (PT. 238) 734*.

#### CONCLUSION

In conclusion, based on the detail argument canvassed in favour of the Claimant/Applicant above and the facts contained in the pleadings coupled with unequivocal pieces of evidence, we urge the court to grant the application and the claims of the Claimant/Applicant as follows:

1. An order to the Defendant to pay the sum of N3,470,000 (Three Million Four Hundred and Seventy Thousand Naira) to the Claimant
2. An order to the Defendant to pay the sum of N5,000,000 (Five Million Naira) as general damages

Dated this 4<sup>th</sup> day of December, 2020

---

EYEKE KENNETH, ESQ  
COUNSEL TO PLAINTIFF/APPLICANT  
EYEKE KENNETH & CO  
Plot 76 Democracy Extension  
Abuja

#### LIST OF AUTHORITIES CITED

1. *Iron Products Ltd. v. SAC (1992) 4 NWLR (Pt. 238) 734*.
2. ....

**Notice of Intention to Defend Under the Undefended List**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

SUIT NO:.....  
MOTION\_\_\_\_\_

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**NOTICE OF INTENTION TO DEFEND**

TAKE NOTICE that the defendant intends to defend the suit at the hearing.

Dated this 6<sup>th</sup> day of December, 2020.

\_\_\_\_\_  
OKPARA MICHAEL, ESQ  
COUNSEL TO DEFENDANT  
Whose address for service:  
24, Ray Power Road  
Asokoro, Abuja

For Service on:  
EYEKE KENNETH, ESQ  
COUNSEL TO PLAINTIFF/APPLICANT  
EYEKE KENNETH& CO  
Plot 76 Democracy Extension  
Abuja

NOTE: This Notice of Intention to defend shall be accompanied by an affidavit disclosing defence on the merit and a written address [see page 125&126 of Akin O. Oluwadayisi Sample Draft]

**WEEK 8 ASSIGNMENT ON SUMMARY JUDGMENT PROCEDURE**

Mrs Leah Hogan is a caterer who operates her catering business under the name "Sweet Meals Enterprises of No. 1 Catering Road, Ikeja. On 1st November 2019 she entered into an agreement to provide catering services at the graduation ceremony of a private educational institution - Eagles Private School Limited- of No. 1 Eagles Crescent, Victoria Island, Lagos. The transaction entailed the supply of 4000 plates of assorted meals for the students of the School, their parents and other invited guests at the ceremony, at the rate of N4000 per each plate/ person to cover the cost of the ceremony the School had demanded and received the sum of N50, 000 from each of its students as a "Development fee" An initial sum of N4 million was paid to Mrs. Hogan, just as the parties agreed to the payment of the balance of N12 million, within 2 weeks after the holding of the ceremony The graduation took place on the 17th November 2019, with success. By a letter of 19th November,2019 to Mrs. Hogan, the School commended the excellent performance of her part of the catering agreement. The School also advised Mrs. Hogan to expect payment of the outstanding N12 million within a week from the date on the letter

Contrary to the promise, the School has refused, defaulted, and/or neglected to settle its outstanding indebtedness to Mrs. Hogan, in the sum of N12 million, despite several letters and visits from Mrs. Hogan to the School. Rather, by another letter dated 10th May, 2020, the school acknowledged Its indebtedness to Mrs. Hogan, even as it pleaded its inability to raise the money at this time. The School blamed its inability to settle the debt on the COVID-19 Epidemic which had adversely affected payment of school fees by its students, before the closure of the School.

In any case, Mrs. Hogan has found out on good information from Miss, Slippery Joe (a friend of Mrs. Hogan and an accountant with the School), that the School currently has to its credit in an account with the 3rd Bank of Nig, Plc- the sum of N 60 million being the school fees generated in the last academic session.

Mrs. Hogan has retained your services to recover the sum of N 12 million from the School:

- I. Identify the procedure you would adopt to recover the money expeditiously and without calling witnesses in Lagos
- II. State the documents that you would have to file in court while commencing the action in (i) above. iii. Draft the application and the affidavit required in (i) above
- III. Assuming the cause of action arose in Abuja, identify any other procedure that could be adopted for the recovery of the money in lieu of the procedure identified in (i) above.
- IV. Give a list of steps involved in the procedure in (iv), above.
- V. State 2 similarities as well as 3 differences between the procedure in (i) and the other one in (iv), above.

### **Assignment 2**

Prepare in writing ethical issues that may arise and ethical duties of a lawyer in such cases as a summary judgment procedure

### **WEEK 8 TASKS: KANO CAMPUS**

1. In a tabular form set out the similarities and differences between Summary Judgment Procedure and Default Judgment.
2. Compare and list the similarities as well as the differences between the Undefended List Procedure in the FCT rules and Summary Judgment procedure under Orders 13 & 11 in the Lagos and Abuja rules respectively.
3. List the processes to be filed in actions commenced under the Undefended List on the one hand and those to be filed in the procedure under Orders 13 & 11 in the Lagos and Abuja rules respectively on the other.
4. Highlight the procedure for the two procedures for Summary Judgment (Order 35 Abuja on the one hand and Orders 13 & 11 in the Lagos and Abuja rules on the other) from filing of the process to judgement.
5. As Counsel to the Matrix Bank in the case study below draft the necessary processes for the purpose of applying for Summary Judgment under the Undefended List Procedure.

6. As Counsel to the Defendant, list the necessary processes for purposes of defending the case on the merit. Draft the first process listed only for purposes of defending the case.

7. Assuming the transaction took place in Lagos, list the necessary processes for the purpose of applying for the appropriate Summary Judgment. Draft the application only summary judgement.

8. As Counsel to the Defendant in 7 above, list the necessary document(s) you will draft for the purposes of defending the case on the merit.

9. Identify and draw up a list of ethical issues likely to arise in an application for Summary Judgment. What are the duties of a Lawyer in a Summary Judgment Procedure?

### **CASE STUDY**

KAS Transport Ltd with registered office at No 1, KAS Close, Wuse, FCT Abuja, carries on the business of haulage of petroleum products and other goods across Nigeria. The Company is the holder of current account No. 0020035790 with the Abuja Branch of Matrix Bank PLC, one of the commercial banks in Nigeria with registered/head office at No 114, Marina, Lagos. The Abuja Branch of the Bank is located at Plot 5, Bank Street, Garki, Abuja.

By a letter of offer dated 28th October, 2014 duly accepted by the Company, a credit facility in the sum of N60, 000,000 (Sixty Million Naira) was granted to the company by the Bank payable over a period of twenty four months at the interest of 20% per annum for the purpose of part-financing the acquisition of 6 trucks for movement of petroleum products by the company. Pursuant to that agreement, 6 DAF trucks were purchased with registration Nos. XU215JJJ, XU216JJJ, XU217JJJ, XU218JJJ, XU219JJJ and XU210JJJ. The trucks were registered in the joint names of the company and the bank but remained in the exclusive possession of the company.

Clause 7 of the letter of offer stipulates that the company shall pay principal and interest by 24 equal instalments. The Company paid regular instalments for 12 consecutive months but has since stopped any payment. At the end of the 24th month, the Bank decided to commence proceedings in Court to recover the balance by the quickest means possible under the rules.

**SUMMARY JUDGMENT TASK: YOLA CAMPUS**

Mrs Leah Hogan is a caterer who operates her catering business under the name “Sweet Meals Enterprises” of No. 1 Catering Road, Ikeja. On 1st November 2019 she entered into an agreement to provide catering services at the graduation ceremony of a private educational institution - Eagles Private School Limited- of No. 1 Eagles Crescent, Victoria Island, Lagos. The transaction entailed the supply of 4000 plates of assorted meals for the students of the School, their parents and other invited guests at the ceremony, at the rate of N4000 per each plate/ person. To cover the cost of the ceremony the School had demanded and received the sum of N50, 000 from each of its students as a “Development fee”

An initial sum of N4 million was paid to Mrs. Hogan, just as the parties agreed to the payment of the balance of N12 million, within 2 weeks after the holding of the ceremony. The graduation took place on the 17th November 2019, with success. By a letter of 19th November, 2019 to Mrs. Hogan, the School commended the excellent performance of her part of the catering agreement. The School also advised Mrs. Hogan to expect payment of the outstanding N12 million within a week from the date on the letter.

Contrary to the promise, the School has refused, defaulted, and/ or neglected to settle its outstanding indebtedness to Mrs. Hogan, in the sum of N12 million, despite several letters and visits from Mrs. Hogan to the School. Rather, by another letter dated 10th May, 2020, the school acknowledged its indebtedness to Mrs. Hogan, even as it pleaded its inability to raise the money at this time. The School blamed its inability to settle the debt on the COVID-19 Epidemic which had adversely affected payment of school fees by its students, before the closure of the School.

In any case, Mrs. Hogan has found out on good information from Miss. Slippery Joe (a friend of Mrs. Hogan and an accountant with the School), that the School currently has to its credit - in an account with the 3rd Bank of Nig. Plc- the sum of N 60 million being the school fees generated in the last academic session.

Mrs. Hogan has retained your services to recover the sum of N12 million from the School:

- a. Identify the procedure you would adopt to recover the money expeditiously and without calling witnesses in Lagos.
- b. State the documents that you would have to file in court while commencing the action in (i) above.
- c. Draft the application and the affidavit required in (i) above.
- d. Assuming the cause of action arose in Abuja, identify any other procedure that could be adopted for the recovery of the money in lieu of the procedure identified in (i) above.
- e. Give a list of steps involved in the procedure in (iv), above.
- f. State 2 similarities as well as 3 differences between the procedure in (i) and the other one in (iv), above

## Week 9

### PLEADINGS (EXAMS)

Pleadings are written statements of fact set out in summary form which is filed and exchanged by the parties in a civil action commenced by writ of summons. Pleadings usually contain the material facts which the party serving it intends to use in proof of his case. Whether a case will succeed or not is depending on pleadings. No rule provides that pleadings must be in a particular form. Essentially, the basic rules for drafting pleadings are the same but pleadings drafted by lawyers A and lawyer B on the same facts will be different. Always adopt precedents effectively.

Pleadings are not used in the Magistrate courts. They are used ONLY in actions commenced by writ of summons. However, it must be noted that the court may order pleadings to be filed and exchanged in an action wrongly commenced by originating summons where there are disputes of facts. See ***Adeyelu II v. Ajagungbade III***.

#### Types of Pleadings

- 1) Statement of claim
- 2) Statement of defense
- 3) Reply. [This is the second pleading filed by plaintiff to defendant to respond to new matters in SOD].
- 4) Set-Off/Counter-claim
- 5) Defenses to Set-Off/Counter-claim.
- 6) Further and better particulars

N/B Originating processes such as writ of summons, originating summons, petition, originating application (motion) are not the same as pleadings

#### Contents of Pleadings

- 1) Statement of material facts on which the Claimant bases his claim or the Defendant relies on for his defense.
- 2) Statements of fact and not evidence by which facts will be proved – ***Order 15 Rule 2 Abuja***.
- 3) Statements of fact in which the law can be inferred and not the law itself – ***Abacha v. Fawehinmi***.
- 4) Relief sought by a party

**SAMPLE DRAFTS OF PLEADINGS**  
**Accompanying Documents for the Claimant (Pleadings)**

**STATEMENT OF CLAIM:** This is the first pleading and it initiates the machinery of pleadings in an action. The statement of claim is filed by the Plaintiff and served on the Defendant, stating the case that the Plaintiff intends to put up in court. It is made of three major parts; Introductory Averments, Body and Prayer/Relief and Damages

**Sample Draft of Statement of Claim**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**STATEMENT OF CLAIM**

1. The Claimant is a limited liability company registered in Nigeria, which deals in rendering catering services and supply of general goods and merchandise with its registered/head office at No. 21, Street, Victoria Island, Lagos.
2. The Claimant is also a registered contractor with the Defendant.
3. The Defendant is a limited liability company registered in Nigeria, which deals in supply of general goods and merchandise with its registered/head office at No. 2, Allen Avenue, Ikoyi, Lagos.
4. The Claimant avers that a valid partnership contract was made between the Claimant and the Defendant on the 2nd day of January, 2019 which is still subsisting. The said partnership contract dated 2<sup>nd</sup> Day of January, 2019 is hereby pleaded and will be relied upon at the trial.
5. The Claimant avers that the purpose of the contract is to perform a catering service to the Students Representative Council of the Nigerian Law School across the six campuses for which the 20(twenty) vehicles were purchased in the partnership's name. The receipt of purchase of the 20(twenty) vehicles dated 3/2/2019 is hereby pleaded and will be relied upon at the trial.



6. The Claimant avers that both parties performed the contract and subsequently, the sum of ₦3, 470, 000 (Three million four hundred and seventeen thousand naira) accrued. The Receipts of the said sum is hereby pleaded and will be relied upon at the trial.
7. The Claimant avers that in April, September and December 2020, several letters of demand were written to the Defendant for the share of the proceeds of the contract and the 20 vehicles. The letters of demand are hereby pleaded and will be relied upon at the trial.
8. The Claimant avers that the Defendant refused to respond to any of the letters and instead purported to convert the 20 vehicles to its sole use and as such breached the terms of the partnership contract between the parties.
9. The Claimant avers that by reason of the matters stated above, the Claimant suffered loss and damages.
10. THE CLAIMANT CLAIMS AS FOLLOWS:
  - (a) A DECLARATION that the contract between the parties is still subsisting;
  - (b) CLAIM FOR SHARE of the sum of ₦3, 470, 000 (three million four hundred and seventeen thousand naira) being the proceed of the contract between the parties in equal proportion of ₦1,735, 000; and
  - (c) AN ORDER FOR THE SHARING OF THE 20 VEHICLES between the parties in equal proportion of 10 vehicles to each of the parties.

Dated this 4th day of December, 2020.

---

EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria Island Lagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**List of Witnesses**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**LIST OF WITNESSES**

1. Nwibo Nelson of No. 1 Benakol Street, Victoria Island, Lagos
2. Deborah Gift Gideon of No. 5 Abacha Street, Victoria Island Lagos

Dated this 4th day of January 2020.

---

EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria IslandLagos

FOR SERVICE ON:

Ugwu Dominic Esq.

Defendant/Respondent's Solicitor

Plot A2 Ikoyi Lane, Lagos

**Evidence to Rely Upon**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**EVIDENCE TO RELY UPON**

TAKE NOTICE that the Claimant shall, during trial, rely on the following evidence:

1. Partnership Agreement between the parties;
2. Receipt of purchase of the 20 (twenty) vehicles;
3. Receipt of the sum of ₦3, 470, 000 (three million four hundred and seventeen thousand naira) being proceeds of the contract written in favour of the partnership venture;
4. Letters of demand of money written by the claimant;

Dated this 4th day of December, 2020.

---

EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria Island Lagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**Claimant's Witness Statement on Oath**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**WITNESS STATEMENT ON OATH OF TOBI DAFE**

I, Nwibo Nelson, Adult, male, Christian, a Director and Nigeria citizen of No. 1 Benakol Street, Victoria Island, Lagos do make oath and state as follows:

1. I am a director in the Claimant Company by virtue of which I am conversant with facts of this suit.
2. I have the authority of the Claimant to make this statement on oath.
3. The Claimant entered into a valid partnership contract with the defendant between January, 2019 and January 2020.
4. The contract was evidenced in writing in compliance and is hereby pleaded.
5. The purpose of the contract is to perform a catering service to the Students Representative Council of the Nigerian Law School across the six campuses for which the 20(twenty) vehicles were purchased in the partnership's name.
6. The contract was performed by both parties and subsequently the sum of ₦3, 470, 000 (three million four hundred and seventeen thousand naira) accrued.
7. The Claimant wrote several letters of demand to the Defendant for the share of the proceeds of the contract and the 20 vehicles.
8. The Defendant refused to respond to any of the letters and instead purported to convert the 20 vehicles to its sole use and as such breached the terms of the partnership contract between the parties.
9. The Claimant has suffered loss and damages as a result of the facts stated above.
10. I make this statement conscientiously and in good faith according to the Oath Act.

---

Witness

Sworn to at the High Court Registry, Lagos

This 4<sup>th</sup> day of December, 2020

Before me

.....

Commissioner for Oaths

**Pre-Action Protocol Form 01**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**STATEMENT OF COMPLIANCE WITH PRE-ACTION PROTOCOL**

I, Eyeke Kenneth, Claimant's legal practitioner, make oath and state as follows:

4. I have complied with the directions of the Pre-action Protocol as set out in Order 1 Rule 1(4) (ii) (e) of the High Court Rules.
5. I have made attempts to have this matter settled out of Court with the Defendant and such attempts were unsuccessful. Such attempts include:
  - (d) Negotiation held on the 2<sup>nd</sup> day of December 2020, which ended in a deadlock.
  - (e) Attempts to reconvene another meeting to try to negotiate, which was never successful.
  - (f) Mediation organized and headed by Dr James Agaba, which also ended in a deadlock.

6. I have by a Written Memorandum to the Defendant, set out the Claimant's claim and options of settlement.

Dated at Lagos this 4<sup>th</sup> day of December, 2020

BEFORE ME

---

COMMISSIONER FOR OATHS

**Accompanying Documents for the Defence**

**STATEMENT OF DEFENCE**; This is the pleading filed by the Defendant in response to the allegations of fact in the Plaintiff's statement of claim. The defendant can respond to the statement of claim by:

1. Admission
2. Traverse/denial
3. Objection on point of law
4. Set-Off
5. Counterclaim

**Statement of Defence**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**STATEMENT OF DEFENCE**

SAVE AND EXCEPT as is expressly admitted, the Defendant denies each and every allegation of fact contained in the statement of claim as if same is herein set out and traversed seriatim —

1. The Defendant admits paragraph 1, 2, 3, 4, 5, 6 and 7 of the Statement of Claim.

2. The Defendant denies paragraph 8 and 9 of the Statement of Claim.
3. The Defendant states in response to paragraph 8 and 9 of the Statement of Claim that the sum of ₦1, 735, 000.00 (One million and Seven and thirty Five Thousand Naira only) was paid into the Access Bank Account of the Claimant on the 7th day of November, 2020 as his share of the proceeds from the contract. A copy of the bank draft is hereby pleaded.
4. The Defendant further states in response to paragraph 8 and 9 of the Statement of Claim that 10 vehicles were given to the Claimant on the 7<sup>th</sup> day of November, 2020 as his share of the vehicles purchased in the partnership name.
5. The Defendant avers that the Claimant acknowledged receipt of the sum of ₦1, 735, 000 as its share of the proceeds and the ten vehicles. The letter of acknowledgement is hereby pleaded.
6. The Defendant avers that no letters of demand were forwarded to the Defendant by the Claimant in April, September and December 2020 or any other date.
7. The Defendant avers that he does not owe the Claimant the sum of ₦1, 735, 000.00 (One million and Seven and thirty Five Thousand Naira only) or any amount whatsoever.
8. The Defendant avers that he does not owe the Claimant 10 vehicles obtained in the partnership name or any other vehicle whatsoever.
9. The Defendant avers that the court lacks the jurisdiction to entertain this suit as the Claimant did not exhaust the provision for Conciliation first before resulting to Litigation which is a condition precedent before commencing this suit as provided in the partnership agreement.
10. The defendant states that it is not liable for the claims of the Claimant and prays the court to dismiss the suit as being frivolous and baseless and for want of jurisdiction.

Dated this 4th day of December, 2020.

.....  
UGWU DOMINIC  
DOMINIC & CO.  
DEFENDANT'S SOLICITORS  
NO. 10 AKINSWAY,  
VICTORIA ISLAND, LAGOS.

FOR SERVICE ON:  
CLAIMANT  
C/O EYEKE KENNETH ESQ.  
EYEKE KENNETH & CO.  
CLAIMANT'S SOLICITORS  
NO. 1 BENAKOL ROAD,  
VICTORIA ISLAND, LAGOS

**List of Witnesses for the Defence**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**LIST OF WITNESSES FOR THE DEFENCE**

1. Mary W. Allagoa
2. Nafisa Ya'u Yunusa (on Subpoena)
3. Joshua Chukwu (on Subpoena)

Dated this 4th day of December, 2020.

.....  
UGWU DOMINIC  
DOMINIC & CO.  
DEFENDANT'S SOLICITORS  
NO. 10 AKINSWAY, LAGOS.

FOR SERVICE ON:  
CLAIMANT  
C/O EYEKE KENNETH ESQ.  
EYEKE KENNETH & CO.  
CLAIMANT'S SOLICITORS  
NO. 1 BENAKOL ROAD,  
VICTORIA ISLAND, LAGOS



**Evidence to Rely Upon**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**EVIDENCE TO RELY UPON**

1. Bank draft of the payment of the sum of ₦1, 735, 000.00 (One million and Seven and thirty Five Thousand Naira only) to the Claimant's Access bank account number 000012345.
2. Letter of acknowledgment of receipt of the sum of ₦1, 735, 000 and 10 vehicles by the Claimant.

Dated this 4th day of December 2020.

.....  
UGWU DOMINIC ESQ  
DOMINIC & CO.  
DEFENDANT'S SOLICITORS  
NO. 10 AKINSWAY,  
VICTORIA ISLAND, LAGOS.

FOR SERVICE ON:  
CLAIMANT  
C/O EYEKE KENNETH ESQ.  
EYEKE KENNETH & CO.  
CLAIMANT'S SOLICITORS  
NO. 1 BENAKOL ROAD,  
VICTORIA ISLAND, LAGOS

**Defendant's Witness Statement on Oath**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**WITNESS STATEMENT ON OATH OF NAFISA YA'U YUNUSA**

I, Nafisa Ya'u Yunusa, Female, Accountant, Nigerian Citizen residing at No. 12, Tolulope Olaide Street, Ikeja, Lagos, do hereby make oath and state as follows:

1. I am the Accountant of the Defendant Company by virtue of which I am conversant with the facts of this case.
2. The Defendant Company entered into a partnership agreement with the Claimant between January 2019 and January, 2020.
3. The purpose of the contract is to perform a catering service to the Students Representative Council of the Nigerian Law School across the six campuses for which the 20(twenty) vehicles were purchased in the partnership's name..
4. The contract was performed by both parties and subsequently the sum of ₦3, 470, 000 (three million four hundred and seventeen thousand naira) accrued.
5. On the 7<sup>th</sup> day of November, 2020 I, on the authority of the board of directors paid in the sum of ₦1, 735, 000.00 (One million and Seven Hundred thirty Five Thousand Naira only) into the Access bank account provided by the claimant to the company to serve as his share of the profit.
6. Upon confirming the account number and payment was effected, I was issued a bank teller.
7. The bank teller was served on the Claimant by the company secretary.
8. On the 7<sup>th</sup> day of November, 2020, on the authority of the board of directors, 10 vehicles were given to the Claimant as its share of the 20 vehicles purchased in the partnership name.
9. A letter of acknowledgement of receipt of the ₦1, 735, 000.00 (One million and Seven Hundred thirty Five Thousand Naira only) and the 10 vehicles was sent to the Defendant by the Claimant.

