**INTRODUCTION TO CIVL PROCEDURES**

Civil procedure is the body of law that regulates the process that courts must follow when hearing cases of a civil nature (a "civil action," as opposed to a criminal action). Civil procedure refers only to form and procedure, and not to the substantive law