.....  
Witness

Sworn to at the High Court Registry, Lagos

Dated this 4<sup>th</sup> Day of December, 2020.

BEFORE ME

.....  
COMMISSIONER FOR OATHS

### ETHICAL CONSIDERATIONS

1. A counsel should disclose all facts even if the facts are against his client – **Rule 15(3) (e) RPC.**
2. A counsel should not plead false facts
3. A counsel should not file frivolous pleadings
4. A counsel should take full responsibility for his brief.
5. A counsel should draft the pleadings competently and in accordance to his clients instruction
6. A counsel should not sign a pleading prepared by a none lawyer  
A counsel should affix his seal and stamp on the pleadings – **Rule 10 RPC**

### WEEK 9 ASSIGNMENT ON PLEADINGS

Dr. Moshood Tantan of 5, Ojota Lane, Surulere, Lagos bought a piece of land from Chief Warinpa of 22, Edepie Street, Ikoyi, Lagos on 22 January 2018 for which he paid fully, and erected a fence on two sides of the property. He had a Deed of Assignment, duly perfected by him and having registration number 55/55/2018F, in respect of the transaction. But he did not do anything more. The

property is located at 11, Ikorodu Road, Ikeja, Lagos. Dr MoshoodTantan was however informed on 07/03/2020 by his boys that one Mr Sam Abroko of 41, Ikorodu Road, Palmgroove, near Ikeja, Lagos had started depositing some building materials preparatory to commencing a building project on the same land. When the boys approached Mr Abroko, Mr Abroko said he had bought the land from Chief Warinpa in June 2019. Dr Tantan`s boys could not stop Mr Abroko because Mr Abroko stationed stern-looking touts who were ready to deal with anyone who tried to stop them. Dr Tantan is aggrieved and has decided to file an action to protect his property. Dr Tantanhas approached you to commence an action immediately.

**(a)**As Counsel to Dr Tantan, answer the following questions:

- (i) Draft the statement of claim, ready for filing.
- (ii) List out matters that the statement of claim should and should not contain, mention the documents you are required to file alongside the statement of claim, and identify the effect of failure to file all the documents in court, at the same time.
- (iii) List out facts that you must specifically plead in the statement of claim, and highlight the effect of failure to specifically plead such facts.
- (iv) How and when is Dr Tantan expected to respond to the statement of defence (if any)?

**(b)**Assuming you were Counsel to Mr Abroko, answer the following questions:

- (i) Assuming Mr Abroko intends to defend this suit, state the time within which Mr Abroko is required to file his statement of defence, and identify the effect of failure to file the same within time. Is there any remedy for Mr Abrokoif he fails to file his/her statement of defence within time?
- (ii) Draft the statement of defence up to the first paragraph. Highlight the role and legal effect of the first paragraph of the statement of defence.
- (iii) Assuming Mr Abroko has a counter-claim, how and within what time is he expected to file same in the court, and by what document is Dr Tantan expected to respond?
- (iv) Identify the differences between a Counter-Claim and a Set-off in civil proceedings.
- (v) With the aid of legal authorities, discuss the legal effect of the statement of defence in this suit being signed as follows:

-----  
**Musa JideAgu & Co**  
**Legal Practitioners for the Defendant**  
**Address:**  
**Phone Number:**  
**Email:**  
**Or**

-----  
**Managing Partner,**  
**Musa JideAgu & Co**  
**Legal Practitioners for the Defendant**  
**Address:**  
**Phone Number:**  
**Email:**

- (c) Assuming that as the trial was about to commence, DrTantan drew his Counsel's attention to the fact that, he had (immediately after perfection of the Deed of Assignment) commenced processing his Certificate of Statutory Right of Occupancy in respect of the property, and indeed he furnished the counsel with documents to testify to this fact,
- (i) what step should the counsel take in order to reflect this fact/development in the suit already before the court and within what time is the counsel expected to take this step;
  - (ii) State the documents the counsel would need to file in court for this purpose; and identify the factors the court ought to consider in deciding whether or not to permit such step.
  - (iii) Identify the different types of pleadings, and enumerate the role of pleadings in civil proceedings.
  - (iv) List any ten duties Dr. Tantan's counsel owes Dr Tantan, three duties he/she owes Mr Abroko, five duties he/she owes the court, and any three duties he/she owes the opposing counsel in this case.

**Week 10**

**PRE-TRIAL ISSUES AND PRE-TRIAL PROCEEDINGS**

When pleadings are closed, parties may, before trial begins, make one of several applications to court or undertake proceedings which should be properly settled before trial. Sometimes, such applications or proceedings may lead to termination of the suit even before trial commences. Such applications and or proceedings include striking out pleadings, discovery and interrogatories, case management or pre-trial conference, settlement of issues, consolidation and setting down the matter for hearing.

**DRAFT OF SAMPLE APPLICATIONS FOR IN PRE-TRIAL PROCEEDINGS**

**STRIKING OUT PLEADINGS:** Instances for Striking Out Pleadings – *Order 15 Rule 16 & 18 Abuja & Order 17 Rule 15 Lagos*

- i. Non-Disclosure of Reasonable Cause of Action
- ii. Non-Disclosure of Reasonable Defence to the Action
- iii. Frivolous, Vexatious, Embarrassing or Scandalous Pleading
- iv. Abuse of Court Process

**Application for Striking Out a Suit**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006  
MOTION NO.....

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 4 RULE 1 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES, 2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court may be moved on the 6<sup>th</sup> day of December, 2020 in the forenoon or so soon thereafter as Counsel to Applicant will be heard praying this Honourable Court for the following order:

1. AN ORDER STRIKING OUT THE SUIT OF THE CLAIMANT;
2. AND FOR SUCH FURTHER OR OTHER ORDERS as the Honourable Court may deem fit to make in the circumstances.

AND TAKE FURTHER NOTICE that the grounds for the objection are as follows:

1. Failure to first submit the matter to conciliation as agree in clause 2 of the partnership agreement between the parties.
2. Commencing it in the wrong judicial division.

Dated this 4<sup>th</sup> day of December, 2020

.....  
UGWU DOMINIC ESQ  
DOMINIC & CO.  
DEFENDANT'S SOLICITORS  
NO. 10 AKINSWAY,  
VICTORIA ISLAND,  
LAGOS.

FOR SERVICE ON:  
CLAIMANT  
C/O EYEKE KENNETH ESQ.  
EYEKE KENNETH & CO.  
CLAIMANT'S SOLICITORS  
NO. 1 BENAKOL ROAD,  
VICTORIA ISLAND, LAGOS

**Affidavit in Support of Motion on Notice for Striking Out**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006  
MOTION NO.....

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE**

I, Mary W. Allagoa, female, Christain, Nigerian citizen, Managing Director of No. 65, Agric Oke-Aro, Ikorodu, Lagos, do hereby make oath and state as follows:

1. I am the Managing Director of the Defendant/Applicant Company by virtue of which I am conversant with the facts of this suit.
2. The Defendant/Applicant had since been served with the Originating Processes in this proceedings.
3. The Defendant/Applicant has reacted to the said processes by filing its statement of defence together with all other relevant documents, all of which have been served on the Claimant/Respondent.
4. The Claimant/Respondent instituted this action without first having recourse to conciliation as agreed by the parties in clause 2 of the partnership agreement between the parties.
5. The Claimant/Respondent instituted this action in the wrong judicial division (Ikeja) as the contract between the parties was agreed to be performed and actually performed in Ikoyi as stated in clause 5 of the partnership agreement. The partnership agreement is hereby attached as Exhibit A1.
6. I make this affidavit in good faith believing the contents to be true and correct and in accordance with the Oaths Act.



.....  
DEPONENT

Sworn to at the High Court Registry, Lagos

This 4<sup>th</sup> day of December, 2020

Before me

.....  
COMMISSIONER FOR OATH

**Written Address in Support of Motion for Striking Out a Suit**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006  
MOTION NO.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**WRITTEN ADDRESS IN SUPPORT OF MOTION**

INTRODUCTION

Before this Honourable is a motion on notice dated and filed on the 4<sup>th</sup> day of December, 2020. The Application is brought pursuant to Order 4 Rule 1 of the Rules of this Honourable Court and under the inherent jurisdiction of this Honourable Court seeking the Order of this Honourable Court striking out the suit of the Claimant/Respondent herein constituted for failure to first resort to

conciliation and institution of the suit in a wrong judicial division. The application is supported by a 6 paragraph affidavit deposed to by Mrs Mary W. Allagoa. We shall rely on all the paragraphs of the said affidavit especially paragraphs 3-5.

#### BRIEF STATEMENT OF FACTS

The Claimant filed a suit in court against the Defendant without first resorting to conciliation as agreed by the parties in clause 2 of the partnership agreement between them. The Claimant also filed the suit in the wrong judicial division, Ikeja Judicial Division.

#### ISSUE FOR DETERMINATION

My Lord, the sole issue for determination is whether the Defendant/Applicant is entitle to an order of this Honourable Court striking out the suit of the Claimant/Respondent.

#### LEGAL ARGUMENT

There are condition precedents which are to be met before the commencement of an action. Such conditions must be fulfilled by claimant and his counsel before commencing an action. See **Okolo v Union Bank of Nigeria**. In this instance, the Claimant/Respondent failed to fulfill the condition precedent of submitting the matter to conciliation as agreed by the parties in clause two of their partnership agreement. My Lord, a close perusal at clause 2 of the partnership agreement shows that where dispute arises between the parties in respect to the partnership, parties shall first resort to conciliation before litigation. However, the Claimant/Respondent went straight to court to institute proceedings in court by virtue of which has made this suit unripe for hearing i.e. the court is seized of jurisdiction to entertain the matter until such has been submitted to conciliation. Where condition precedents are not fulfilled, the court will have no jurisdiction to entertain the matter.

It is equally trite my Lord, that by virtue of Order 4 Rule 1 of this court, actions are to be commenced in the appropriate judicial division. It is also a trite rule of law that the court that has jurisdiction to entertain matters arising from breach of contract are court situated in the place where the contract was intended to be performed or where the contract was performed. In this instance, under clause 5 of the partnership agreement, the contract was to be performed and was actually performed in Ikoyi and not Ikeja. Thus, the appropriate judicial division to entertain this suit is the court sitting in Ikoyi.

In the case of **Madukolo v. Nkemdilim** and **Odofin v. Agu**, the court held that, issue of jurisdiction is a threshold issue that goes into the root of the matter, no matter how well the matter was conducted it goes to no issue and liable to be set aside on appeal. The appropriate order to make when the court lacks jurisdiction is to strike out the matter.

## CONCLUSION

We therefore urge the Court to grant the application by making an order to strike out the suit of the Claimant.

Dated this 4<sup>th</sup> day of December, 2020

.....  
UGWU DOMINIC ESQ  
DOMINIC & CO.  
DEFENDANT'S SOLICITORS  
NO. 10 AKINSWAY,  
VICTORIA ISLAND, LAGOS.

## FOR SERVICE ON:

CLAIMANT  
C/O EYEKE KENNETH ESQ.  
EYEKE KENNETH & CO.  
CLAIMANT'S SOLICITORS  
NO. 1 BENAKOL ROAD,  
VICTORIA ISLAND, LAGOS

## LIST OF AUTHORITIES CITED

1. Okolo v. Union Bank of Nigeria (1996) 7 NWLR (Pt 461) 833.
2. Nkemdilim v. Madukolo
3. Odofin v. Agu

**Motion on Notice for Striking Out of Pleadings**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006  
MOTION NO.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 17 RULE 15 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the 6<sup>th</sup> day of December, 2020 at the Hour of 9 'O'clock in the forenoon or so soon thereafter as Counsel on behalf of the Applicant may be heard praying the court for the following:

1. AN ORDER striking out the Claimant/Respondent's Statement of Claim for the non-disclosure of a reasonable cause of action.
2. AND FOR FURTHER ORDER(S) this Court may deem fit to make in the circumstances.

Dated this 4<sup>th</sup> day of December, 2020

.....  
UGWU DOMINIC ESQ  
DOMINIC & CO.  
DEFENDANT'S SOLICITORS  
NO. 10 AKINSWAY, LAGOS.

FOR SERVICE ON:

CLAIMANT  
C/O EYEKE KENNETH ESQ.  
EYEKE KENNETH & CO.

**Motion on Notice for Leave to Issue Notice to Produce Document**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

SUIT NO: HC/ABJ/020/006

MOTION NO: .....

BETWEEN

MR EVBUOMAN EDWARD.....CLAIMANT/APPLICANT

AND

CASSY BLACK NIGERIA PLC.....DEFENDANT/ RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 28 RULE 8(1) OF THE HIGH COURT OF  
THE FCT ABUJA (CIVIL PROCEDURE) RULES 2018 AND UNDER THE  
INHERENT JURISDICTION OF THIS COURT

TAKE NOTICE that this Honourable Court will be moved on the 6<sup>th</sup> day of  
December, 2020 at the Hour of 9 'O'clock in the forenoon or so soon thereafter  
as Counsel on behalf of the Plaintiff /Applicant can be heard praying for:

1. AN ORDER granting leave to the Claimant/Applicant to file a Notice to  
Produce documents on the Defendant/Respondent.
2. AN ORDER directing the Defendant/Respondent to produce the following  
documents for inspection to wit:
  - (a) Notice of Supply of substandard goods dated the 1<sup>st</sup> day of June 2020
  - (b) Agreement on supply of 500 Tons of Plasma Television
3. AND FOR SUCH FURTHER ORDER(S) this Court may deem fit to make in  
the circumstances.

Dated the 6<sup>th</sup> day of December, 2020

.....  
EYEKE KENNETH ESQ.  
S. K. EYEKE & CO.  
CLAIMANT'S SOLICITORS  
NO.10 AKINSWAY,

VICTORIA ISLAND, LAGOS

FOR SERVICE ON:  
DEFENDANT

**Interrogatories (Form 19) Lagos**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**INTERROGATORIES**

Interrogatories on behalf of the above named Claimant for examination of Mr. Nafisa Ya'u Yunusa, Accountant of the above named Defendant.

1. Did you not deposit the sum of N3, 470,000.00 on the 30th day of November, 2020 in a Current Account No 0023459379 with Zenith Bank Nig. Plc in an understanding that such sum would be made out in favour of the Defendant?
2. Did you not register 20 Toyota Hilux trucks on the 1<sup>st</sup> day of March 2020 on the understanding that it be used to further the business partnership with the Claimant/
3. Are you not aware that failure of the Defendant to honour the terms of the Partnership Agreement as at when due would affect the Claimant's liquidity adversely and as to the survival of the Claimant's business?

Dated the 6<sup>th</sup> day of December, 2020

.....  
EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria Island  
Lagos

FOR SERVICE ON:

Ugwu Dominic Esq.

Defendant/Respondent's Solicitor

**Answer to Interrogatories (Form 20) Lagos**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**ANSWERS TO INTERROGATORIES**

The answers of the above named Defendant, S & E NIGERIA LIMITED, to the Interrogatories for his examination by the above named claimant.

In answer to the said Interrogatories, I Mr.Nafisa Ya'u Yunusa make Oath and State as follows:

1. Yes
2. Yes
3. No, not to my knowledge

I, the above named Mr Nafisa Ya'u Yunusa, do hereby solemnly swear that this is my name and handwriting and that the facts deposed by me in this affidavit are the truth, the whole truth and nothing but the truth.

\_\_\_\_\_  
DEPONENT

Sworn to at the High Court Registry,

Dated the 6<sup>th</sup> day of December, 2020

BEFORE ME

COMMISSIONER FOR OATHS

**Application for Discovery of Documents Order 26 Rule 8(1) Lagos**

**EYEKE KENNETH & CO**  
**LEGAL PRACTITIONERS AND SOLICITORS**  
NO. 1 BENAKOL ROAD, VICTORIA ISLAND, LAGOS  
[Eyekekennethsamuel@gmail.com](mailto:Eyekekennethsamuel@gmail.com) 08102959631

Our Ref:.....Your Ref:.....  
6<sup>th</sup> day of December, 2020

Ugwu Dominic Esq.  
Dominic & Co  
Defendant Solicitor  
Plot A2 Ikoyi Lane  
Lagos

Dear Sir,

**AYORINDE NIGERIA LTD V. S & E NIGERIA LTD**  
**SUIT NO: HC/LG/O20/006**  
**REQUEST FOR PRODUCTION OF DOCUMENTS**

We write on behalf of Ayorinde Nigeria Limited, our client, in the above matter pending before the High Court of Lagos State.

Pursuant to Order 29 Rule 6 of the Lagos State High Court (Civil Procedure) Rules 2019, we request your client to make discovery of the following documents which are within its possession:

1. The Bank Statement from 1<sup>st</sup> March 2020 to 1<sup>st</sup> January 2021 of Zenith Bank Nig. Plc Current A/C No: 0023459379, A/c Name: S and E Nigeria Limited within the possession of your client.
2. The particulars of 20 vehicles (Toyota Hilux trucks 2017 model) jointly purchased by our client and yours and which have been in your client's possession.
3. Any other documents that are or have been in your possession, custody, power or control relating to the matter in question.

Thanks for your corporation as we expect your early response.



\_\_\_\_\_  
Eyeke Kenneth Esq.  
FOR: S. K. EYEKE & Co

**Affidavit in Answer to Request for Discovery of Documents - Form 21**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**AFFIDAVIT IN ANSWER TO REQUEST FOR DISCOVERY OF DOCUMENTS**

I, Nafisa Ya'u Yunusa, Female, Accountant, Nigerian Citizen residing at No. 12, Tolulope Olaide Street, Ikeja, Lagos, do hereby make oath and state as follows:

1. I am the Accountant of the Defendant in this action by virtue of which I am conversant with the facts of this case.
2. I have the consent and the authority of the Defendant to depose to this affidavit.
3. The Defendant is in possession of the bank statement to Zenith Bank Nig. Plc Current A/C No: 0023459379, A/c Name: S and E Nigeria Limited. A copy of the said bank statement is attached to this affidavit and marked "Exhibit A".
4. The Defendant is in possession of the particulars of the 20 Toyota Hilux trucks 2017 model. Copies of the particulars all of the cars are hereby attached to this affidavit and marked "Exhibits B1-B20" respectively.
5. I do not know of any other documents within the possession of the defendant which are relevant to this case.
6. I make this oath in good faith believing same to be true and correct and in accordance with the Oaths Law.

\_\_\_\_\_  
DEPONENT

Sworn to at the High Court Registry,  
Dated the 6<sup>th</sup> day of December, 2020

BEFORE ME

\_\_\_\_\_  
COMMISSIONER FOR OATHS

**Case Management Information Sheet – Order 27 Rule 1 Lagos (Form 18)**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**CASE MANAGEMENT INFORMATION SHEET**

This Case Management Information Sheet is intended to include references to all applications which the parties would wish to make at the Case Management Conference. Application not covered by the standard questions raised in this Case Management Information Sheet be entered under item 12 below:

All parties shall not later than 7 days before the first Case Management Conference, file and serve on all parties:

- (a) All applications in respect of matters to be dealt with before trial including but not limited to the matters listed hereunder;
- (b) Written answers to the questions contained in this Case Management Information Sheet.

1. Do you require that this action be consolidated with any other action(s)? If so give Particulars.
2. Are amendments to any originating or other processes required?
3. Are further and better particulars of any pleadings required? If so, specifically what particulars are required?
4. Do you object to Interrogatories that may have been delivered pursuant to Order 29 Rule 1 of the High Court (Civil Procedure) Rules? If so, state the grounds of such compliance with Order 29 Rule 1.
5. Do you object to any document in respect of which a request for discovery has been made pursuant to Order 29 Rule 8(1) of the High Court (Civil

Procedure) Rules? If so, state the grounds of such objection in compliance with Order 29 Rule 1 of the Rules.

6. If you intend to make any further admission give details.
7. Will interpreters be required for any witness? If so state in what language.
8. Is this a case in which the use of a single or joint expert might be suitable? If not, state reasons.
9. Is there any way the Court can assist the parties to resolve their dispute or particular issues in it without the need for trial or full trial?
10. Have you considered some form of Alternative Dispute Resolution (ADR) procedure to resolve or narrow the dispute or particular issue in it? If yes, state the steps that have been taken? If not, state reasons.
11. State any question or questions of law arising in your case, if any, which you require to be stated in the form of a special case for the opinion of the judge in accordance with Order 31 of the rules.
12. List the applications you wish to make at the Case Management Conference.

Dated the 6<sup>th</sup> day of December, 2020

.....  
UGWU DOMINIC ESQ  
DOMINIC & CO.  
DEFENDANT'S SOLICITORS  
NO. 1 BENAKOL ROAD,  
VICTORIA ISLAND, LAGOS.

FOR SERVICE ON:  
CLAIMANT  
C/O EYEKE KENNETH ESQ.  
EYEKE KENNETH & CO.  
CLAIMANT'S SOLICITORS  
NO. 10 AKINSWAY,  
VICTORIA ISLAND, LAGOS

NB:

Note that parties shall file their issues for determination along with this Form.

**Answers to Questions Contained in Case Management Information Sheet**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**ANSWERS TO QUESTIONS CONTAINED IN CASE MANAGEMENT  
INFORMATION SHEET**

1. No consolidation required.
2. No amendment required.
3. No further and better particulars of pleadings required.
4. Interrogatories have been served and answered in accordance with the rules.  
Also there is no objection.
5. There was a request for documents and defendant has duly complied.  
Therefore, there is no objection.
6. No admission.
7. No interpreters required.
8. No expert witness required.
9. The Court may intervene by advising the Defendant to pay the amount claimed, that is the sum of ₦1, 735, 000.00 (One million, Seven hundred million and Thirty Five Thousand Naira only). On its part, the Claimant is willing to make a concession by forgoing the interest that has accumulated on the said sum, but however insists on an equal division between the parties, of the 20 vehicles jointly purchased by the parties.
10. No Alternative Dispute Mechanism required.
11. No question requiring special case for the opinion of the Judge.
12. Motion for interlocutory Injunction restraining the defendant from the use of 20 vehicles pending the determination of this suit.

Dated the 6<sup>th</sup> day of December, 2020

.....  
EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos  
.

**Report of the Case Management Conference**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LG/020/006

BETWEEN  
AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT  
AND  
S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**REPORT OF THE CASE MANAGEMENT CONFERENCE**

1. The Case Management Conference began on the 2<sup>nd</sup> day of November, 2020 at the High Court of Lagos State. Parties had exchanged pleadings and pleadings closed on the 4<sup>th</sup> day of December, 2020.
2. The Claimant's action is in respect of the contract and partnership agreement entered into between the parties in 2020. The Claimant claimed as follows:
  - (a) The Sum of ₦1, 735, 000.00 (One million, Seven hundred million and Thirty Five Thousand Naira only) as proceeds of various contracts executed by the parties between January 2019 and December 2020.
  - (b) Equal division of 20 Toyota Hilux Trucks jointly bought by the parties pursuant to the partnership agreement.
  - (c) A declaration that the Partnership Agreement between the parties is valid and subsisting.

3. The Defendant denied liability. It denied being indebted to the claimant in any sum and further denied that the partnership agreement was still valid and subsisting.
4. Issues were settled as follows:
  - (a) Whether the claimant is entitled to the sum of ₦1, 735, 000.00 (One million, Seven hundred million and Thirty Five Thousand Naira only) being proceeds of the contract as claimed?
  - (b) Whether the Partnership Agreement was validly executed?
  - (c) Whether both parties are joint owners of the 20 vehicles in the defendant's possession bought pursuant to the purported partnership agreement?
5. The Defendant brought a preliminary objection to strike out the suit on the grounds that the Court lacked jurisdiction but the Court overruled the Preliminary Objection and held that the Court possessed jurisdiction because the contract was a simple contract and the Defendant was within the jurisdiction of the Court.
6. The Claimant filed and served Interrogatories on the Defendant and the Defendant responded. The Claimant requested from the Defendant, discovery of documents to with particulars of the 20 vehicles. The Defendant responded in an affidavit attaching the document requested.
7. No facts were admitted or requested and no expert witness was sought to be used.
8. The Claimant intends to make an application for an Interlocutory Injunction restraining the Defendant for converting the 20 vehicles.
9. On consideration of the whole circumstances, I find that there is a matter to be tried.

However, the precondition for instituting action in this matter, according to clause 5 of the Partnership Agreement between the parties dated the 1st day of March 2019 is that the matter first be taken to Conciliation. Thus, I hold that without an attempt at Conciliation, the matter is premature for litigation. I therefore refer this matter to the Lagos Multi-Door Courthouse to enable the parties to attempt Conciliation in a bid to amicably settle this matter. The parties are to report back to the Court on the 20<sup>th</sup> of January 2021.

The Proceedings at this Case Management Conference are therefore stayed pending the outcome of the attempt at conciliation at the Lagos Multi-Door Court House

Hon Justice Benemone, Warefiniere Rachael  
High Court Lagos.

## **WEEK 10 ASSIGNMENT: Pre-Trial Issues and Pre-trial Proceedings**

### **Assignment 1**

MusaShege and Lovebird Okoro have been dating for three years. In March Lovebird paid Musa a visit at his residence in Ikoyi, Lagos and was caught up by the Federal Government lockdown order in Lagos State. Due to the long period they were together, Musa discovered that Lovebird is a very lazy woman. So he ended their relationship. Lovebird sued Musa for breach of promise of marriage. In her Statement of Claim she averred that Musa had never mentioned marriage throughout their relationship. She also averred that Musa was a regular visitor in her father's house and that she also regularly visited his house, and that their marriage was a matter of time. The parties have exchanged pleadings and pleadings were closed on 18 May 2020.

### **Answer the following questions**

1. What is the next step to be taken in the action? Indicate in your answer the party to take the step, the time within which to take it and the consequences of failure to take it.
2. State five subject matters that can be on the court's agenda for consideration when conducting the procedure in the step taken in (1) above.
3. Assuming you are counsel to Musa Shege, given the facts of the case, what possible interlocutory application will you make in the course of the conduct of the procedure in the step taken in (1) above.
4. What is the time frame for the completion of the procedure in the step taken in (1) above? Would your answer be different if the action was commenced in Abuja?
5. What are the consequences of either of the parties failing to participate in good faith in the step in (1) above?

### **Assignment 2**

Topshape Fitness Center Ltd located in Wuse, Abuja had entered into a contract with Seir Equipment Ltd for the supply of twenty (20) treadmills in December 2019. The full purchase price of N30m was paid by Topshape Fitness Center and the goods were to be delivered on or before 28 February 2020. Seir Equipment has failed to deliver the goods claiming that the contract was frustrated due to the

corona virus pandemic as it was unable to clear the goods from the port as expected. Topshape Fitness Center through its counsel Reuben Jacob has brought an action against Seir Equipment Ltd for breach of contract claiming the refund of the contract sum and N10 million general damages. At the pre-trial conference, Reuben Jacob intends to get more facts from Seir Equipment Ltd as to when the goods arrived the Nigerian port and when the clearing would have been completed. He also will like to see the clearing documents.

**Answer the following questions.**

1. Describe the procedure the parties should adopt in bringing to the notice of the court the issues they have settled for trial.
2. Assuming you are Reuben Jacob what step will you take to actualize your intentions?
3. Draft only the process for the step taken in (2) above with regards to the intention of getting more facts.



## WEEK 11

### TRIAL PREPARATION AND EVIDENCE

The principles and rules of evidence constitute integral part of civil trial. A sound knowledge of the principles of evidence law puts a litigation lawyer on top of his game. A case is won or lost on the basis of availability of evidence or lack of it. Therefore, a fair knowledge of the principles and rules of evidence is cardinal to aspirants to the bar

It is inline with this that some of the essential principles and rules of evidence are incorporated into civil the litigation course model. This is the focus of today's lesson.

#### **FACTS WHICH NEED NOT BE PROVED**

- Admitted facts. See 123 EA
- Facts that must or may be judicially noticed. See 16 - 19, 122 & 124 EA
- Facts that must or may be presumed. See 145; 157 - 168 EA

#### **Facts which may not be admissible in evidence**

- Illegally obtained evidence admissible but may be excluded by court. S 14 & 15 EA
  - Character in civil cases not admissible subject to exceptions. See S.78 & 79 EA
  - Similar facts not admissible but exceptions can be found in S. 35 & 36 EA
- a. Hearsay not admissible subject to exceptions. See S. 37 & 38 EA
  - b. Estoppel including res judicata See ss 169 - 174 EA

#### **OPINION s. 67 – 76EA**

Opinion of a witness is inadmissible as evidence of a fact. Exceptions: s. 68

Where the evidence relates to: foreign law, customary law, science or art and identification of handwriting or finger impression. Any person who is skilled in any of the areas mentioned above is an expert s.68 (2)

**WEEK 11**  
**ASSIGNMENT**

Read the task below and answer all the questions

Janet Joyce a super star Afro music legend in Lagos State was invited by the Law Students Association of the Lagos State University to perform at the 25th convocation dinner ceremony scheduled for 15th March, 2019. At about 5.30 pm on 15th March, 2019 on her way to the University, at Police road she met her old friend Rose Moses who was also going to the convocation dinner with her 10 years old son David Moses and she gave them a ride. At about 6.00 pm, the Police road traffic warden at Jimo Roundabout stopped the vehicle and suddenly a Toyota Camry 2014 model driven by one Engineer Rufus, chatting with his friend Mr Bello Musa hit her vehicle from the rear. Consequently, Janet Joyce hit her head on the wheel and broke her tooth and her car was damaged. She was hospitalized at Rando Medical centre along Dogie, Road Vespa Lagos where she expended the sum of N 15000000 for treatment. She equally spent the sum of N 35000000 to repair the vehicle. Against this background, she engaged the law firm of A.B. Smart & Co to institute an action against Engineer Rufus. Upon the receipt of the statement of defence, A.B. Smart Esq realized that the main defence contained in the process is contributory negligence and has decided to prepare well for the matter coming up for hearing the following week. He intended calling Rose Moses as one of the claimant's witnesses but was told by the claimant that she passed on just a week ago and decided to call David Moses instead.

Answer the following questions.

1. Assuming you are A.B. Smart Esq prepare the theory of the case and a trial plan that will guide you during the trial
2. Comment on the importance of the theory of the case and the trial plan you prepared in 1 above
3. In not more than 8 paragraphs draft the claimant's written statement on oath.
4. Comment on the propriety or otherwise of calling David Moses as a witness in the suit.
5. Assuming Janet Joyce invited Mr Bello Musa to come and testify in court and he refused, briefly comment on what she can do in the circumstance.

**Week 12 & Week 13**  
**TRIAL – EXAMINATION OF WITNESSES**

- **Concept:** this is the examination of a witness by the party who call him – **Section 214 Evidence Act.**
- **Object:** to elicit from the witness material facts that have been pleaded in the pleadings in establishment of the claim or defence.
- **Proof of Facts:** proof of facts shall be by written deposition and oral examination of witnesses in open court – **O. 34 R. 1(1) Abuja; O. 36 R. 1(1) Lagos.**
- **Adopting Sworn Statement as Evidence in Chief:** In all jurisdictions, oral examination-in-chief of a witness is restricted to the adoption of the witness' statement on oath; and tendering of all disputed documents or other exhibits referred to in the statement through the witness – **O. 34 R. 1(3) Abuja; O. 36 R. 1(4) Lagos.** Adopting witness statement on oath avoids waste of time but it robs counsel of perfection of the art of examination in chief.
- **Leading Questions:** leading questions are prohibited in examination in chief and re-examination except with the leave of court – **Section 221(2) EA.** However, leading question can be asked on introductory matters, undisputed matters and matters that have been sufficiently proved.
- **Leading a Witness to Tender a Document:** where counsel wants to tender document through the witness, he is to first of all lead the witness to adopt his statement on oath. He will then refer the witness to the specific paragraph in his statement on oath that makes reference to the document and ask the witness how he can identify the document. After identification of the document by the witness, counsel is to seek to tender the document through the witness. Where the document is a secondary evidence proper foundation will have to be led informing the court of the where about of the original..
- **Open Questions:** Open questions guide the witness along a story line but allow him to tell his story. It is only prompted with closed questions so as to make the witness remain on course as he tells his story. Thus, open questions are used in examination-in-chief in preference to closed questions, which operates best in cross-examination. Example includes questions starting with the words "Why", "Where", "How", "What", Describe, Explain. The advantages of open questions are:

•

### **WEEK 12 ASSIGNMENT**

Read the task below and answer all the questions Janet Joyce a super star Afro music legend in Lagos State was invited by the Law Students Association of the Lagos State University to perform at the 25th convocation dinner ceremony scheduled for 15th March, 2019. At about 5.30 pm on 15th March, 2019 on her way to the University, at Police road she met her old friend Rose Moses who was also going to the convocation dinner with her 10 years old son David Moses and she gave them a ride. At about 6.00 pm, the Police road traffic warden at Jimo Roundabout stopped the vehicle and suddenly a Toyota Camry 2014 model driven by one Engineer Rufus, chatting with his friend Mr Bello Musa hit her vehicle from the rear. Consequently, Janet Joyce hit her head on the wheel and broke her tooth and her car was damaged. She was hospitalized at Rando Medical centre along Dogire, Road Vespa Lagos where she expended the sum of N150, 000.00 for treatment. She equally spent the sum of N350,000.00 to repair the vehicle. Against this background, she engaged the law firm of A.B. Smart & Co to institute an action against Engineer Rufus. Upon the receipt of the statement of defence, A.B. Smart Esq realized that the main defence contained in the process is contributory negligence and has decided to prepare well for the matter coming up for hearing the following week. He intended calling Rose Moses as one of the claimant's witnesses but was told by the claimant that she passed on just a week ago and decided to call David Moses instead.

Answer the following questions.

1. Assuming you are A.B. Smart Esq prepare the theory of the case and a trial plan that will guide you during the trial
2. Comment on the importance of the theory of the case and the trial plan you prepared in 1 above
3. In not more than 8 paragraphs draft the claimant's written statement on oath
4. Comment on the propriety or otherwise of calling David Moses as a witness in the suit.
5. Assuming Janet Joyce invited Mr Bello Musa to come and testify in court and he refused, briefly comment on what she can do in the circumstance.

**WEEK 13 ONLINE ASSIGNMENT**

The following cross examination took place during a trial at the High Court of Lagos State, Ikeja.

Q1. Counsel - Witness, you claimed that the car driven by the defendant was travelling at an excessive speed, at the time of the accident, didn't you?

Witness -Yes.

Q2. Counsel- And the event took place at about 9pm in the night, , am I correct?

Witness - Yes.

Q3. Counsel- At the time, there was no street light in the area in question- am I correct?

Witness- Yes.

Q4. Counsel - Then, how were you able to see the accident?

Witness- That was simple. The moon shone brightly, and the whole place was well lit up. I saw everything clearly.

Q5. Counsel - You are not telling the truth. You are lying. You are a hostile witness. I apply that you be so treated.

1. a. Was the above cross examination successful?

b. Identify 3 functions of cross examination.

c. Identify 3 techniques in cross examination..

d. Is there any of the above stated questions you would have refrained from asking? State your reason(s).

e. Define the type of question asked in Q1- Q3

2 a. Identify other stages of examination of witnesses. State the major functions of the stages.

b. Is any of the stages optional?

3. a. Was counsel right in the way he treated the witness in Q.5? State your reason (s).

b. Could counsel have validly made the application in Q5? State reasons.

## **Week 14**

### **CLOSING ADDRESS AND JUDGMENT**

A closing address also known as written address is a marriage of facts and law in other to convince the court to grant or refuse to grant claims or prayers. The written address of a counsel no matter how eloquent it is cannot substitute evidence. Thus, the courts are not bound by the final addresses of parties as it is only meant to guide the court in coming into a just determination of the matter.

#### **Sample of Closing Address for the Defendant**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

#### **DEFENDANT'S FINAL ADDRESS**

##### **1.0 INTRODUCTION**

1.1 My Lord, the Claimant by a Writ of Summons and Statement of Claim dated and filed on 4<sup>th</sup> December, 2020, claims against the Defendant as follows:

- (d) A DECLARATION that the contract between the parties is still subsisting;
- (e) CLAIM FOR SHARE of the sum of N3, 470, 000 (three million Four hundred and seventeen thousand naira) being the proceed of the contract between the parties in equal proportion v of N1,735, 000; and
- (f) AN ORDER FOR THE SHARING OF THE 20 VEHICLES between the parties in equal proportion of 10 vehicles to each of the parties.

##### **2.0 BRIEF STATEMENT OF FACTS**

2.1 A valid partnership contract was made between the Claimant and the Defendant on the 1/3/2015. The purpose of the contract is to perform a catering service to the Students Representative Council of the Nigerian Law School

across the six campuses for which 20(twenty) vehicles were purchased in the partnership's name. Both parties performed the contract and subsequently, the sum of N3, 470, 000 (three million Four hundred and seventeen thousand naira) accrued. The sum of N1, 735, 000.00 (One million Seven Hundred and Five Thousand Naira only) was paid into the Diamond Bank Account of the Claimant on the 7/11/2020 as its share of the proceeds from the contract. Ten (10) vehicles were given to the Claimant on the same day as his share of the 20 vehicles purchased in the partnership name. The Claimant acknowledged receipt of the sum of N1, 735, 000 as its share of the proceeds and the ten vehicles through a letter. The Claimant nevertheless on no justifiable ground instituted an action in this court for breach of contract.

2.2 My Lord, at the course of presentation of its case, the Claimant called two witnesses and tendered 4 exhibits which all were admitted in evidence. On the other hand, the Defendant called three witnesses out of which two were on subpoena, and tendered 2 exhibits which were all admitted in evidence.

### 3.0 ISSUES FOR DETERMINATION

My Lord, from the case presented by the parties, the Defendant humbly submits the following sole issue for determination by this honourable Court:

Whether the Claimant has reasonable cause of action as to entitle him to all the reliefs sought.

### 4.0 LEGAL ARGUMENT

4.1 My Lord, we respond in negation and respectfully submit that the Claimant in this suit has not disclosed any reasonable cause of action which can necessitate the institution of this suit as there is no act or omission on the part of the Defendants. We most respectfully refer your Lordship to the case of **Sahinmi v. Gov. Lagos State (2006) 10 NWLR (PT 987) 1** where the court held as follows:

— The statement of claim of a Plaintiff must disclose a cause of action, set out the legal right of the Plaintiff and the obligation of the Defendant. It must also go on to set out facts constituting infraction of the plaintiff's legal right or failure of the Defendant to fulfill his obligation or duty in such a way that if there is no proper defense the Plaintiff will succeed in the relief or remedy.

4.2 My Lord, on the meaning and constituents of cause of action, we respectfully refer his Lordship to the case of **Mboem v. Nigerian Mining Corp (2006) 13 NWLR (Pt 998) atPage 662**, where the Court of Appeal states as follows:

—A cause of action is a set of facts which establishes or gives rise to the right to sue and or factual situation which gives a party right to judicial relief. The cause of action in a suit incorporates every fact (not evidence) which will support a party's right to succeed or to have judgment of the court in his favour. In a Plaintiff's claim, his cause of action include every act or omission on the part of the Defendant which gives the Plaintiff cause of his complaint.

4.3 My Lord, going by the above decision, the Claimant in this suit has no cause of action as the facts adduced by the claimant in its statement of claim does not in any way show any act or omission of the Defendant which might have given right to a cause of action thereby necessitating the institution of this suit. The facts does not in any way show that there was a breach of contract by the Defendant.

4.4 Moreover, the Supreme Court of Nigeria in ***Ojukwu v. Yar' Adua (2009)12 NWLR (Pt. 1121) at Page 75*** stated two elements of cause of action as follows :Wrongful act of the Defendant which gives the Plaintiff his cause of complaint; and the consequent damage

4.5 My Lord looking at these two elements, it is categorically clear that there is no any wrongful act on the part of the Defendants which can lead to this action as there was no breach of the contract or attempt to convert the 20 vehicles or proceeds of the contract to the sole use of the Defendant.

4.6 My Lord, at the course of presentation of its case, the Defendant called DW1, the accountant of the Defendant who testified to the effect that after complete performance of the contract by the parties, the sum of N1, 735, 000 was transferred to the Diamond Bank account of the Claimant on the 7/11/2020 and 10 vehicles were also transferred to the Defendant on the same day, which the Claimant acknowledge that in writing. The said written acknowledgment was tendered by the Defendant in evidence and was admitted.

4.7 My Lord, the Defendant also called DW2, the Secretary to the Claimant who testified to the existence and issuance of the said acknowledgment letter by the Claimant. DW2 also admitted during cross examination that the signature on the said letter was hers and that of the Managing Director of the Claimant. In further support of this position, they drew the attention of the court to the similarity of the signature of the Managing Director on the acknowledgment letter and the



partnership agreement. The signature is the same which shows that the letter acknowledging the receipt of the share of the proceeds from the contract and the vehicles actually emanated from the Claimant.

**4.8** My Lord, DW3, the Bank Manager of Access Bank Plc, who was on subpoena produced before this honourable court, a bank record of the transaction which took place on the 7/11/2020 showing clearly that the sum of N1,735,000 was transferred to the account of the Claimant.

**4.9** My Lord, all the witnesses who testified for the Claimant did not in any way show the specific breach of contract committed by Defendant. In fact, all the Claimant's witnesses were in tandem with the fact that the sum of N3.470,000.00 million naira accrued from the proceeds of the contract which evidence of such payment was tendered in evidence by the Claimant. My Lord, this clearly shows that the contract was completely performed by the parties, that is why the complete payment of the fee for the services rendered have been made. One wonders how a breach of contract was made after the contract has been completely performed and thereby discharged.

**4.10** My Lord, on the issue of complete performance of a contract, the courts in ***Cutter v. Powell (1795) 6 Term Rep 320; Re Moore and Launder (1921) 2 KB 519*** held that completion of a contract discharges the contract.

### 5.0 CONCLUSION

5.1 We hereby respectfully urge this Honourable Court to dismiss the case/suit of the Claimant with substantial cost for being frivolous, lacking merit and being instituted with fraudulent intention.

Dated this 4<sup>th</sup> day of December, 2020

.....  
EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**Sample of Judgment**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO:.....

BETWEEN

AYORINDE NIGERIA LTD.....CLAIMANT/APPLICANT

AND

S & E NIGERIA LTD.....DEFENDANT/RESPONDENT

**JUDGEMENT**

The Claimant instituted this action by a specially endorsed writ of summons dated the 4<sup>th</sup> December, 2020 in which the claimant claimed against the defendants as follows:

1. A DECLARATION that the contract between the parties is still subsisting;
2. CLAIM FOR SHARE of the sum of N3, 470, 000 (three million four hundred and seventeen thousand naira) being the proceed of the contract between the parties in equal proportion v of N1, 735, 000; and
3. AN ORDER FOR THE SHARING OF THE 20 VEHICLES between the parties in equal proportion of 10 vehicles to each of the parties.

At the beginning of the trial, counsel on both sides announced appearance. The Claimant opened its case by calling two witnesses who testified on the existence of a partnership agreement and contract between the Claimant and the Defendant and the attempt of the Defendant to convert the 20 vehicles of the partnership to its sole use. The Claimant also tendered four exhibits which all were admitted and marked Exhibit C1, C2, C3 and C4 respectively. The Defendant on the other hand called 3 witnesses who testified on how the contract was completely performed between the parties and how the how the proceeds of the contract was shared between the parties. The Defendant also tendered two exhibits which were all admitted in evidence and marked as Exhibit D1 and D2. I have considered the testimonies of the witnesses called by the parties and the exhibits tendered by them. I have also considered the submissions of counsel on both sides and it is my respectful opinion that two issues call for determination in this matter:

1. Whether there was a contract between the parties
2. Whether there was a breach by the defendant.

On the 1<sup>st</sup> issue, I am of the opinion that there was a valid contract and partnership agreement between the parties executed in accordance to the *Contract Law of Lagos State* and *Partnership Law of Lagos State* respectively. Exhibit C1 clearly bears this position out especially as the defendant did not seriously join issue on this point. The court in the case of *Carlill v. Carbolic Smoke Ball Co (1893) 1 QB 256* the court defined contract as an agreement between two or more parties which the law will enforce and recognize as affecting the legal right and duties of the parties. For a contract to be valid, there must be offer, acceptance, consideration and intention to create legal relations which in my view all these essential elements are present in the contract between the parties. Thus, the court resolves this issue in affirmation that there was a valid contract between the Claimant and the Defendant as both parties are in consensus about the existence of the contract.

**On the 2<sup>nd</sup> issue**, I hold that there was no breach of contract by the defendant. This is because the position of the law as can be seen from a long line of cases is that whoever comes to equity must come with clean hands. The claimant having received its share of the proceeds from the contract performed by the parties and the 10 vehicles out of the 20 vehicles purchased in the partnership name cannot subsequently complain that there was breach of contract. This is to show that complete and actual performance of the contract has been made which there by renders the contract as discharged.

The Claimant through CW1 averred that the Defendant is attempting to convert the 20 vehicles to its sole use. However, the Claimant has not adduced any evidence prove of that allegation. The Claimant went further to tender the receipts of the vehicles which was admitted in evidence. This in turn has left the court in doubt as to how the Claimant came into possession of the receipts of the vehicles without being in control of vehicles itself.

On the case presented by both parties and the evidence adduced in support of their case, the court has come to an irresistible conclusion that there was no breach of contract by the Defendant and the Claimant has no reasonable cause of action against the Defendant. On the whole, I dismiss the claimant's claims in their entirety. I further order that both parties are to bear their respective costs.

This 4<sup>th</sup> day of January, 2021.

---

Aniekan Udo-Okon Emmanuel  
Judge

**WEEK 14 ASSIGNMENT ON FINAL ADDRESS AND JUDGEMENT**

1. Where the defendant decides to rest his case on that of the claimant/ plaintiff who addresses the court first.
2. Would your answer be different, if the defendant calls no witness but reads evidence through plaintiff/claimant's witness
3. Would your answer be different from 2 above if apart from the documents tendered by consent the defendant calls no witness. The suit between Council of Legal Education and Access Computers Ltd came to an end as the parties already filed, exchanged and adopted their final addresses and Justice S.B Oke of Lagos State High Court adjourned the matter to 15th June, 2020 for judgement. On the date fixed for judgment, all parties and their counsel were in court. Hon. Justice Oke sat around 9.00am as usual, and started delivering his judgement. But later, he asked all counsel to pick pen and paper to write what he would be dictating as part of the judgement because he said he couldn't write the last part because his ink finished and wouldn't like to sit late. Although counsel started taking down what he was dictating to them, midway, he also said the counsel should delivering the judgement next week from where he stopped
4. Was Justice Oke right when he dictated part of his judgement because his ink finished? Support your answer with authorities
5. Was Justice Oke right when he excused himself that he would continue to deliver his judgement next week? State your reasons
6. State the features of a good judgement
7. When will a judgement of a justice of an appellate court be read and when will it be pronounced?

**Model Answer on Closing Address and Final Judgment Assignment**

1. Where a defendant decides to rest his case on that of a claimant, the claimant will address the court first. When a defendant rest his case on the claimant's case, he is simply saying that the claimant has failed to make out a *premafacie* case to call the defendant to answer by calling evidence or has a complete defence in law. In the circumstance, the claimant will address the court first since the defendant did not adduced evidence. *Tariola v Williams* (1982) 7 SC 27; *Akanbi v Alao* (1989) NWLR (Pt.108) 118; Order 32 Rule 14-17 and 33 Rule 13-16 Abuja and Lagos Rules respectively.

2. The answer will be different, since the defendant read evidence through the claimant's witness. The reading of evidence in the circumstance simply means that the defendant elicited evidence via cross-examination and therefore will address the court first.
3. The answer will not be different from 2 above since the defendant tendered document by consent. It amounts to giving evidence, thus the defendant will address the court first.
4. Justice Oke was not right when he dictated part of his judgment because his ink finished. Such action amounts to the delivery of judgment orally which is unconstitutional. Section 294 (1) of the 1999 Constitution as amended; *Ifezue v Mbadugha* (1984) 5 SC 79
5. Justice Oke was wrong when he excused himself that he would continue to deliver judgment next week, as it will amount to delivery of judgment by piecemeal. A court cannot deliver judgment by piecemeal. *CBN v Beekiti Constructions Limited* (2004)14 NWLR (Pt.893) 293
6. Features of a good judgment –
  - a. Delivery of the Judgment in writing. Section 294 (1) of the 1999 Constitution as amended
  - b. Delivery of judgment within time. Section 294 (1) of the 1999 Constitution as amended
  - c. Delivery of judgment in open court. Section 36 (1) (3) of the 1999 Constitution as amended; Order 39 Rule 1 and 35 Rule 1 Abuja and Lagos Rules respectively.
  - d. Proper evaluation of the case. *Mogaji&Ors v Odofin&ors* (1978)3 SC 91
  - e. Confinement of judgment to issues raised and the claims sought. *Ekpenyong&Ors v Nyong&Ors* (1975) 2v SC 71
7. The opinion of a Justice of an appellate court will be read when the Justice is still serving in the court, while it will be pronounced when the Justice, ceased to be a Justice of the court by reasons of death, retirement, dismissal. elevation etc. *AG (Imo) v AG (Rivers)* (1983)8 SC 10 and 11; *Shitta-Bey v AG (Fed)* (1998)7 SCNJ 264

**Week 15**  
**ENFORCEMENT OF JUDGMENT AND APPLICATIONS PENDING APPEAL**

Enforcement of judgment refers to all the available method of enforcing judgment. Execution of judgment is restricted to enforcement by Writs. A need to enforce judgment only arises when the judgment debtor is unwilling or refusing to pay the judgment sum or carry out the order of the court. Thus, when a judgment debtor is in compliance, there will be no need for enforcement.

**DRAFT SAMPLE OF APPLICATIONS**

**Application for Stay of Execution**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LAG/34/019  
MOTION NO: \_\_\_\_\_  
APPEAL NO: \_\_\_\_\_

BETWEEN  
S & E NIGERIA LTD -----APPELLANT/APPLICANT  
AND  
AYORINDE NIGERIA LTD -----RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 58 RULE 1 OF HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this honourable Court will be moved on the 6th day of January, 2021 at the hour of 9 O' Clock in the forenoon or so soon afterwards as

the applicant or counsel on his behalf may be heard praying this honourable Court for the following orders:

1. AN ORDER for the stay of execution of the judgment of this Honourable Court in Suit No HC/LAG/63/14 delivered by his Lordship Aniekan Udo-Okon Emmanuel on the 4<sup>th</sup> day of January, 2021 pending the determination of the appeal of the Appellant/Applicant filed on the 6<sup>th</sup> day of January, 2021 at the Registry of this honourable Court, against it at the Court of Appeal, Lagos Division.
2. AND FOR SUCH FURTHER ORDERS as this honourable Court may deem fit to make in the circumstances.

TAKE FURTHER NOTICE that the grounds upon which this application is brought are:

1. The Applicant has filed a notice of appeal
2. The Applicant will be deprived of his benefit of appeal if it turns out in favour of the Applicant.

Dated this 6<sup>th</sup> day of January, 2021.

.....  
EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**Affidavit In Support of Application for Stay Of Execution**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LAG/34/020

MOTION NO: \_\_\_\_\_

APPEAL NO: \_\_\_\_\_

BETWEEN

S & E NIGERIA LTD -----APPELLANT/APPLICANT

AND

AYORINDE NIGERIA LTD -----RESPONDENT

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION**

I, Chidinma Odiari, adult, female, business woman, Christian, Nigerian Citizen residing at No. 7 Suru Street, Ikeja, Lagos, do hereby make oath and state as follows:

1. I am the company secretary/legal adviser to the Applicant Company and by virtue of my position I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of the applicant to depose to this affidavit.
3. I know that on the 5th day of January, 2021, the Respondent obtained judgment in the High Court of Lagos State at the Ikeja Judicial Division against the Applicant for the payment of the sum of N1, 735,000 (One Million Seven Hundred and Thirty Five Thousand Million Naira) as debt owed.
4. A Certified True Copy of the judgment is hereby attached as Exhibit A1.
5. I know that the Applicant filed an appeal on the 6<sup>th</sup> day of January 2021 at the Court of Appeal, Lagos Division. A copy of the Notice of Appeal is hereby attached as Exhibit A2.
6. Ground 2 of the Notice of Appeal states that the Honourable Court ought not to have ruled in favour of the Respondent on the issue of jurisdiction of the trial court as the matter was not first submitted to conciliation as agreed by the parties.



7. Ground 3 of the Notice of Appeal states that the Honourable Court ought not to have entertained the matter as the action was commenced in the wrong judicial division.
8. If this application is not granted the applicant will not be able to reap the fruit of his appeal if the appeal succeeds.
9. This application is necessary and it is in the interest of justice pending the determination of the appeal.
10. The Applicant undertakes to bear cost and damages if the appeal fails or turn out to be frivolous
11. I swear to this affidavit solemnly and conscientiously believing its contents to be true and correct in accordance with the Oaths Act.

\_\_\_\_\_  
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS  
This 6th day of January, 2021.

BEFORE ME

\_\_\_\_\_  
COMMISSIONER FOR OATH

**Written Address in Support of Motion**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LAG/34/020

MOTION NO: \_\_\_\_\_

APPEAL NO: \_\_\_\_\_

BETWEEN

S & E NIGERIA LTD -----APPELLANT/APPLICANT

AND

AYORINDE NIGERIA LTD -----RESPONDENT

**WRITTEN ADDRESS IN SUPPORT OF MOTION**

**Introduction**

My Lord, this is an application in which the Judgement Creditor is seeking the Order of Stay of Execution of judgement of this Honourable Court pending the determination of appeal already filed.

**Brief Statement of Facts**

My Lord, the facts are that I know that on the 25th day of February, 2019, the Respondent obtained judgment in the High Court of Lagos State at the Ikeja Judicial Division against the Applicant for the payment of the sum of N1, 085,000 (One Million and Eighty Five Thousand Million Naira) as debt owed. The Applicant filed an appeal on the 28th day of February 2019 at the Court of Appeal, Lagos Division.

**Issue for Determination**

My Lord, the major issue sought out here is whether the applicant is entitled to an order of this Honourable Court to stay the execution of judgement having filed a Notice of Appeal.

**Legal Argument...**

**Conclusion**

My Lord, we therefore urge the Court to grant the application. We move in terms of our motion papers.

Dated this 6<sup>th</sup> day of January, 2021.

.....  
EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos

FOR SERVICE ON:  
Ugwu Dominic Esq.

Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**Application for Stay of Proceedings**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LAG/34/020  
MOTION NO: \_\_\_\_\_  
APPEAL NO: \_\_\_\_\_

BETWEEN

S & E NIGERIA LTD -----APPELLANT/APPLICANT  
AND

AYORINDE NIGERIA LTD -----RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 54 RULE 1 OF HIGH COURT OF LAGOS  
STATE (CIVIL PROCEDURE) RULES 2019 AND UNDER THE INHERENT  
JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this honourable Court will be moved on the 6th day of  
January, 2021 at the hour of 9 O' clock in the forenoon or so soon thereafter as  
counsel for the Applicant may be heard praying this honourable Court for the  
following:

1. AN ORDER staying proceedings of this court in the matter pending the  
determination of the appeal No CA/01/2021 filed against the decision/ruling of  
this honourable Court in Suit No HC/LAG/63/20 delivered by his Lordship  
Aniekan Udo-Okon Emmanuel on the 5<sup>th</sup> day of January, 2021 at the Court of  
Appeal, Lagos Division.
2. AND FOR SUCH FURTHER OR OTHER ORDERS as this honourable Court  
may deem fit to make in the circumstances.

Dated this 6<sup>th</sup> day of January, 2021

.....

EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**Affidavit In Support Of Application For Stay Of Proceedings**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LAG/34/020  
MOTION NO: \_\_\_\_\_  
APPEAL NO: \_\_\_\_\_

BETWEEN

S & E NIGERIA LTD -----APPELLANT/APPLICANT  
AND  
AYORINDE NIGERIA LTD -----RESPONDENT

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR STAY OF PROCEEDINGS**

I, Nafisa Ya'u Yunusa, Female, Accountant, Nigerian Citizen residing at No. 12, Tolulope Olaide Street, Ikeja, Lagos, do hereby make oath and state as follows:

1. I am the Appellant/Applicant in the Suit.
2. I have since been served with the order of the court directing that I pay the Respondent the sum of N500, 000 before the conclusion of the trial.
3. I have reacted to the said order by filing Notice of Appeal against the order.
4. If this application is not granted the applicant will not be able to reap the fruit of his appeal if appeal succeeds.
5. Refusal of this application will inflict greater hardship than it would avoid if granted.

6. This application is necessary and it is in the interest of justice pending the determination of the appeal.
7. I make this affidavit in good faith believing the contents to be true and correct and in accordance with the Oaths Act.

.....  
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS  
This 6<sup>th</sup> day of January, 2020.

BEFORE ME

\_\_\_\_\_  
COMMISSIONER FOR OATH

**Application for Injunction Pending Appeal**

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA

SUIT NO: HC/LAG/34/020  
MOTION NO: \_\_\_\_\_  
APPEAL NO: \_\_\_\_\_

BETWEEN

AYORINDE NIGERIA LTD -----APPELLANT/APPLICANT

AND

S & E NIGERIA LTD -----RESPONDENT

**MOTION ON NOTICE**

BROUGHT PURSUANT TO ORDER 58 RULE 1 OR ORDER 43 RULE 1 OF  
HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2019 AND  
UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the 6<sup>th</sup> day of January, 2021 at the hour of 9 O'Clock in the forenoon or so soon thereafter as counsel for the Applicant may be heard praying this Honourable Court for the following:

1. AN ORDER FOR INJUNCTION RESTRAINING the Respondent/Claimant FROM ACTING ON THE JUDGMENT OR INTERFERING WITH THE PROPERTY PENDING the determination of the appeal No CA/01/21 against the JUDGMENT of this Honourable Court delivered in Suit No HC/LAG/34/20 on the 5<sup>th</sup> day of January, 2021 filed against it at the Court of Appeal, Lagos Division.
2. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Dated this 6th day of January, 2021.

.....  
EYEKE KENNETH ESQ  
CLAIMANT/APPLICANT'S  
SOLICITORS  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos

FOR SERVICE ON:  
Ugwu Dominic Esq.  
Defendant/Respondent's Solicitor  
Plot A2 Ikoyi Lane, Lagos

**WEEK 15 ASSIGNMENT - ENFORCEMENT OF JUDGMENT AND  
APPLICATIONS PENDING APPEAL**

Mr. Thompson and Mr. Matthew are members of the Living Wonder Church, Ikeja, Lagos where they have worshipped for the past 10 years. Mr. Thompson just retired as a Senior Executive Director of Midas Car Limited, Ikeja, Lagos while Mr. Matthew is a Director in Whitepearl Estate Limited, Ikeja Lagos.

On the 2<sup>nd</sup> January, 2020, Mr. Thompson visited Mr. Matthew at his home and requested a loan of N15, 000, 000 to complete the building of his house in Ikeja

so that he can move in and celebrate his 60<sup>th</sup> Birthday anniversary upon his retirement by the end of February 2020. He promised to pay back the loan to Mr. Matthew at the end of March 2020 when he will be paid N20,000, 000 as gratuity. Mr. Matthew did not doubt Mr. Thompson's promises because of their long-standing relationship and having known Mr. Thompson to have paid back all the loans he collected in times past promptly. He, however, requested Mr. Thompson to put his undertaking into writing. Upon putting the undertaking into writing by Mr. Thompson, Mr. Matthew gave him the sum of N15, 000, 000 in cash.

However, to the dismay of Mr. Matthew, two months passed without Mr. Thompson paying him back the loan and without even contacting him about it and Mr. Thompson stopped attending the church where they worshipped. When Mr. Matthew inquired from the General Manager of Midas Car Limited, the GM confided in him that due to COVID 19, the Company could not pay Mr. Thompson's gratuity at the end of March but will do so by the end of August.

Mr. Matthew instituted an action against Mr. Thompson in the High Court of Lagos State and successfully got a judgment in his favor on the 17<sup>th</sup> June 2020. Mr. Matthew has come to you for advise on the following issues: --

1. The procedure he will follow to recover the judgment debt of N15, 000,000
2. Whether he can compel Midas Car Limited to pay to him the amount due from Mr Thompson's gratuity. Assuming he can compel the Company, what would be the procedure to follow?
3. What procedure will you follow if the execution of the Lagos High Court judgment were to be carried out in Abuja?
4. Will your answer be different if the judgment were given by an Abidjan (Ivory Coast) High Court to be executed in Abuja, Nigeria?
5. Assuming Mr. Thompson appealed against the judgment and wants you to apply for stay of execution of same. Draft the necessary application.

### **MODEL ANSWER**

#### **WEEK 15 - ENFORCEMENT OF JUDGMENT AND APPLICATIONS PENDING APPEAL**

##### **Question 1**

To ensure that Mr Thompson complies with the Court's judgment, an application should be made to the court for the issuance of Writ of Fi fa. I will apply to the Registrar of the court by filing a praecipe in Form 3 in the 1<sup>st</sup> schedule to the Sheriffs and Civil Process Act. The application is normally for execution of the judgment in the first place against Mr. Thompson's movable properties. The Writ

shall not be issued until after expiration of 3 days from the day on which the judgment has been given against Mr. Thompson, except with the express leave of the court. See Order IV of the Judgment (Enforcement) Rules. If the movable properties of Mr. Thompson cannot be found within jurisdiction or are insufficient to satisfy the judgment, then an application can be made to extend execution to Mr. Thompson's immovable properties. This application for leave to issue a writ of fi fa against immovable property shall be by Motion on Notice.

**Question 2**

Yes, he can compel or request Midas Car Limited to pay the amount due from Mr. Thompson's gratuity under Garnishee proceedings.

However, for the debt to be attachable it must be due or accruing to the judgment debtor. Section 85 of the Sheriffs and Civil Process Act;

The procedure is to bring application by motion *ex parte* supported by affidavit. Section 83 of the Sheriffs and Civil Processes Act.

**Question 3**

This is otherwise known as inter state execution of judgment. This requires registration of the judgment in the State where it is intended to be executed i.e. the Federal Capital Territory, Abuja. See Section 104 of the Sheriffs and Civil Processes Act.

Accordingly the following procedure has to be followed: -

8. Obtaining of Judgment Certificate. The judgment is to be issued by the High Court of Lagos State and shall contain particulars of claim and the judgment. The Registrar of the court is to issue it under his hand and seal.
9. Registration of the judgment Certificate in High Court of the Federal Capital Territory, Abuja which is to be done by the Registrar of the court.
10. Then I will file an affidavit in the High Court of the Federal Capital Territory, Abuja stating:
  - a. That the amount is due and unpaid or:
  - b. That the act ordered to be done has not been done: or
  - c. That the person restrained from doing an act disobeyed the order

See ELECTRICAL & MECHANICAL CONSTRUCTION CO. LTD V. TOTAL (NIG.) Ltd. & ANOR. (1972) 1 ALL NLR Pt 2 p. 293

**Question 4**

Ivory Coast (Abdijan) is not a Common Law Country in respect of which the Foreign Judgment (Reciprocal Enforcement) Act applies.

Therefore, Enforcement in that case is by taking an action under Common Law.

The judgment would be the cause of action.



**Question 5**

**IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT IKEJA**

**SUIT NO:**

BETWEEN:

DONALD MATTHEW----- CLAIMANT / RESPONDENT

AND

SAMUEL THOMPSON ----- DEFENDANT / APPLICANT

**MOTION ON NOTICE**

**BROUGHT PURSUANT TO ORDER 58 RULE 1 HIGH COURT OF LAGOS  
STATE (CIVIL PROCEDURE) RULES 2019**

**AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE  
COURT**

TAKE NOTICE that this Honourable Court will be moved on the \_\_\_\_ day of \_\_\_\_\_ 2020 at the hour of 9 O'clock in the forenoon or so soon thereafter as counsel on behalf of the APPLICANT can be heard praying this Honourable Court for the following orders:

AN ORDER GRANTING STAY OF EXECUTION OF THE JUDGMENT OF THIS HONOURABLE COURT DELIVERED ON THE 19TH DAY OF JUNE, 2020 PENDING THE DETERMINATION OF THE APPEAL FILED AGAINST IT AT THE COURT OF APPEAL, LAGOS DIVISION.

AND FOR SUCH FURTHER ORDER or other orders as this Honourable Court may deem fit to make in the circumstances.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2020

-----  
Theophilus James Esq.  
Counsel to Defendant / Applicant  
No. 48, Achara Layout, Ikeja, Lagos  
theo.james@yahoo.com  
08012345678

FOR SERVICE ON:

Claimant

C/o Counsel

E.T. Tomboy, Esq

Emeka Tomboy & Co.

4A Akenpai Street

## Week 16 APPEALS

**Note: for the purpose of MCQ, time to file appeal in criminal proceedings is ninety (90) days; while in civil proceedings, it is three (3) months.**

Appeals involve proceeding from the judgment of a trial court to an appellate court or from one appellate court to another appellate court. Appeals are important because there is a realization that judges are human and they can be wrong. Thus, opportunity is given for another set of judges to assess the decision of a lower judge. Also, appeal helps curb the excessive power of the trial court. There is no inherent or general right of appeal. The right to appeal is purely statutory – **Adigun v. AG Oyo State**.

### SAMPLE DRAFT ON APPEALS

#### Notice of Appeal

IN THE COURT OF APPEAL OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

SUIT NO: HC/LAG/02/020  
APPEAL NO:.....

BETWEEN

AYORINDE NIGERIA LTD -----APPELLANT/APPLICANT  
AND

S & E NIGERIA LTD -----RESPONDENT

TAKE NOTICE that the Appellant being dissatisfied with the decision of the lower court delivered by His Lordship, Justice Aniekan Udo-Onon Emmanuel of the High Court of Lagos dated 5<sup>th</sup> day of January, 2021, more particularly stated in paragraph 2 of this Notice of Appeal do appeal to the Court of Appeal upon the grounds set out in the paragraph 3 and will at the hearing of the appeal, seek the relief sought in paragraph 4.

The appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

## 2. DECISION APPEALED AGAINST:

The whole decision of the court; attached is a certified copy of the judgment.

## 3. GROUNDS OF APPEAL

### Ground 1

The learned Trial Judge erred in law when he came to the conclusion that the Contract was illegal and void.

**Particulars:** The Contract is a valid contract under the Contract Law of Lagos State and contains all the ingredients of a contract.

Also, it is not prohibited under it or any other existing laws; so the question of illegality does not come into question.

## 4. RELIEFS SOUGHT:

The appellant hereby seeks the following reliefs:

1. An order setting aside the decision of the lower court.
2. A declaration that the contract between the parties is valid and subsisting in law
3. Any such other orders that the court may deem fit to grant in the circumstances of this case.

## 5. PERSONS DIRECTLY AFFECTED BY THIS APPEAL ARE:

*Name*

*Address*

- (a) Ayorinde Nigeria Ltd (Appellant) of No 5 Victoria Island Road, Ikoyi, Lagos
- (b) S&E Nigeria Ltd of Plot 5 Ikoyi Street, Banana Island, Lagos.

Dated this 6th day of January, 2021

---

EYEKE KENNETH ESQ  
APPELLANT'S SOLICITOR  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos State

## FOR SERVICE ON:

Ugwu Dominic Esq.  
Respondent's Solicitor  
Plot A2 Ikoyi Lane,  
Lagos

**Appellant's Brief of Argument**

IN THE COURT OF APPEAL OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

SUIT NO: HC/LAG/02/020  
APPEAL NO:.....

**APPELLANT'S BRIEF OF ARGUMENT**

**INTRODUCTION**

This action was commenced by writ of summons and duly filed along with it were the statement of claim, written statement on oaths of witnesses and certificate of pretrial counseling as required by the Rules of Court. The Defendant was duly served the processes on 6<sup>th</sup> November, 2020.

The Defendant entered unconditional appearance and filed its statement of defence and counterclaim, written statement on oaths of witnesses, copy of contract agreement and a copy of invoice issued by the defendant. They were all served on the Plaintiff on 5<sup>th</sup> January, 2020.

**BRIEF FACTS RELEVANT TO THE APPEAL**

The Claimant called two witnesses, Mrs Deborah Gift Gideon and Mr. Nwibo Nelson. After adopting her deposition on oath, CW1, the Claimant's manager was cross-examined and she testified that a contract and partnership agreement was entered between the Claimant and the Respondent on 1<sup>st</sup> day of January, 2020. CW2, the expert witness, also adopted her deposition on oath and affirmed the existence of 20 vehicles purchased in the partnership name in order to execute the contract agreement.

The defendant called three witnesses, Mary W. Allagoa, Nafisa Ya'u Yunusa (on Subpoena), Joshua Chukwu(on Subpoena). DW1, the company's accountant, who after adopting her deposition on oath and on cross-examination testified that the sum of N1, 735, 000.00 (One million, Seven Hundred and Thirty Five Thousand Naira only) was transferred to the Claimant's Access bank account number 000012345 as the Claimant's share of the proceeds of the contract. DW2, testified about the share of the 20 vehicles purchased in the partnership name, while DW3 tendered a bank record of the transfer of the Claimant's share of the proceeds.

## **GROUND OF APPEAL AND PARTICULARS OF THE GROUNDS**

### **Ground 1**

The learned Trial Judge erred in law when he came to the conclusion that the Contract was illegal and void.

**Particulars:** The Contract is a valid contract under the Contract Law of Lagos State and contains all the ingredients of a contract. Also, it is not prohibited under it or any other existing laws; so the question of illegality does not come into question.

### **ISSUE FOR DETERMINATION**

Whether the Trial Judge erred in law when he came to the conclusion that the contract was invalid.

## **LEGAL ARGUMENT**

**Whether the Trial Judge erred in law when he came to the conclusion that the Contract was invalid**

1. It is trite law that the elements of a valid contract are offer, acceptance, consideration, capacity and intention to enter into legal relations. All these elements can be glimpsed from the facts of the case. This was also given judicial credence in the case of **Ojuade & Sons v. D.N.T Nig. Ltd. 2009 13 NWLR Pt 1099 (1534)**.
2. The existence of a valid contract between the two parties is evidenced by the written partnership agreement which cannot be varied by oral testimony. In the absence of the elements of fraud, duress, undue influence and misrepresentation, the contract stands as valid in law.
3. The trial judge therefore erred when she held that the contract between the parties was invalid.

## **RELIEFS SOUGHT:**

The appellant hereby seeks the following reliefs:

1. An order setting aside the decision of the lower court.
2. A declaration that the contract between the parties is valid and subsisting in law
3. Any such other orders that the court may deem fit to grant in the circumstances of this case

## **SUMMARY AND CONCLUSION**

This Honourable Court is therefore urged to resolve the sole issue in favour of the Claimant/Appellant, grant the reliefs sought and allow the appeal in that: The trial judge erred in law in holding that there was no breach of contract.

**LIST OF AUTHORITIES:**

Ojuade & Sons v. D.N.T Nig. Ltd. 2009 13 NWLR Pt 1099 (1534).

---

EYEKE KENNETH ESQ  
APPELLANT'S SOLICITOR  
EYEKE KENNETH & CO  
No. 1 Akins way, Victoria  
IslandLagos State

**FOR SERVICE ON:**

Ugwu Dominic Esq.  
Respondent's Solicitor  
Plot A2 Ikoyi Lane,  
Lagos

**WEEK 16 ONLINE ASSIGNMENT**

Hearing in the libel suit between Dr. YunusaYohanna v. Nigerian Galaxy Newspaper Limited was concluded on January 12, 2019. Counsel to the parties addressed the court on March 10, 2019 and the matter was adjourned to May 10, 2019 for judgment. On July 10, 2019, Honourable Justice Kya Hua Bwari, of the FCT High Court sitting in Maitama delivered an oral judgment in his chambers as follows: By a writ of summons dated June 12, 2018, the Claimant claimed against the defendant the sum of N50 million for libel contained at page 7 of the Nigerian Galaxy Newspaper of May 10, 2018 Pleadings were filed and exchanged and witnesses testified on both sides. The newspaper in question was tendered in evidence as Exhibit A1. This case Slander is not actionable per se and the plaintiff as far as I am concerned, is a simple and straight forward case of slander where the newspaper referred to the Plaintiff, among other lecturers in the Faculty of Medicine, as 'fake consultant virologists" did not prove, before this court, any damages he has suffered. Although the defendant admitted that the words used were in their ordinary meaning, defamatory, that the words referred to the plaintiff and that it was published in the Nigerian Galaxy Newspaper which

circulated among the students of the Claimant at the University of Abuja, I hold that the Claimant has failed to prove defamation as he clearly failed to prove damage. Although the defendant did not lead evidence, I hold that the case of the plaintiff fails because the preponderance of evidence is in favour of the defendant using the imaginary scale. The action is accordingly dismissed.

You have been briefed by Dr. YunusaYohanna who has expressed his dissatisfaction with the judgment.

Now, answer the following questions:

1. What process will you file on his behalf, and where?
2. Draft the process in 1 above with three (3) grounds of appeal (without particulars) from the above judgment.
3. What is the time frame provided under the law for you to file the process in 1 above?

### **Assignment 2**

Using the same scenario in Assignment 1 answer the following questions.

1. After the filing of the originating process in the appeal highlight the procedure for compilation and transmission of records of appeal especially the time frame for doing so.
2. What is consequence of failure to comply with the procedure in 1 above?
3. Highlight the procedure and time frame for exchange of briefs by parties and the consequence of failure to comply with the procedure.

### **Assignment 3**

Using the same scenario in Assignment 1, answer the following questions

1. Assuming as counsel to the respondent you intend to raise a preliminary objection at the hearing highlight the steps for doing so.
2. Can additional record be filed after transmission of records of appeal in a case? If yes, when?
3. Assuming, after the decision in the above case at the lower Court and while the Appeal was slated for hearing, Dr. Musa Okeleye who just returned to Nigeria from Uganda after spending more than one year as a member of 'Doctors Without Borders', also realized that he has an interest in the case, being one of the Doctors, whose names were mentioned in the publication of the Defendant/Respondent, Exhibit A1, can he be part of the appeal? If no, why? If yes, why and how?

## **NIGERIAN LAW SCHOOL CIVIL LITIGATION WEEK 16- APPEALS**

MODEL ANSWERS

Assignment 1

**QUESTION 1**

Notice of appeal, which should be filed at the F.C.T High Court Appeal Registry.

**QUESTION 2**

NOTICE OF APPEAL  
IN THE COURT OF APPEAL  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

SUIT NO...  
APPEAL NO...

BETWEEN

DR. YUNUSA YOHANNA

.....

APPELLANT

AND

NIGERIAN GALAXY NEWSPAPER LIMITED

..... RESPONDENT

**NOTICE OF APPEAL**

TAKE NOTICE that the Claimant/Appellant being dissatisfied with the decision of the High Court of the F.C.T, Abuja, contained in the judgement of Hon. Justice Kyahuwa Bwari dated 10<sup>th</sup> July, 2019 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3.

And the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2.PART OF THE DECISION COMPLAINED OF: The whole decision

3.GROUNDS OF APPEAL

**Ground One**

The learned trial judge erred in law when he delivered an oral judgement

**Ground Two**

The learned trial judge erred in law when he delivered judgement more than ninety (90) days after conclusion of evidence and final address.

**Ground Three**

The learned trial judge erred in law when he failed to evaluate the evidence of PW 1 and PW 2 and ascribe probative value to them.

4. RELIEFS SOUGHT



The Appellant hereby seeks for the following reliefs:

- i. An order allowing the appeal
- ii. An order setting aside the decision of the lower court
- iii. An order remitting the case to the trial court for re-hearing.

**5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:**

- i. Dr. YunusaYohanna  
N0. 1, Gwagwalada Drive, Bwari, Abuja
- ii. Nigerian Galaxy Newspaper Limited  
N0. 3, Aso Drive, Maitama, Abuja.

Dated this.....Day of.....2020

U.U Eteng, Esq.  
Eteng& Associates  
Appellant's Counsel  
3, Bwari Close  
Area 11, Garki, Abuja.

**FOR SERVICE ON:**

The Respondent  
N0. 3, Aso Drive, Maitama, Abuja.

**QUESTION 3**

The notice of appeal in this matter should be filed within 3 months of the delivery of the decision. This is because the decision is a final decision of the F.C.T High Court. Section 24 of the Court of Appeal Act.

**Assignment 2**

**QUESTION 1**

he procedure is as follows:

- i. After filing of the notice of appeal at the registry of the High Court, the Registrar of the High Court shall, summon all the parties for settlement of the documents to be included in the record of appeal and fixing the fees payable by the Appellant to cover the estimated cost of compilation and forwarding of the record to the Court of Appeal;
- ii. The same Registrar shall, within 60 days of filing compile and transmit the record of appeal to the Court of Appeal;
- iii. Where the Registrar fails to compile and transmit the record of appeal within 60 days, the appellant shall do this within 30 days after the expiration of the 60 days reserved for the registrar to do same **Ord. 8 Rules 1 & 4 of the C.A Rules, 2016.**

## QUESTION 2

Upon failure of the Registrar to compile and transmit the record within 60 days, the Appellant could do that within 30 days. Where both fail to do within the prescribed days, the Respondent may apply to the Court of Appeal to dismiss the appeal. **Ord. 8 R.18, CAR, 2016.**

## QUESTION 3

The procedure and time frame are as follows:

- i. The appellant shall within 45 days of the receipt of the record of appeal file his brief of argument at the Court of appeal and serve the Respondent;
- ii. The Respondent shall, within 30 days of the receipt of the Appellant's brief of argument file and serve his respondent's brief
- iii. The Appellant shall, within 14 days of the receipt of the Respondent's brief file his Reply Brief, where he so wishes.

**Ord. 19 Rr. 2,4 & 8 CAR, 2016**

Where the Appellant fails to file his brief as provided under the law, the Respondent may apply to dismiss the appeal for want of diligent prosecution. Where it is the respondent that fails to file his brief, that respondent shall not be heard to canvass any oral argument at the hearing of the appeal. **Ord. 19 R.10 CAR, 2016.**

## Assignment 3

### QUESTION 1

The steps to be taken in raising preliminary objection are as follows:

1. The respondent shall file a formal notice of preliminary objection as in Civil Form 11 not later than 3 clear days before the hearing date;
2. The objection shall be taken first before hearing of the appeal **Ord. 10 R. 1, CAR, 2016**

### QUESTION 2

Yes. A party can compile and transmit to the court additional record within 15 days of service on him of the record of appeal. **Ord.8 R.6. Dick v Our and Oil CO. Ltd (2018) 4 NWLR (PT. 1638) 1**

### QUESTION 3

Yes. He can be part of the appeal by appealing as an interested party pursuant to Section 243 of the Constitution of the Federal republic of Nigeria, 1999. Dr. Musa can apply for leave to appeal as an interested party. **Akande v General Electric.**

**Week 17**  
**RECOVERY OF POSSESSION OF PREMISES**

A landlord who seeks to recover his premises from a tenant must comply very strictly with the provisions of the relevant laws. The slightest deviation from the requirements of the law will frustrate such attempt to recover possession, no matter how troublesome and terrible such tenant may be.

**SAMPLE DRAFTS ON RECOVERY OF POSSESSION OF PREMISES**

**Letter of Instruction to Recover Premises**

No 9, Atiku Expressway,  
Off Grace Court Avenue,  
Ikoyi Lagos.  
3rd July, 2020.

Eyeke Kenneth Samuel  
Eyeke Kenneth & Associates  
No. 12 Kings College,  
Lekki Phase 1,  
Lagos.

Dear Sir,

**LETTER OF INSTRUCTION TO RECOVER PREMISES**

I, Chief Ibori T. Success, owner of 6 bedroom flat situate at No. 35 Agaba Street, Ikeja Lagos, do hereby give instructions to you as my solicitor to take all necessary steps to recover possession of the said premises and arrears of rent on the said premises currently in occupation by one Mr. Mohammed Sani who is occupying the said premises as a yearly tenant with whom I wish to terminate the tenancy in existence.

I shall of course pay the necessary fees.  
Thank you for your co-operation.

Yours faithfully,

Chief Ibori T. Success.

Encl:

Copy oftenancy agreement.

**Notice to Quit**

**EYEKE KENNETH & ASSOCIATES**

**BARRISTERS & SOLICITORS**

NO 22, KINGS CLOSE LEKKI PHASE 1 LAGOS

[Eyekekennethsamuel@gmail.com](mailto:Eyekekennethsamuel@gmail.com) Phone; 08102959631

**Our Ref: .....Your Ref:.....Date: 20th July, 2020**

To: Mr. Mohammed Sani  
No. 35 Agaba Street,  
Ikeja,  
Lagos.

Sir,

**NOTICE TO QUIT**

I, Eyeke Kennethas solicitor to Chief Ibori T. Success, your landlord, and on his behalf give you notice to quit and deliver up possession of the 6 bedroom flat together with the appurtenances situate at No. 35 Agaba Street, Ikeja Lagos, which you hold of him as a yearly tenant between 29<sup>th</sup> January, 2019 to 28<sup>th</sup> day of January, 2021.

Dated this 20<sup>th</sup> day of July, 2020

---

Eyeke Kenneth, Esq.,  
Solicitor to the Landlord  
Eyeke Kenneth & Associate  
22, Kings Close Lekki,  
Phase 1, Lagos.

**Notice of Owner's Intention to Recover Possession**

**EYEKE KENNETH & ASSOCIATES  
BARRISTERS & SOLICITORS**

NO 22, KINGS CLOSE LEKKI PHASE 1 LAGOS

[Eyekekennethsamuel@gmail.com](mailto:Eyekekennethsamuel@gmail.com) Phone; 08102959631

**Our Ref: .....Your Ref:.....Date: 20th January, 2021**

To: Mr. Mohammed Sani  
No. 35 Agaba Street,  
Ikeja,  
Lagos.

Sir,

**NOTICE OF OWNER'S INTENTION TO APPLY TO RECOVER POSSESSION  
(7 DAYS NOTICE)**

I, Eyeke Kenneth as solicitor to Chief Ibori T. Success, your landlord, the owner, and on his behalf do hereby give you notice that unless peaceable possession of the 6 bedroom flat together with the appurtenances situate at No. 35 Agaba Street, Ikeja Lagos State, which you held of the owner under a yearly tenancy, which tenancy was determined by a Notice to Quit from me on the 28th day of January 2021, and which premises are now held over and detained from the said owner, be given to the owner on or before the expiration of the *seven (7) clear days* from the service of this notice, I shall apply to the Magistrate acting for the District of Lagos, for summons to eject you and any person from the premises.

Dated this 20<sup>th</sup> day of January, 2021.

---

Eyeke Kenneth, Esq.,  
Solicitor to the Landlord  
Eyeke Kenneth & Associate  
22, Kings Close Lekki,  
Phase 1, Lagos

**Note:** The Statutory Notices can be drafted on ordinary paper, letter head paper or inserting heading of the court where the action for recovery of possession of premises will be commenced.

**Claim against Person Refusing to Deliver Up Possession of Premises**

IN THE MAGISTRATE COURT OF LAGOS STATE  
IN THE LAGOS MAGISTERIAL DISTRICT  
HOLDEN AT LAGOS

CLAIM NO.....  
PLAINT NO: (ABUJA)  
SUIT NO: (OTHERS)

BETWEEN

CHIEF IBORI T. SUCCESS..... CLAIMANT

AND

MOHAMMED SANI.....DEFENDANT

**CLAIM** (IN LAGOS)**WRIT** (HIGH COURT) **PLAINT**(IN ABUJA) **PARTICULARS**  
**OF CLAIM** (IN OTHERS)

1. The claimant is entitled to possession of the six bedroom flat with appurtenances situate at No 35 Agaba Street, Ikeja Lagos, which the claimant let to the defendant as a yearly tenant at the rental value of ₦700,000.00 (Seven hundred thousand naira only) per annum in respect of which tenancy was determined by Notice to Quit given by the Claimant.
2. The Claimant did serve on the Defendant a Notice in writing of his intention to apply to recover possession of the said 6 bedroom flat with appurtenances situate at No 35 Agaba Street, Ikeja Lagos.
3. The Claimant claims against the Defendant as follows:
  1. AN ORDER of this court for the recovery of possession of the said premises comprising of 8 bedroom flat situate at No 35 Agaba Street, Ikeja Lagos.
  2. AN ORDER of this court for the payment of arrears of rent from 2020 till date which is N 700,000.00 (Seven hundred thousand naira).
  3. AN ORDER of this court for the payment of mesne profit at the rate of N50, 000 per month from the month of January 20 till judgment.
  4. AN ORDER for payment of general damages to the tune of N300.000.00 (Three hundred thousand naira).
4. Grounds of possession (Optional)
  - (a) Arrears of rent
  - (b) Nuisance

DATED THIS 20<sup>th</sup> DAY OF JANUARY, 2021

---

Eyeke Kenneth, Esq.,  
Counsel to the Claimant  
Eyeke Kenneth & Associate  
22, Kings Close Lekki

FOR SERVICE ON:  
Mr. Muhammed Sani  
The Defendant  
No. 35 Agaba Street,  
Ikeja, Lagos.

When an action is to be filed at the High Court, it will be by Writ as in Form A or TL1; if the action is to be filed before the District Court of the FCT, Abuja, it will be by Plaint as in Form F and a Summons will be issued as in Form G and in the Magistrates Court of Lagos State, it will be by Claim as in Form TL6B and a Summon in Form TL6A will be issued. See the Schedule to Recovery of Premises Act, Abuja and the Lagos State Tenancy Law, 2011 ~**Page 238 (NLS)**  
**Civil Litigation Practice Handbook**

### **WEEK 17 ASSIGNMENT – RECOVERY OF POSSESSION OF PREMISES**

Chief Olowo is the landlord of Koko Lodge, No 1, Olowo Street, Off Admiralty Way, Lekki, Lagos State, consisting of 6 flats of 4 bedrooms each. Mr. Dauda Kareem is a tenant in respect of one of the flats. The agreement between the parties is that the tenancy shall be a yearly tenancy commencing on 1<sup>st</sup> January of every year at a rent of N4 million per annum. After paying rent for the first 2 years in 2016 and 2017, Mr. Kareem has refused to pay further rents in respect of the property but remains in possession till date. Mr Kareem throws noisy parties in the house every week to the annoyance of neighbours. Chief Olowo is fed up and intends to recover possession of the premises from Mr. Kareem.

Answer the following questions:

1. State the condition precedent that Chief Olowo must fulfil before he can validly instruct his counsel to recover possession of the premises from the tenant.
2. State the step(s) that must be taken by Counsel to Chief Olowo before he can validly recover possession of the premises from Mr Kareem.
3. Draft the first statutory notice that will be issued to terminate the tenancy of Mr Kareem.
4. In which court will the action be commenced? Give reasons for your answer.
5. State the court processes that will be filed in court to validly commence an action for recovery of the premises from the tenant.
6. Assuming after the expiration of the statutory notices Mr Kareem Dauda refuses to give up possession of the premises and Chief Olowo has informed you as Counsel that he intends to instruct his body guards Enoch and Efam to remove the roof in Mr Kareem's flat and also cut off his electricity supply. Advise him on the propriety of his intended action.



## Week 18

### ELECTION PETITION

**Applicable Law:** An election petition is a special proceeding where actions for the purpose of challenging the validity of an election or disputing the return of a candidate or claiming the return of a candidate are commenced by **petition**.

1. CFRN (Second Alteration) Act 2010
2. CFRN (First Alteration) Act 2010
3. Electoral Act 2010 (as amended 2011)
4. Election Tribunal and Court Practice Direction 2011
5. Rules of Procedure for Election Petition (First Schedule to the Act)
6. Note: Electoral Amendment Act 2014 (but lecture will not focus on this)

### DRAFTING OF ELECTION PETITIONS

#### **Petition**

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF EBONYI STATE OF  
NIGERIA

HOLDEN AT ABAKALIKI

PETITION NO: EPT/GOV/001/20

ELECTION TO THE OFFICE OF THE GOVERNOR OF EBONYI STATE OF  
THE FEDERAL REPUBLIC OF NIGERIA HELD ON 21<sup>ST</sup> OF MARCH 2019

BETWEEN

1. DR. EZE VICTOR
  2. NIGERIAN YOUTH DEMOCRATIC PARTY
- AND

PETITIONERS }

1. CHIEF ONU FELIX
2. ACTION CONGRESS PARTY
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

} RESPONDENTS

#### PETITION

THE PETITION OF DR. EZE VICTOR OF NO. 52, EZEKUNA STREET, EZZA  
SOUTH LOCAL GOVERNMENT AREA, EBONYI STATE, WHOSE NAME IS  
SUBSCRIBED

1.0 The 1<sup>st</sup> Petitioner Dr. Eze Victor, was a candidate at the above election that held on the 21<sup>st</sup> day of March, 2019, where the 1<sup>st</sup> Respondent was a candidate.

1.1 The 1<sup>st</sup> Petitioner contested under the platform of the 2<sup>nd</sup> Petitioner (Nigeria Youth Democratic Party). The 1<sup>st</sup> Respondent contested under the platform of the 2<sup>nd</sup> Respondent (Action Congress Party).

1.2 The results as released by the 3<sup>rd</sup> Respondent were as follows (despite the fact that there were no elections in 5 out of the 13 Local Government Areas in Ebonyi State)

CANDIDATE	PARTY	VOTES
Chief Onu Felix	ACTION CONGRESS PARTY	1,050,000 Votes
Dr. Eze Victor	NIGERIAN YOUTH DEMOCRATIC PARTY	850,000 Votes

1.3 The 1<sup>st</sup> Petitioner states that the Respondent, Chief Onu Felix, was then returned as the elected candidate and or winner of the election (despite the fact that there were no elections in 5 out of the 13 local government areas in Ebonyi State)

## 2.0 GROUNDS FOR THE PETITION:

The petitioners state that the grounds on which they rely for the petition are as follows:

1. The return of the 1<sup>st</sup> respondent as winner of the re-election for the office of the governor of Ebonyi State which held on the 21<sup>st</sup> of March, 2019 was invalid by reason of non-compliance with the provisions of the Electoral Act 2011 and was marred by irregularities and corrupt practices.
2. The 1<sup>st</sup> Respondent was not duly elected as a majority of lawful votes cast at the election, as no lawful votes were cast in 219 polling stations making up 5 out of the 21 local government areas in Ebonyi State.

## 3.0 FACTS IN SUPPORT OF THE PETITION:

1. The petitioners state that elections did not take place in 219 polling centres making up 5 out of the 13 Local Government Areas in Ebonyi State on the 21<sup>st</sup> March, 2019
2. The petitioners state that the 3<sup>rd</sup> Respondent deliberately hoarded the election materials and released some of the election materials particularly the result sheet to agents of the 2<sup>nd</sup> Respondent (Action Congress Party) who used the said result sheets to enter the figures manufactured outside the polling units in the most reckless manner.

3. The petitioners state that the 3<sup>rd</sup> respondent did not supply the following election materials in 219 polling centers making up 5 out of the 13 Local Government Areas in Ebonyi State on the 21<sup>st</sup> March, 2019:
  - (a) Voters register for use in 219 polling centers making up 5 out of the 13 Local Government Areas in Ebonyi State on the 21<sup>st</sup> March, 2019.
  - (b) Result Sheets (FORM EC84A1) for the Gubernatorial Election at the respective polling units in Ebonyi State.
4. The petitioners state that the 3<sup>rd</sup> Respondent failed to display copies of the voters' register for each Local Government, Area Council or ward in Ebonyi State for public scrutiny.
5. The petitioners state that the 2<sup>nd</sup> Respondent and his agents prevented the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner from free use of the media, designated vehicles, mobilization of political support and campaign at an election by causing the 1<sup>st</sup> Petitioner to be arrested by the police and detained for 14 days without telling the 1<sup>st</sup> Petitioner what offence He committed.
6. The petitioners state that in the 8 Local Government Areas where elections held, the voters were compelled by force by the agents of the 1<sup>st</sup> Respondent to refrain from voting the 1<sup>st</sup> Petitioner and vote for the 1<sup>st</sup> respondent or be killed and some voters refrained from voting based on the threat.
7. The petitioners state that the total number of voters as presented in Forms EC8A, EC8B, EC8C, EC8D, EC8F, EC8G, the voters registers used in the 8 local Government Areas where elections were held was 296,000 (two hundred and ninety six thousand) persons and the number of accredited voters on the day of election was 273,751 (two hundred and seventy three thousand seven hundred and fifty one) persons.
8. The petitioners state that the total number of votes cast as presented in the result sheet Form R1 is 1,900,000.00 (One million nine hundred thousand) persons and this is untenable in keeping with the number of accredited voters for the election on the 21<sup>st</sup> march, 2019.
9. Despite the gross irregularities and the fact that no results were collated by the 3<sup>rd</sup> respondent, the 1<sup>st</sup> respondent was declared winner of the election by 10.30 pm at the Secretariat of the 3<sup>rd</sup> respondent.
10. The 3<sup>rd</sup> respondent is hereby given notice to produce at the hearing of the petition the following documents
  - a. Ballot papers and ballot boxes purportedly used during the election.
  - b. All forms EC8A, EC8B, EC8C, EC8D, EC8E, EC8D allegedly used in the election on the 21<sup>st</sup> march, 2019

- c. The comprehensive voters register for all the polling booths in the country.
- d. Comprehensive list of the polling clerks, presiding officers, supervisory presiding officers, ward returning officers and the constituency returning officer that were scheduled to work at the said election.
- e. The declaration of election result sheet Form R1
- f. All other documents allegedly used during the election.

**PRAYERS:**

The petitioner prays the Tribunal for the following reliefs:

1. DECLARATION that the 1<sup>st</sup> Respondent, CHIEF ONU FELIX was not duly elected and returned as winner of the rerun election to the office of the Governor of Ebonyi State held on the 21<sup>st</sup> of March, 2019.
2. AN ORDER DECLARING the rerun election to the office of the Governor of Ebonyi State held on the 21<sup>st</sup> of March, 2019 was null or void.

Dated 21<sup>st</sup> day of April, 2019.

Eyeke Kenneth Esq.  
(Petitioner's Counsel)  
Eyeke Kenneth & Co.  
No. 17 Afikpo Road,  
Abakaliki, Ebonyi State.

Signed before me  
This 21<sup>st</sup> day of April, 2019

.....  
Secretary

**FOR SERVICE ON:**

1<sup>st</sup> Respondent  
CHIEF ONU FELIX  
7 Uburu Road,  
Abakaliki, Ebonyi State.

2<sup>nd</sup> Respondent:  
Action Congress Party

State Headquarters  
39 Ogoja Street,  
Abakaliki, Ebonyi State

3<sup>rd</sup> Respondent:  
Independent National Electoral Commission (INEC)  
National Headquarters,  
12 Nsugbe Street,  
Akakaliki, Ebonyi State

The Petitioner  
C/o His Solicitor of the above address

**Memorandum of Appearance**

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF EBONYI STATE OF  
NIGERIA

HOLDEN AT ABAKALIKI

PETITION NO: GET/AN/001/11

BETWEEN

DR. EZE VICTOR

PETITIONERS

AND

1. CHIEF ONU FELIX

2. ACTION CONGRESS PARTY

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

RESPONDENTS

To The Secretary

**MEMORANDUM OF APPEARANCE**

Please enter appearance for CHIEF ONU FELIX who is the first respondent in the above election petition.

The name and address of his Solicitor are as follows-

.....  
Nwali Ikenna Esq  
No. 10, Abacha Road,  
Abakaliki,  
Ebonyi State.

Dated 21<sup>st</sup> day of April, 2019

.....  
Nwali Ikenna Esq  
Counsel to the 1<sup>st</sup> Respondent

For Service on:  
The Petitioner  
No. 52, Ezekuna Street  
Ezza South Local Government  
Ebonyi State

Occupier:  
Dr. Eze Victor

**Reply to Petition**

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF EBONYI STATE OF  
NIGERIA

HOLDEN AT ABAKALIKI

PETITION NO: GET/AN/001/11

BETWEEN

DR. EZE VICTOR

PETITIONERS

AND

1. CHIEF ONU FELIX

2. ACTION CONGRESS PARTY

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

RESPONDENTS

**REPLY TO THE PETITION OF DR. VICTOR EZE BY THE 1<sup>ST</sup> RESPONDENT**

SAVE AND EXCEPT as expressly admitted in this reply, the respondents deny every allegation of fact made in the petition as if same were herein set out and traversed seriatim.

1. The 1<sup>st</sup> Respondents admit paragraphs 1.0. 1.1. of the Petition.
2. The 1<sup>st</sup> Respondents is not in a position to either admit or deny paragraph 1.2. and 1.3., and would, at the trial, put the Petitioner to the strictest proof of same.
3. The 1<sup>st</sup> Respondent denies paragraph 2.0.1. 2.0.2 2.0.3. and 2.0.4
4. The 1<sup>st</sup> Respondents is not in a position to admit or deny paragraph 3.0.1. 3.0.2. 3.0.3. 3.0.4. and 3.0.5. of the Petition and put the Petitioners to the strictest proof of same.

5. The 1<sup>st</sup> Respondent denies paragraph 3.0.6. of the Petition and aver that election did not hold only in two Local Government Areas due to the heavy rainfall that fell in these two location on the election day and the voters voted their candidates out of their free will.
6. The 1<sup>st</sup> Respondent denies paragraph 3.0.7. of the petition and state that the total number of votes as presented in Forms EC8A, EC8B, EC8C, EC8D, EC8F, EC8G, the voters registers used in the 8 local Government Areas where elections were held was 700,000 (seven hundred thousand) persons and the number of accredited voters on the day of election was 650, 000 (sixty hundred and fifty thousand) persons.
7. The 1<sup>st</sup> Respondent denies paragraph 3.0.8. of the Petition.
8. The 1<sup>st</sup> Respondent admits paragraph 3.0.9. of the Petition to an extent that the 1<sup>st</sup> Respondent was declared winner of the election by the 3<sup>rd</sup> Respondent around 10.30pm but denies any other material allegation in the paragraph.
9. The 1<sup>st</sup> Respondent further state that the said election was conducted in a free and fair manner and in accordance with the provisions of the Electoral Act, 2010, as amended and the 1<sup>st</sup> respondent was therefore duly returned as the winner of the election.

The 1<sup>st</sup> respondent prays this Honourable Tribunal to dismiss the Petition as it is frivolous, baseless and lacks merit.

.....  
No. 7 Uburu Road,  
Abakaliki,  
Ebonyi State

Occupier:  
CHIEF ONU FELIX

.....  
Nwali Ikenna Esq  
Counsel to the 1<sup>st</sup> Respondent

ADDRESS FOR SERVICE  
PETITIONER,  
No. 52, Ezekuna Street  
Ezza South Local Government  
Ebonyi State

Occupier:  
Dr. Eze Victor

### **WEEK 18 ASSIGNMENT on Election Petition**

The Progressive People Congress held election on the 6 June, 2020 to elect the Party flag bearer for the forthcoming bye-election to the Central Senatorial District of Taraba State. Chief Dodo Moses and MrSandaTanda contested the election and Chief Dodo Moses emerged victorious.

The Independent National Electoral Commission conducted the election on the 25<sup>th</sup> July, 2020. Chief Dodo Moses, Sani Lukas and Bello Usman contested the election under the platforms of Progressive People Congress; Redemption Progressive Party and Unity People Congress respectively. Chief Dodo scored 2500 votes; Sani Lukas 1200 votes and Bello Usman 1000 votes. Chief Dodo, having scored the highest votes was returned as the winner of the election. His closes rival, Sani Lukas rejected the result of the election on the ground that the election was characterised by all sorts of corrupt practices ranging from intimidation of voters, vote buying, snatching and stuffing of ballot boxes etc. Against this background he has retained you to challenge the result of the election in court.

Answer the following questions

1. Identify the Court/ Tribunal that you would approach for the purpose of challenging the result of the election
2. Mention the process you would use to challenge the result of the election
3. Draft the process you identify in 2 above
4. Mention the documents that would accompany the process you drafted in 3 above
5. Assuming Mr SandaTanda wants to challenge the result of the election, identify the court or tribunal that he would approach.
6. What is the period of time within the court/tribunal you identified in 5 above would decide the matter.

### **MODEL ANSWERS**

1. The National and State Houses of Assembly Election Tribunal. Section 285 of the 1999 Constitution as amended
2. Petition
3. **IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNAL HOLDEN AT TARABA STATE**

**PETITION NO.....**

**ELECTION TO THE SENATE FOR TARABA CENTRAL SENATORIAL DISTRICT HELD ON 25 July 2020  
BETWEEN**



1. SANI LUKAS -----1<sup>ST</sup> PETITIONER

2. REDEMPTION PROGRESSIVE PARTY-----2<sup>ND</sup> PETITIONER

AND

1. CHIEF DODO MOSES-----1<sup>ST</sup> RESPONDENT

2. PROGRESSIVE PEOPLE CONGRESS-----2<sup>ND</sup> RESPONDENT

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) -----  
-----3<sup>RD</sup> RESPONDENT

### PETITION

**PETITION OF SANI LUKAS OF NO 56 WALI CLOSE JALINGO TARABA STATE**, whose name is herein subscribed.

1. Your 1<sup>st</sup> Petitioner, Sani Lukas was a candidate at the above election and your Petitioner states that the election was held 25 July 2020, where the 1<sup>st</sup> Respondent was also a candidate
2. Your 1<sup>st</sup> Petitioner contested under the platform of the 2<sup>nd</sup> Petitioner, Redemption Progressive Party, the 1<sup>st</sup> Respondent contested under the platform of the 2<sup>nd</sup> Respondent, the Progressive People Congress
3. The results as released by the 3<sup>rd</sup> Respondent were as follows:  
Chief Dodo Moses----- 2500 votes  
Sani Lukas-----1200 votes  
Bello Usman-----1000 votes
4. Your 1<sup>st</sup> Petitioner states that the 1<sup>st</sup> Respondent, Chief Dodo Moses was returned as the elected candidate and winner of the election
5. Your 1<sup>st</sup> Petitioner shall found and rely on the results declared by the 3<sup>rd</sup> Respondent at the trial

### GROUND OF THE PETITION

Your Petitioner states that the ground on which he relies for the petition is as follows:

- g. The return of the 1<sup>st</sup> Respondent as the winner of the election for Taraba Central Senatorial District held on 25 July 2020 was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act 2010

### FACTS OF THE PETITION

- a. There were widespread cases of voters intimidation, over voting, under age voting, vote buying, snatching and stuffing of ballot boxes etc.
- b. Your 1<sup>st</sup> Petitioner states that the 1<sup>st</sup> Respondent with the collusion of the Resident Electoral Officer of the 3<sup>rd</sup> Respondent snatched the ballot boxes and voting materials at Dankalu polling unit in Jalingo North Local Government

- c. The agents of the 1<sup>st</sup> Respondent campaigned on the day of election
- d. Election materials were supplied at various polling units in Jalingo South Local Government at 2pm as opposed to 8am slated for the commencement of the election

### RELIEFS SOUGHT

Your Petitioner prays for the following reliefs:

- iv. A declaration that the said 1<sup>st</sup> Respondent, Chief Dada Moses was not duly elected or returned
- v. A declaration that the election and return of the 1<sup>st</sup> Respondent is void, the election having been marred by corrupted malpractices
- vi. An order that fresh election be conducted by the 3<sup>rd</sup> Respondent.

Dated this-----day-----2020

G H Bello

GH Bello & Co

(1<sup>st</sup> Petitioner's Counsel)

No 45 Jalo Road, Jalingo Taraba State.

ADDRESS FOR SERVICE

- 1. THE 1<sup>ST</sup> PETITIONER  
OCCUPIER
  - 2. THE 2<sup>ND</sup> PETITIONER  
OCCUPIER
  - 3. THE 1<sup>ST</sup> RESPONDENT  
OCCUPIER
  - 4. THE 2<sup>ND</sup> RESPONDENT  
OCCUPIER
  - 5. THE 3<sup>RD</sup> RESPONDENT  
OCCUPIER
- SIGNED BY

-----

Signed before me this-----day-----2020

Secretary

- 4. Written Statements on oath of the Witnesses; a list of the Witnesses that the petitioner intends to call in proof of the petition; copies or list of every document to be relied on at the hearing of the petition. Paragraph 4 (5) 1<sup>st</sup> Schedule Electoral Act 2010 as amended.
- 5. The Federal High or State High Court. Section 87 (9) of the Electoral Act 2010 as amended.
- 6. Within 180 days. Section 285 (10) of the 1999 Constitution as amended

## Week 19

### MATRIMONIAL CAUSES

Marriage is a union between one man and a woman for life - **Hyde v. Hyde**. A church marriage only gives blessing to a customary marriage. In **Nwangwu v. Ubani**, the Court of Appeal held that mere celebration of a marriage in a church as was done in the case does not confer statutory flavour to the marriage. In order to convert a customary law marriage into a statutory marriage, the parties must consciously take steps and adopt the procedure contained in the Marriage Act - **Martins v. Adenugba; Anyaegbunam v. Anyaegbunam**.

Once a person contracts marriage under the Act, he cannot marry other persons apart from the initial marriage. Marriage under the Act is monogamous. Thus, once you are married under the Act, you cannot marry another person under the Act or under Customary Law - **Section 47 Marriage Act**.

A person married under native Law and Custom cannot marry any other person under the Act except the one he married under native law and custom - **Section 46 Marriage Act**. Note that both customary and Act marriages are regarded as valid marriages but the distinction is for the purpose of the application of the Matrimonial Causes Act.

**Section 7 of the Same Sex Marriage (Prohibition) Act**, recognizes marriage as a legal union between persons of the opposite sex. Thus, same sex marriage is prohibited in Nigeria

### SAMPLE DRAFTS

#### Scenario-Case Study

Miss Lynda Trump had come to Nigeria in 2018 on an exchange programmed from the United States and has since remained here. On 17th January, 2019 Lynda and Paul Baba contracted a church marriage at the Congress Hall of the Nicon Hilton, Abuja. The ceremony was performed by Mr Nwokeke, a part-time teacher and an aspiring pastor of the Repentant People of God Church. Unknown to Paul and Lynda, Lynda is the daughter of Paul's brother's wife who had naturalized in the United States of America. After the marriage, Paul and Lynda continued to live in Abuja until 14th September 2019 when one day Lynda came home and found a note from Paul stating that he had travelled to Australia on an immigrant visa and was never intending to turn to Nigeria again. Paul also made it clear to Lynda that he was leaving her because of those occasions she willfully refused to sleep with him. In any event, Lynda had before now been

thinking of how she will get out of the marriage, as she had come to find out that the angel she married saw her as a punching bag to beat up every now and then. Also, she has since found out that faithfulness did not particularly feature in Paul's daily routine as he was in the habit of visiting brothels on a daily basis, from where he had on several occasions contacted STDs Lynda had finally filed a petition for dissolution of the marriage. At the hearing of the petition, Paul Baba raised several objections to the petition and indeed cross-petitioned. He was also not happy that one prostitute Miss Abigail Ogun was joined as a co-respondent with him. He felt that such joinder seriously defamed his character. The court after final addresses by the parties on the 1st of December 2019 adjourned for judgment to the 22nd of December 2020, on which date judgment was entered for Lynda, granting her a decree *nisi*.

**Application for Leave for Dissolution of Marriage**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT  
AND  
PAUL BABA----- 1<sup>ST</sup> RESPONDENT  
ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**MOTION EX PARTE**

**BROUGHT PURSUANT TO ORDER IV RULE I OF THE MATRIMONIAL  
CAUSES RULES 1983 AND UNDER THE INHERENT JURISDICTION OF THIS  
HONOURABLE COURT**

TAKE NOTICE that this Honourable Court will be moved on the 15th day of December, 2020 at the Hour of 9 o'clock in the forenoon or so soon thereafter as counsel on behalf of the Applicant may be heard praying this Honourable Court for the following orders:

1. AN ORDER OF COURT granting leave to institute proceedings for the dissolution of marriage within two years of marriage.
2. AND FOR SUCH ORDER OR FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Dated this 10th day of December, 2020

\_\_\_\_\_  
Eyeke Kenneth Samuel Esq  
Counsel to the Petitioner/Applicant  
FOR: Eyeke Kenneth & Co  
No 24 Abacha Street  
Maitama  
Abuja

**Affidavit in Support of Application for Leave**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT  
AND  
PAUL BABA----- 1<sup>ST</sup> RESPONDENT  
ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**AFFIDAVIT IN SUPPORT OF MOTION EX PARTE**

I, Lynda Baba, female, medical practitioner, Nigerian citizen of No 43, Enoch Adebayo Avenue, Maitama, Abuja do hereby make oath and state as follows that:

1. I am the petitioner in this petition by virtue of which I am conversant with the facts stated in this affidavit.
2. I have a valid marriage with the 1<sup>st</sup> respondent contracted on the 17<sup>th</sup> day of January, 2019 at the Repentant People Church, Asokoro, Abuja in

accordance with the Marriage Act. Attached to this affidavit is the Marriage certificate issued by the Registrar of Marriages of the FCT and marked as Exhibit A1.

3. I have been diagnosed to be suffering from severe depression as a result of the constant physical abuse and psychological trauma that the 1<sup>st</sup> respondent subjected me to.
4. I believe that if my application is not granted, I would continue to suffer undue hardship at the hands of the 1<sup>st</sup> respondent.
5. If leave is however granted to me by this Honourable Court, the grounds upon which I intend to petition for the decree are as stated in the petition prepared by my solicitor. The proposed petition is hereby attached to this application.
6. No previous application for leave has been made to a Court.
7. There is no child of the marriage.
8. Reconciliation attempts have been made by parents and extended relatives of both families but all to no avail as the 1<sup>st</sup> respondent is recalcitrant in his adulterous ways.
9. I swear to this affidavit solemnly and conscientiously believing its content to be true and correct and in accordance with the Oaths Act.

-----  
DEPONENT

Sworn to at the High Court Registry, Federal Capital Territory, Abuja.  
Dated this 10th day of December, 2020

BEFORE ME

-----  
COMMISSIONER FOR OATHS

**NB: When drafting this Affidavit, tailor it in line with the legal Circumstances under which you can apply for Leave within two years of Contracting a Statutory Marriage**

**Petition for Dissolution of Marriage**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT  
TO: ABOVE NAMED HIGH COURT

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT

AND

PAUL BABA----- 1<sup>ST</sup> RESPONDENT

ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**PETITION FOR DISSOLUTION OF MARRAIGE**

1. The petitioner, Mrs Lynda Baba, whose address is at No 43, Enoch Adebayo Avenue, Maitama, Abuja and whose occupation is a medical practitioner petitions the Court for a decree of dissolution of the marriage against the respondent, Mr Paul Baba whose address is No 49, Melanin Avenue, Maitama Abuja and whose occupation is a businessman. The 2<sup>nd</sup> respondent is Miss Abigail Ogun whose address is No 6, Indiana Layout, Gwarinpa, Abuja and whose occupation is a commercial sex worker.
2. MARRIAGE
  - (a) The petitioner, then a spinster was lawfully married to the respondent, then a bachelor, on the 17<sup>th</sup> day of January 2019 at the Congress Hall of the Nicon Hilton, Abuja which performed the Christian ceremony in accordance with the Marriage Act.
  - (b) The surname of the petitioner immediately before the marriage was Roberts.
3. BIRTH OF PETITIONER AND RESPONDENT  
The petitioner was born in 1988 in the United States of America and the respondent was born in 1978 in Lagos State, Nigeria.
4. DOMICILE  
The petitioner is within the meaning of the Act, domiciled in Nigeria. The facts on which the Court would be asked to find that the petitioner is so domiciled are as follows: prior to the marriage and since the marriage, the petitioner has

resided in Abuja and after the marriage, at No 60, Enoch Adebayo Avenue, Maitama, Abuja within the jurisdiction of the Federal Capital Territory, Abuja.

5. COHABITATION

Particulars of the place at which and during which the petitioner and the respondent has co-habitated are as follows: Immediately after the marriage, the petitioner and the respondent cohabitated at No 49, Melanin Avenue, Maitama Abuja.

The date and circumstances in which cohabitation between the petitioner and the respondent first ceased are as follows: On 14<sup>th</sup> September, 2019, the respondent relocated to Australia with the intention of never returning to Nigeria for reasons best known to him.

6. CHILDREN

There was no child.

7. PREVIOUS PROCEEDINGS

Since the marriage, there have not been any proceedings in a Court between the petitioner and the respondent.

8. GROUNDS FOR THE PETITON

The marriage between the petitioner and the respondent has broken down irretrievably. The particulars of such breakdown are as follows:

(a) Since the marriage, the respondent has committed adultery by making a habit of visiting brothels daily and patronizing sex workers in particular, the 2<sup>nd</sup> respondent. It is from these visits to brothels that the 1<sup>st</sup> respondent has contacted sexually transmitted diseases in the form of Gonorrhoea and Herpes which he has rather unfortunately, transmitted to the petitioner.

Hence, the Petitioner has found it intolerable to continue to live with the respondent.

(b) Since the marriage, the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with the respondent. This is as a result of the fact that, the respondent has on several occasions, physically abused the petitioner which more often than not, resulted in admission at the University of Abuja Teaching Hospital, Gwagwalada, Abuja for her recovery from various injuries such as broken ribs, fractured wrists as well as concussions.

9. CONDONATION, CONNIVANCE AND COLLUSION

The petitioner has not condoned or connived at the grounds specified above and is not guilty of collusion in presenting this petition.



10. PROPOSED ARRANGEMENT FOR THE CHILDREN

There is no child.

11. CUSTODY

It is not applicable.

12. RELIEFS

The petitioner seeks the following order:

- (a) A decree of dissolution of marriage between the petitioner and the respondent on the ground that the marriage has broken down irretrievably.

Dated this 10th day of December, 2020

---

Eyeke Kenneth Samuel Esq  
Counsel to the Petitioner/Applicant  
FOR: Eyeke Kenneth & Co  
No 24 Abacha Street  
Maitama  
Abuja

This petition was settled by Eyeke Kenneth Samuel, legal practitioner for the petitioner.

Filed on 10th day of December, 2020 by Eyeke Kenneth Samuel on behalf of the petitioner whose address for service is No 24 Abacha Street, Maitama, Abuja.

FOR SERVICE ON:

1. 1<sup>st</sup> Respondent  
Paul Baba  
No 49, Melanin Avenue  
Maitama, Abuja
2. 2<sup>nd</sup> Respondent  
Abigail Ogun  
No 6, Indiana Layout,  
Gwarinpa, Abuja.

**Verifying Affidavit**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT  
TO: ABOVE NAMED HIGH COURT

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT

AND

PAUL BABA----- 1<sup>ST</sup> RESPONDENT

ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**VERIFYING AFFIDAVIT**

I, Lynda Baba, female, medical practitioner, Nigerian citizen of No 60, Enoch Adebayo Avenue, Maitama, Abuja do make oath and state as follows that:

1. I am the petitioner and by virtue of which I am conversant with the facts stated in the petition.
2. I verify and confirm the facts contained in the petition to be true and correct.
3. Attached to this petition is a copy of the Marriage certificate issued by the Registrar of Marriages of the FCT.
4. I swear to this affidavit solemnly and conscientiously believing its content to be true and correct and in accordance with the Oaths Act.

\_\_\_\_\_  
DEPONENT

Sworn to at the High Court registry, Federal Capital Territory, Abuja.

Dated this 10th day of December, 2020

BEFORE ME

-----  
COMMISSIONER FOR OATHS

**Answer & Cross Petition**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT  
TO: ABOVE NAMED HIGH COURT

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT

AND

PAUL BABA----- 1<sup>ST</sup> RESPONDENT

ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**ANSWER AND CROSS PETITION**

1. The 1<sup>st</sup> respondent in answer to the petition in these proceedings says:
2. The 1st respondent/cross petitioner admits paragraphs 1,2,3,4,5,6,7,9,10 & 11 of the petition.
3. The 1st respondent/cross petitioner denies paragraphs 8 of the petition.
4. The 1st respondent/cross petitioner avers in response to paragraph 8 of the petition that the 1<sup>st</sup> respondent has been faithful to the petitioner since the marriage and has not contacted any sexually transmitted diseases of any kind. The only sexual partner that the 1st respondent has had since the marriage is the petitioner.
5. In further response to paragraph 8 of the petition, the 1st respondent/cross petitioner states that he never subjected the petitioner to any form of physical abuse.
6. CROSS PETITION
7. The respondent/cross petitioner pleads facts in paragraphs 1- 7 and 9 of the petition.
8. DOMICILE

The petitioner is within the meaning of the Act, domiciled in Nigeria. The facts on which the Court would be asked to find that the petitioner is so domiciled are as follows: prior to the marriage and since the marriage, the petitioner has resided in Abuja and after the marriage, at No 3, Independence lane, at No 49, Melanin Avenue, Maitama Abuja within the jurisdiction of Federal Capital Territory, Abuja.

9. GROUNDS FOR CROSS PETITION

The respondent/cross petitioner petitions the Court for a decree of dissolution of marriage between the respondent and the petitioner on the ground that the marriage has broken down irretrievably.

The particulars of such breakdown are as follows: Since the marriage, the petitioner has willfully and persistently refused to consummate the marriage.

10. CONDONATION, CONNIVANCE AND COLLUSION

The respondent/cross petitioner has not condoned or connived at the ground specified above and is not guilty of collusion in presenting this answer.

11. RELIEFS

The respondent seeks the following orders:

- (a) A decree of dissolution of marriage between the petitioner and the respondent.

DATED THIS 15<sup>th</sup> DAY OF DECEMBER, 2020

---

John Omotunde Esq  
Mulloy Consulting LP  
17, Law School Drive,  
Bwari  
Abuja.

This cross petition was settled by John Omotunde, legal practitioner filed on 15<sup>th</sup> day of December, 2020 by JOHN OMOTUNDE on behalf of the cross petitioner whose address for service is 17, Law School Drive, Bwari, Abuja.

FOR SERVICE ON:

The Petitioner  
C/o Counsel  
Eyeke Kenneth  
No 24 Abacha Street  
Maitama  
Abuja

The respondent may also respond to the petition by protesting that the Court lacks the jurisdiction to entertain or to wait and file a notice of preliminary objection.

**Answer under Protest**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT  
TO: ABOVE NAMED HIGH COURT

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT

AND

PAUL BABA----- 1<sup>ST</sup> RESPONDENT

ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**ANSWER UNDER PROTEST**

The respondent in answer to the petition in this proceeding, objects to the jurisdiction of the above named Court upon the ground that the marriage between the petitioner and the respondent was only a church blessing synonymous to a customary marriage and not under the Marriage Act.

The respondent therefore asks the Court to strike out the petition as it lacked jurisdiction on the matter.

DATED THE 15<sup>th</sup> DAY OF DECEMBER, 2020

\_\_\_\_\_  
John Omotunde Esq  
Mulloy Consulting LP  
17, Law School Drive,  
BwariAbuja.

This answer was settled by John Omotunde, Legal Practitioner of the respondent and filed on the 15<sup>th</sup> day of December, 2020 by John Omotunde on behalf of the respondent, whose address for service is 15, Law School Drive, Bwari,Abuja.

FOR SERVICE ON:

The Petitioner

C/o Counsel

Eyeke Kenneth Samuel

**Verifying Affidavit**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT  
TO: ABOVE NAMED HIGH COURT

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT

AND

PAUL BABA----- 1<sup>ST</sup> RESPONDENT

ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**VERIFYING AFFIDAVIT**

I, Mr. Paul Baba, Nigeria citizen, male, Christian, Business man, residing at No 49, Melanin Avenue, Maitama, Abuja, make oath and state as follows:

1. That I am the 1<sup>st</sup> Respondent/ cross-petitioner in this suit.
2. That I verify the facts stated in my cross-petition by virtue of my personal knowledge of same.
3. That the statements set forth in paragraph 1 to 9 of my answer and cross-petition are true and correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
Deponent

Sworn to at the FCT High Court Registry, Abuja

Dated this 15<sup>th</sup> Day of December, 2020

BEFORE ME

.....  
COMMISSIONER FOR OATHS

**Certificate Relating to Reconciliation**

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

PETITION NO: \_\_\_\_\_

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT  
TO: ABOVE NAMED HIGH COURT

BETWEEN

LYNDA BABA-----PETITIONER/APPLICANT

AND

PAUL BABA----- 1<sup>ST</sup> RESPONDENT

ABIGAIL OGUN----- 2<sup>ND</sup> RESPONDENT

**CERTIFICATE RELATING TO RECONCILIATION**

I, John Omotunde Esq certify that I am the solicitor representing the respondent/cross-petitioner and that I have brought to the attention of the respondent/cross-petitioner the provisions of the Matrimonial Causes Act relating to reconciliation of the parties to a marriage and the approved marriage guidance organizations reasonably available to assist in effecting a reconciliation between the petitioner and the respondent/cross-petitioner and the possibility of a reconciliation either with or without the assistance of such organization.

DATED THE 15<sup>TH</sup> DAY OF DECEMBER, 2020

\_\_\_\_\_  
John Omotunde Esq  
Mulloy Consulting LP  
17, Law School Drive,  
Bwari  
Abuja.

**WEEK 19 ASSIGNMENT ON MATRIMONIAL CAUSES**

**Assignment-**

Chief Mathew Lewisa and Sabina Lewisa got married at an impressive marriage ceremony held at a church in Lagos on 1<sup>st</sup> April, 2005, after the completion of the requisite procedure for marriage at the Marriage Registry. Friction has developed between the parties to the marriage on account of an illicit relationship between Chief Mathew Lewisa and Miss. Ruth Ade, a stunningly beautiful university student.

Chief Lewisa always took Ruth to Jaiyeori'eHomebreakers Hotel, Epe Lagos on sexual escapades. In fact, he had exclusively retained a particular room in the hotel for the above purpose, to keep his affairs with Ruth away from public glare. Unknown to Chief Lewisa, Sandra Ilu, a relation of Sabina, worked in the hotel as a cleaner. Sandra planted a secret camera in the aforesaid Chief Lewisa's hotel room. The camera produced footage of Chief Lewisa and Ruth activities (including acts of sexual intercourse) during their 8- hour stay in the hotel room on 14/4/2016. Sandra has recently informed Sabina of the escapades of her husband, and also released the video clips of the amorous events of 14/4/2016. Before Sandra's disclosure, Sabina Lewisa on her own has just recently become aware of the relationship between her husband and Ruth. However, Chief Lewis vehemently denied the allegation when Sabina, his wife, confronted him with the allegation thereof.

On 1/4/2019 Chief Lewis and Sabina attended a housewarming ceremony of Dr Daniel Ali, a family friend, an event attended by Ruth, as well. Ruth was all over the place introducing herself to everyone that came her way, as Mrs. Lewisa, the legally married wife of Chief Mathew Lewisa. On several other occasions known to Chief Lewisa, Ruth had made similar claim, and boasted that "No Jupiter on earth can take me –Ruth Ade- away from, my husband, Chief Mathew Lewisa, whom I am lawfully married to," even after she had been cautioned against making such claim by Chief Lewisa.

Mrs. Sabina Lewisa who is fed up with the relationship with her husband wants you to obtain a divorce. In fact she packed out of her matrimonial home on 3/4/19. She has recently relocated to Abeokuta, Ogun State, where she met Mr. Smart Hassan, a young man whom she has been dating since 1/5/2020. Sabina wants the action for divorce to be instituted and tried in Jos Plateau State, to discomfit Chief Lewisa, a very busy Lagos businessman.

Answer the following questions:

- vii. (i) Identify the court vested with jurisdiction over the action contemplated by Mrs Sabina Lewisa. (ii) Can a court sitting in Jos, Plateau State, ever possess



jurisdiction over the court action envisaged by Mrs Sabina Lewisa? (iii) Identify the originating process that you would employ in this action. (iv) State the ground(s) that shall be relied on in the action.

- viii. State two of the factual situations that can ever be relied on in any action of similar nature as the one proposed by Sabina.
- ix. Chief Lewisa wants the action after it has been commenced in Jos to be moved to a court of competent jurisdiction in Lagos. If counsel on his behalf has applied for the matter to be so transferred, would you have any legal ground to resist the application on behalf of Sabina, your client?
- x. Sabina wants you to advise her on the possibility of (i) making Ruth a party to her divorce action (ii) and the title to be ascribed to Ruth as a party in such event (iii) the relief that may be claimed from Ruth.
- xi. Can Mrs. Sabina Lewisa solely rely on the fact of the adultery recorded by Sandra on 14/4/2016, in support of her claim against Ruth in the light of the facts in this case? State your reasons.
- xii. Assuming your answer in (5) above was in the affirmative, state the procedural steps for the proof/admissibility of the video evidence in the court action.
- xiii. Sabina now feels guilty of her own affair with Smart. In fact she is worried that Chief Lewisa who already knows about her relationship with Smart will ultimately use the fact devastatingly to frustrate her court action. She seeks your opinion whether (i) the fact of the affair/relationship with Smart should be disclosed to the trial court, at all; (2) if it should be disclosed, what would be the means of disclosure; (iii) if the whole world shall be able to access the disclosure.
- xiv. Draft the heading of the originating process in the action, up to the parties and title of the court process.
- xv. Should Chief Lewisa want to take an action to stop Ruth from parading herself as his wife, identify the form of action that can be employed for that purpose?
- xvi. State the originating process in such action,

### **CLASS ASSIGNMENT- MODEL ANSWERS**

1.(i) The appropriate courts that possess jurisdiction in a matrimonial cause relating to dissolution of marriage are (a) the High Court of each State of the Federation, and (b) the High Court of the Federal Capital Territory, Abuja.

#### **Sections 2(1) & 114 Matrimonial Causes Act MCA**

**2 marks**

1(ii) The High Court of any State/ High Court of the FCT, Abuja may be approached in a matrimonial cause for dissolution of marriage, provided that the petitioner is, at the time of his presentation of the petition, domiciled in any part of Nigeria. It is irrelevant that the petitioner has approached a High Court in a State other than the State of residence of either of the parties to the marriage in issue. Section 2(3) MCA

**2 marks**

Thus the High Court of Plateau State sitting in Jos, has jurisdiction over Mrs. Sabina Lewisa's petition. – Section 2(3) MCA; Adegoroye v Adegoroye

**2 Marks**

1(iii) The action contemplated by Sabina is a matrimonial action/cause- Section 114(a) MCA The appropriate originating process in this instance is petition- Section 54 MCA.-

**2 Marks**

The petition shall be accompanied with other required court process, such as (i) the notice of petition (b) an acknowledgement of service (c) a verifying affidavit (d) a certificate on reconciliation (e) the certificate of marriage.

**1 Mark**

1(iv) The sole ground in a petition for dissolution of marriage is that the marriage has broken down irretrievably S 15 (1) MCA

**2 Marks**

2. A petitioner for the decree of dissolution of marriage must prove the existence of at least one of the following facts in order to establish the ground that a marriage has broken down irretrievably under section 15(2) (a)-(h) MCA:

6. refusal of the respondent to consummate the marriage
7. adultery and intolerability
8. cruelty in the behavior of respondent
9. desertion of at least one year
10. separation of at least 3 years
11. living apart for at least 3 years
12. non compliance with a decree for restitution of conjugal rights
13. presumption of death

**2 correct answers shall suffice – for 4 Marks**

3. As counsel to Sabina, I may not object to an application to transfer the proceedings to Lagos. Hearing in a matrimonial cause may be transferred to a convenient forum in the interest of justice;- S. 9 MCA .**2 Marks**

The matter may be transferred to either of the convenient *fora*- the High Court of Ogun State , Abeokuta or the High Court of Lagos State **1 Mark**

4. i. It is possible to join Ruth as a party to the action. A person who has been alleged to have committed adultery with a party to a marriage can be joined, as a co-respondent in a petition for dissolution of the marriage. S.31 MCA & O. I, r. 4 MC **2 Marks**

ii. Ruth will be joined in the action as a co-respondent- S.31 MCA & O, r.4 MCR. **1 Mark**

iii. Sabina can obtain relief of damages for adultery from Ruth- S.31 MCA; O. I, r. 4 MCR **1 Mark**

5. However Sabina cannot claim damages from Ruth solely on the basis of the adultery recorded by Sandra on 14/42016.

A petitioner will not be granted damages against a co-respondent where the act of adultery in question is more than 3 years before the date of the petition S.31(3) MCA - **2 Marks**

6. The video clips recorded by Sandra can only be admissible in evidence if the conditions in section 84 (2) Evidence Act set for admissibility of computer produced documents are satisfied-

- i. that the video clip was produced by a computer (camera) within a period of regular use thereof to store or process information; - **2 Marks**
- ii. that in the period in question, other information similar to the one in the video was regularly supplied to the computer (the camera); **2 Marks**
- iii. that throughout the time material to the recording, the computer (the camera) was operating properly, or, that if it did not operate properly, any improper operation of the computer(camera) was not of the nature that affected the production of the video clips; **2 Marks**
- iv. that the information in the video reproduces or is derived from information supplied to the camera in the ordinary course of events. **2 Marks**

The above information may be given by oral evidence or by a certificate of someone who holds a responsible position in relation to the operation of the camera or the management of the relevant activities. In the above instance Sandra as the operator of the camera device (the computer herein) will be required to give evidence in respect of the above stated conditions of section 84 by oral evidence or by a certificate to same effect at the trial of the action.- S. 84(4) Evidence Act; Kubor v Dickson **2 Marks**

7.

i. The petitioner for a decree of dissolution of marriage who has committed adultery may disclose the fact of the adultery by making a discretion statement. Thus he /she may by the statement ask the court to exercise its discretion to grant the decree sought despite the fact that adultery has been committed by him/her- Disclosure of such adultery of the petitioner would enable the court to have access to information/particulars of the event, so as to exercise its discretion despite the occurrence of the act of adultery- S. 28 MCA; O. V, r. 13 MCR; O. XI, r.32 (2) MCR **2 Marks**

Sabina ought to disclose the acts of adultery to the court- S. 28 MCA; O. V, r. 13 MCR –**1 Mark**

ii. The appropriate procedure for the disclosure is by filing a discretion statement- S. 28 MCA; O. V, r. 13 MCR; O. XI, r.32 (2) MCR **1 Mark**

iii. Except where the court so orders a discretion statement to be given in evidence, the confidentiality of any discretion statement is relatively preserved. No one other than the Attorney General of the Federation, or a person authorized by him, may inspect a discretion statement, without leave of court- O. XI, r.32(2) **2 Marks**

8. IN THE HIGH COURT OF PLATEAU STATE  
IN THE JOS JUDICIAL DIVISION  
HOLDEN AT JOS **2 Marks**

Suit no ... **1 Mark**

BETWEEN

MRS SABINA LEWISA...

AND

CHIEF MATHEW LEWISA...

MISS RUTH ADE...

PETITIONER **2 Mark**

RESPONDENT **2 Mark**

CO-RESPONDENT **1 Mark**

9. If Chief Lewisa intends to institute an action to restrain Miss. Ruth Ade from parading herself as his lawfully wedded wife, he should institute a matrimonial cause by way of petition for jactitation of marriage. Such petition is in Form 7 1<sup>st</sup> Schedule MCR. Section 52 MCA

**2 Marks**

**Total marks : 50 Marks**

## Week 20

### ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

Fundamental Rights refer to any of the rights provided for in **Chapter IV CFRN** and includes any of the rights stipulated in the African Charter on Human and Peoples Right (Ratification and Enforcement) Act - **Order 1 Rule 2 of Fundamental Rights (Enforcement Procedure) Rules 2009**. Though the rights under **Chapter II CFRN** are not justiciable, they are however, justifiable under the African Charter on Human and People's Rights.

#### ETHICAL ISSUES ARISING FROM ENFORCEMENT OF FUNDAMENTAL RIGHTS

1. Failure to properly advise the client and inform him of his rights or strength of his case before instituting the action -**Rule 14 (2) (e) RPC**.
2. Improper attraction of business – **Rule 39 RPC**.
3. Where a case is in court, no complaint or broadcast should be made so as not to mislead the court to taking its decisions in accordance to public comments other than the law and facts before it -**Rule 33 RPC**.
4. Under the Abuja Rules, Counsel may be personally liable for cost for frivolous suit. This is related to **Rule 15 (3) (b) RPC** which makes it unethical for a legal practitioner to file a suit or assert a position on behalf of his client when he knows or ought reasonably to know that such action would serve merely to harass or maliciously injure another.
5. A lawyer shall not handle a legal matter which he knows or ought to know that he is not competent to handle -**Rule 16 (1) RPC**.
6. A lawyer shall not seek out claimants in respect of personal injuries or any other cause of action with a view to being employed by the prospective client -**Rule 47(1) (b) RPC**.
7. Counsel shall not stand or offers to stand bail for a person for whom he or a person in his law firm is appearing -**Rule 37 (1) RPC**.
8. It is the duty of lawyer employed in respect of a Court case to be personally present or be properly represented throughout the proceedings in Court, more so since it involves the fundamental rights of a person -**Rule 14 (4) RPC**.
9. Counsel shall not conceal or knowingly fail to disclose that which he is required by law to reveal, knowingly use perjured or false evidence, knowingly make a false statement of law or fact or participate in the creation or preservation of evidence when he knows or ought reasonably to know that the evidence is false -**Rule 15 (3)(e)-(h) RPC**.

**SAMPLE DRAFTS**  
**Originating Motion**

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT  
PROCEDURE) RULES 2009

AND

IN THE MATTER OF AN APPLICATION BY MR. UWAKWE CHINEDU FOR AN  
ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

MR. UWAKWE CHINEDU.....APPLICANT  
AND

1. INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT
2. COMPTROLLER GENERAL OF PRISONS.....2ND RESPONDENT

**ORIGINATING MOTION**

BROUGHT PURSUANT TO SECTIONS 35 (3) & (4 ),34(1) (a) AND 36 (4 ), (5)&  
(6) (c) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA  
1999 (AS AMENDED) AND ORDER II RULE 1 OF THE FUNDAMENTAL  
RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 AND WITHIN THE  
INHERENT JURISDICTION OF THIS COURT

TAKE NOTICE that this honourable court will be moved on the ----- day of-----,  
2021 in the hour of 9 o'clock in the forenoon or so soon thereafter as counsel will  
be heard on behalf of the Applicant praying for the following orders:

1. AN ORDER FOR the unconditional release of the applicant
2. AN ORDER restraining the Respondents from any further similar act
3. AND FOR SUCH FURTHER ORDERS OR ORDERS which the court will  
deem fit to make in the circumstance

AND TAKE FURTHER NOTICE that on hearing of this application, the said Applicant will use the affidavit of MRS. UWAKWE CHINEDU and the Exhibit therein referred to.

DATED THIS 5TH DAY OF JANUARY, 2021

\_\_\_\_\_  
EYEKE KENNETH SAMUEL  
Counsel to the Applicant  
Eyeke Kenneth & Co.  
24 Abacha Street  
Abakaliki, Ebonyi State

FOR SERVICE ON:

1ST Respondent  
Inspector General of Police  
Police Command Headquarters,  
Abuja

2nd Respondent  
Comptroller General of Prisons  
Nigerian Prisons Service Headquarters  
Abuja

**Statement in Support of Application**

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOSI JUDICIAL DIVISION  
HOLDEN AT LAGOS

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT  
PROCEDURE) RULES 2009

AND

IN THE MATTER OF AN APPLICATION BY MR. UWAKWE CHINEDU FOR AN  
ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

MR. UWAKWE CHINEDU.....APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

2. COMPTROLLER GENERAL OF PRISONS.....2ND RESPONDENT

STATEMENT PURSUANT TO ORDER 2 RULE 3 OF THE FUNDAMENTAL  
RIGHTS (ENFORCEMENT PROCEDURE) RULES, 2009

**1. NAME AND DESCRIPTION OF THE APPLICANT**

Mr. Uwakwe Chinedu, a Legal Practitioner who resides at no 12, Democracy Estate, Ikeja, Lagos State

**2. RELIEF SOUGHT**

- (a) Declaration that the arrest and detention of the Applicant by the 1st Respondent on the 10th of October, 2020 is unconstitutional, null and void and a breach of the fundamental human right of the Applicant
- (b) Declaration that detaining the Applicant without formally informing him of the reasons for his arrest is unconstitutional and a breach of the fundamental human right of the Applicant
- (c) Declaration that the torture carried out on the Applicant by the 1st Respondent is unconstitutional and a breach of the fundamental human right of the Applicant
- (d) Declaration that the refusal to charge the Applicant for any offence before a court of law for over 50 days is unconstitutional and a breach of the fundamental human right of the Applicant
- (e) Declaration that the threat on Ms. Okwuru Success, the Legal practitioner representing the Applicant resulting in the withdrawal of the said Ms. Okwuru Success from further representing the Applicant by the 1st Respondent is unconstitutional and a breach of the fundamental human right of the Applicant
- (f) Declaration that the trial, conviction and sentencing of the Applicant is unconstitutional and a breach of the fundamental human right of the Applicant
- (g) Declaration that the imprisonment of the Applicant in an over-crowded prison and confinement to a cell with a 250 watt electric bulb left on day



and night by the 2nd Respondent is unconstitutional and a breach of the fundamental human right of the Applicant

- (h) An order compelling 2nd Respondent to release the Applicant from the prison and confinement forthwith
- (i) Damages in tune of ~~N~~350,000,000.00 (Three-hundred and fifty Million naira) for unlawful arrest, detention, torture, trial, and imprisonment of the Applicant

### **3. GROUNDS UPON WHICH THE RELIEFS ARE SOUGHT**

- (a) The Applicant has fundamental rights to dignity, personal liberty, fair hearing and freedom of movement under sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended)
- (b) The Applicant was arrested on the 10th of October, 2020, detained and tortured without any justification by the 1st Respondent
- (c) The Applicant was not informed formally of the reason for his arrest nor was he charged to court within a reasonable period of time required by the Constitution of the Federal Republic of Nigeria.
- (d) The Applicant was also denied right to representation by a Legal practitioner when the Legal Practitioner of his choice was threatened to withdraw from representation by the 1st Respondent
- (e) The Applicant was tried by Mr. Archibong Edet a Judge who has an interest in the case being the first son of Hon Minister of Justice and a close friend to the President.
- (f) The Applicant was imprisoned in an overcrowded prison and subjected to inhuman condition by being detained in a cell with a 250 – watt electric bulb left on day and night by the 2nd Respondent
- (g) The arrest, detention, torture, trial and imprisonment of the Applicant constitutes a breach of his fundamental human rights to dignity, personal liberty, fair hearing and freedom of movement under sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended)

DATED THIS 5TH DAY OF JANUARY, 2021

---

EYEKE KENNETH SAMUEL  
Counsel to the Applicant

Eyeke Kenneth& Co.  
24 Abacha Street  
Abakaliki, Ebonyi State

FOR SERVICE ON:

1ST Respondent

Inspector General of Police

Police Command Headquarters,

Abuja

2nd Respondent

Comptroller General of Prisons

Nigerian Prisons Service Headquarters

Abuja

**Affidavit in Support of Application**

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT  
PROCEDURE) RULES 2009

AND

IN THE MATTER OF AN APPLICATION BY MR. UWAKWE CHINEDU FOR AN  
ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

MR. UWAKWE CHINEDU.....APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

2. COMPTROLLER GENERAL OF PRISONS.....2ND RESPONDENT

**AFFIDAVIT IN SUPPORT OF APPLICATION**

I, Mrs. Igwe Frances U, female, Medical practitioner, Nigerian of No 16, Holy  
ghost Avenue, Ikeja, Lagos do make oath and state as follows:

1. I am the wife of the Applicant and by virtue of which I am conversant with the facts of this case.
2. I have the consent and authority of the applicant to depose to this affidavit on his behalf
3. The Applicant is in the Federal prisons, Abuja by virtue of which he is unable to depose to this Affidavit himself
4. On the 10th of October, 2020, the Applicant was arrested by men of security forces (F-SARS) under the authority of the 1st Respondent
5. The Applicant told me and I believe it to be true that:
  - (a) He was never informed of the reasons for his arrest and detention
  - (b) He was tortured throughout the detention to give out some name of the Applicant's friends
6. The Applicant was never charged before any court of law for over 50 days after his arrest
7. The efforts to get a Legal representation for the Applicant were frustrated as the men of security forces threatened the Legal practitioner employed for the Applicant, through a letter dated 31st day of October, 2020 to withdraw from the case, which she forcefully obliged. A copy of the Letter is attached to this affidavit and marked EXHIBIT A
8. The Applicant was charged with terrorism and attempting to overthrow the government
9. That the trial of the Accused was conducted by Mr. Archibong Edet who is the son to the Minister of Justice and a close friend to the President
10. The Applicant was not represented by any Legal practitioner throughout the entire trial
11. The trial was conducted in the absence of the Applicant
12. The Applicant was found guilty of all charges and sentenced to 20 years imprisonment with hard labour.
13. Since then, the Applicant has been held in an over-crowded prison and confined to a cell with a 250 watt electric bulb left on day and night under the authority of the 2nd Respondent
14. I depose to this affidavit in good faith believing its content to be true and in accordance with the Oaths Act.

---

DEPONENT

SWORN TO AT THE FEDERAL HIGH COURT REGISTRY

THIS 5TH DAY OF JANUARY, 2021

BEFORE ME

---

COMMISSIONER FOR OATHS

**Written Address in Support of Application**

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT  
PROCEDURE) RULES 2009

AND

IN THE MATTER OF AN APPLICATION BY MR. UWAKWE CHINEDU FOR AN  
ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

MR. UWAKWE CHINEDU.....APPLICANT  
AND

1. INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT
2. COMPTROLLER GENERAL OF PRISONS.....2ND RESPONDENT

**APPLICANT'S WRITTEN ADDRESS IN SUPPORT OF THE APPLICATION**

**1.0 INTRODUCTION**

2.0 This is an Application brought pursuant to Order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rule, 1999 for a redress of the breach of his fundamental rights. The application is supported by a Statement containing the Name and particulars of the Applicant, Reliefs sought and grounds for reliefs sought. The application is also supported by a 14 paragraphs affidavit.

**3.0 FACTS RELEVANT TO THE APPLICATION**

- 4.0 On the 10th of October, 2020, the Applicant was arrested by the security forces (F-SARS) acting under the authority of the 1st Respondent and taken to the Divisional Police Headquarters for questioning. No reason for the arrest was given to the Applicant. In the detention, the Applicant was tortured severally to obtain confessions from him.
- 5.0 The Applicant obtained the services of a Legal practitioner, who was however forced to withdraw from the case by the security forces through a threat letter dated 31st of October, 2020.
- 5.1 The Applicant was charged before Mr. Archibong Edet whose father is currently the Minister of Justice and a very close friend of Mr. President who has an interest in the case evidenced from his speech in a news conference on the 13th of November, 2020 where he said he hoped that the Applicant would be given a long and harsh sentence so that people like him would learn a lesson.
- 5.2 The Applicant was not represented by a legal practitioner at all throughout the trial and trial was also held in his absence. The Applicant was found guilty on all the charges, convicted and sentenced to 17 years imprisonment with hard labour and was taken to one of the most over-crowded prisons and confined to a 250 watt electric bulb left on day and night.

## **6.0 ISSUES FOR DETERMINATION**

- 6.1 Whether in the circumstances of the case, the arrest and detention of the Applicant for over 50 days without being charged to a court does not constitute a breach of the fundamental human right of the accused to personal liberty and freedom of movement by the 1st Respondent.
- 6.2 Whether the failure to inform the Applicant of the reason for his arrest does not constitute a breach of the Applicant's fundamental human right to fair hearing.
- 6.3 Whether the torture carried out on the Applicant does not amount to breach of his fundamental human right to dignity of human person
- 6.4 Whether the threat to the legal practitioner of the Applicant on the authority of the 1st Respondent resulting in her forceful withdrawal from the case is not a breach of the fundamental human right of the accused to fair hearing
- 6.5 Whether in the circumstances of the case, the trial of the case against the Applicant by Mr. Archibong Edet is not a breach of the fundamental human right of the accused to fair hearing

- 6.6 Whether in the circumstances of the case, the trial of the Applicant where he is not represented by a legal practitioner is not a breach of his fundamental human right to fair hearing
- 6.7 Whether the trial of the Applicant in his absence is not a breach of his fundamental human right to fair hearing
- 6.8 Whether the imprisonment of the accused in an over-crowded prison and his confinement to a cell with 250 watt electric bulb left on day and night is not a breach of his fundamental human right to dignity of human person

## 7.0 ARGUEMENTS

### 7.1 ISSUE ONE

- 7.1.1 My Lord, the Applicant in the affidavit deposed on his behalf by Mrs. Igwe Frances U. stated in paragraphs 4 and 6 that the applicant was arrested by the men of the security forces on the 10th of October, 2020 and was detained for over 50 days without being charged to court
- 7.1.2 My Lord, it is the provision of **section 35(1) CFRN** guarantee the right of a person to personal liberty. **Section 35 (4) CFRN** provides for where a person is arrested for a criminal trial, such person should be brought before a court of law within a reasonable period which by virtue of **section 35(5) CFRN** is 24 or 48 hours as the case may be.
- 7.1.3 It is our submission that detaining the Applicant for a period of over 40 days without bringing him before a court of law is contrary to the provisions of the constitution and therefore unlawful amounting to a breach of the fundamental human right of the accused

### 7.2 ISSUE TWO

- 7.2.1 The Applicant in the affidavit supporting this application sworn on his behalf by Mrs. Igwe Frances U. in paragraph 5 stated that he was never informed of the reasons for his arrest and detention.
- 7.2.2 My Lord, the **Constitution of the Federal Republic of Nigeria, 1999(as amended)** stated in **Section 36(6)(a)** that any person charged with a criminal offence must be informed promptly and in details the nature of the offence he is alleged to have committed. In the case of **Maja v State (1980) 1 NCR 212** the court held that such person must be informed at the time of his arrest and not later than when he was arraigned
- 7.2.3 It is therefore our submission my Lord, that the failure of the accused to be informed about the offence alleged is a breach of his fundamental human right.

### 7.3 ISSUE THREE

- 7.3.1 My Lord, the affidavit in support of the Application stated in paragraph 5 that the Applicant was severely tortured under the authority of the 1st Respondent in order to give confessions and implicate some other persons
- 7.3.2 My Lords, **Section 34(1)(a) CFRN** stated that no person shall be subjected to torture or to inhuman or degrading treatment as every individual is entitled to respect for the dignity of human person.
- 7.3.3 My Lord, it is our submission that the torture carried out on the Applicant under the authority of the 1st Respondent is a breach of the fundamental human right of the Applicant as enshrined under the constitution

### 7.4 ISSUE FOUR

- 7.4.1 My Lord, the affidavit in support of the Application stated in paragraph 7 that the efforts to get a Legal representation for the Applicant were frustrated as the men of security forces threatened the Legal practitioner employed for the Applicant, through a letter dated 31st day of October, 2020 to withdraw from the case, which she forcefully obliged.
- 7.4.2 My Lord, **Section 36 (6)(c) CFRN** provides that a person charged with a criminal offence shall be entitled to defend himself in person or by legal practitioners of his own choice. See also **Udozinma v COP (1982) 1 NCR 27**
- 7.4.3 It is therefore our submission that by causing the forceful withdrawal of the legal practitioner employed representing the applicant under the authority of the 1st Respondent, there is a breach of the Applicant fundamental human right to have a defence counsel representing him.

### 7.5 ISSUE FIVE

- 7.5.1 My Lord the affidavit in support of the Application stated in paragraph 9 that the Trial was conducted by Mr. Archibong Edet, who is a son to the Minister of Justice and a friend to the President who has a personal interest in the case.
- 7.5.2 My Lords, it has been a principle of law guaranteed by the provision of **Section 36 (4) CFRN** that a person charged with a criminal offence must be afforded fair hearing in public. Also, it is a generally accepted principle of the law that justice must not only be done, but must be manifestly seen to have been done. The Supreme Court in the case of **Garba & Ors v University of Maiduguri (1986) 2SC** held that if a Judge presides over a case in which he has an interest, his decision will be nullified and it is immaterial that he was not actually biased.

7.5.3 From the above flows the conclusion my Lord, that the fundamental human right of the accused to fair hearing was breached when he stood a trial which was adjudicated upon by a Judge who had an interest on the case.

#### 7.6 **ISSUE SIX**

7.6.1 My Lords, it was established in the affidavit in support of the Application in paragraph 10 that the Applicant was never represented once by a legal practitioner, either or his choice or otherwise, throughout the entire course of the proceedings

7.6.2 My Lord, **Section 36 (6)(c) CFRN** provides that a person charged with a criminal offence shall be entitled to defend himself in person or by legal practitioners of his own choice. See **Awolowo & Ors v Minister of Internal Affairs & Ors (1962) LLR 177**. See also **Udozinma v COP (1982) 1 NCR 27**

7.6.3 It is therefore our submission that since the Applicant was denied representation of a legal practitioner during the entire course of his trial, there is a breach of his fundamental human right as provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

#### 7.7 **ISSUE SEVEN**

7.7.1 The affidavit in support of the application in paragraph 11 stated the fact that the trial was conducted in the absence of the accused throughout the entire proceedings

7.7.2 Following the decision of the court in the case of **Adeoye v State (1999) 4 S.C (Pt 11) 67**, trial in absentia is unknown to our law in Nigeria. As such, any person who is charged with a criminal offence must attend his trial from the day he is arraigned to the day he is sentenced. Failure to ensure the presence of the accused at trial is a breach of his fundamental human right to fair hearing.

7.7.3 The above principle of law points to our submission that having failed to ensure the presence of the Applicant in the entire trial, that is, conducting the trial in the absence of the Applicant at the trial is a breach of the fundamental human right of the accused.

#### 7.8 **ISSUE EIGHT**

7.8.1 In the affidavit in support of the Application, it was stated in paragraphs 12 and 13 that the Applicant was convicted and sentenced to 18 years imprisonment with hard labour and that the Applicant has been held in an over-crowded prison and confined to a cell with a 250 watt electric bulb left on day and night under the authority of the 2nd Respondent



- 7.8.2 My Lords, **Section 34(1)(a) CFRN** stated that no person shall be subjected to torture or to inhuman or degrading treatment as every individual is entitled to respect for the dignity of human person
- 7.8.3 My Lords, putting the Applicant in an overcrowded prison and confinement to a cell with a 250 watt electric bulb left on day and night under the authority of the 2nd Respondent is a breach of the fundamental human right of the Applicant

## 8.0 CONCLUSION

My Lord, we humbly submit that this Honourable court grants the reliefs sought by the Applicant for the following:

1. Declaration that the arrest and detention of the Applicant by the 1st Respondent on the 10th of October, 2020 is unconstitutional, null and void and a breach of the fundamental human right of the Applicant
2. Declaration that detaining the Applicant without formally informing him of the reasons for his arrest is unconstitutional and a breach of the fundamental human right of the Applicant
3. Declaration that the torture carried out on the Applicant by the 1st Respondent is unconstitutional and a breach of the fundamental human right of the Applicant
4. Declaration that the refusal to charge the Applicant for any offence before a court of law for over 50 days is unconstitutional and a breach of the fundamental human right of the Applicant
5. Declaration that the threat on Ms. Okwuru Success, the Legal practitioner representing the Applicant resulting in the withdrawal of the said Ms. Okwuru from further representing the Applicant by the 1st Respondent is unconstitutional and a breach of the fundamental human right of the Applicant.
6. Declaration that the trial, conviction and sentencing of the Applicant is unconstitutional and a breach of the fundamental human right of the Applicant
7. Declaration that the imprisonment of the Applicant in an over-crowded prison and confinement to a cell with a 250 watt electric bulb left on day and night by the 2nd Respondent is unconstitutional and a breach of the fundamental human right of the Applicant
8. An order compelling 2nd Respondent to release the Applicant from the prison and confinement forthwith

9. Damages in tune of ~~N~~350,000,000.00 (Three-hundred and fifty Million naira) for unlawful arrest, detention, torture

6.0 LIST OF AUTHORITIES

6.1 CASES

1. MAJA V STATE (1980) 1 NCR 212
2. UDOZINMA V COP (1982) 1 NCR 27
3. AWOLOWO & ORS V MINISTER OF INTERNAL AFFAIRS & ORS (1962) LLR
4. ADEOYE V STATE (1999) 4 S.C (PT 11) 67
5. GARBA & ORS V UNIVERSITY OF MAIDUGURI (1986) 2SC

6.2 STATUTES

1. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS AMENDED

DATED THIS 5TH DAY OF JANUARY, 2020

---

EYEKE KENNETH SAMUEL  
Counsel to the Applicant  
Eyeke Kenneth & Co.  
24 Abacha Street  
Abakaliki, Ebonyi State

FOR SERVICE ON:

1ST Respondent

Inspector General of Police  
Police Command Headquarters,  
Abuja

2nd Respondent

Comptroller General of Prisons  
Nigerian Prisons Service Headquarters  
Abuja

**Suing on behalf of the Applicant**

IN THE HIGH COURT OF KANO STATE  
IN THE KANO JUDICIAL DIVISION  
HOLDEN AT KANO

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT  
PROCEDURE) RULES 2019

AND

IN THE MATTER OF AN APPLICATION BY INCORPORATED TRUSTEES OF  
CITIZEN RIGHTS OF NIGERIA SUING FOR AND ON BEHALF OF  
EMMANUEL SIMON WEBBA FOR AN ORDER OF ENFORCEMENT OF  
FUNDAMENTAL RIGHTS

BETWEEN

CITIZEN RIGHTS OF NIGERIA.....APPLICANT  
(SUING FOR AND ON BEHALF OF EMMANUEL SIMON WEBBA)

AND

1. THE NIGERIAN POLICE FORCE.....1ST RESPONDENT
2. DEPARTMENT OF STATE SECURITY.....2ND RESPONDENT
3. ATTORNEY GENERAL OF KANO STATE.....3RD RESPONDENT

**WEEK 20 NONLINE ASSIGNMENT on Enforcement of Fundamental Rights**

**Scenario:**

Mr. Rabiun Bello, graduated from the Nigerian Law School in 2012 and started practice in Kano under Rabo and Rabo Chambers. With interests in politics, Mr. Rabiun. spends most of his time in PRR headquarters, a political party which believes in the use of force to overthrow the government if democratic principles fail.

On the 12<sup>th</sup> of July, 2019 Mr. Rabiun Bello was suspected of planning to overthrow the government and was taken to Mushroom police headquarters, Kano for questioning, detained there for days and taken to DSS' office in Abuja for further interrogation. Many weeks after his arrests, no clear reasons are formally given

for his arrest. Several weeks after his arrest some of his friends who disappeared after having been picked up by the police are believed to have been implicated by Mr. Rabi Bello after being tortured by the security forces. One of them was his close friend, Musa Anthony whose wife Barakat Anthony, a staff of Kano campus of Nigerian Law School, delivered a bouncing baby just few weeks ago. Anthony was last seen when picked by the men of DSS Kano office and all appeals by his counsel to either release him or arraign him have been in vain. Mr. Sani Aminu, who is Mr. Rabi's childhood friend came to the rescue of Mr. Rabi's family by engaging the services of Ms. Queen Ajayi, a renowned lawyer and human rights defender to defend Mr. Rabi. However, she received a letter from the state security that in her own interest she should withdraw from the case or else she would be charged together with Mr. Rabi for terrorism. She forcefully withdrew from the case the next morning.

Mr. Rabi was just few weeks ago arraigned before a court and sentenced to death by hanging. Nevertheless, as a condemned person, he was taken to one of the most over crowded prisons and confined to a cell with a 250 – watt electric bulb left on day and night. He is also being taken out almost three times a week to the Comptroller of Prison's and other prison official's houses for domestic work, cutting of fire wood and laundry works. He is right now suffering from pneumonia and severe fever. As the prison doesn't have any medical facilities, the health condition of Mr. Rabi is everyday deteriorating.

1. Enumerate the rights violated in respect of Mr. Rabi, Ms. Queen and Mr. Musa
2. Draft separate applications for the enforcement of fundamental rights of:
  - a. Mr. Rabi Bello
  - b. and Mr. Musa Anthony
3. Which court has jurisdiction in respect of the cases in (2) above
4. Assuming, the cases were supposed to be filed in the state high court, but the court discovers it doesn't have jurisdiction, what are the appropriate steps to be taken
5. Does a condemned man have any further enforceable rights, state your answer with reasons
6. Assuming you are to raise issue of jurisdiction, enumerate the processes to be filed in court
7. Assuming Ms. Queen was being threatened by the DSS and she went into hiding and as her counsel you want to enforce her fundamental rights, what are the first appropriate steps you will take in the circumstances

8. Enumerate the processes you will file in (7) above
9. In human rights cases, are there any further remedial avenues, in addition to or after the Supreme Court

**EYEKE KENNETH SAMUEL**

[Eyekekennethsamuel@gmail.com](mailto:Eyekekennethsamuel@gmail.com)

08102959631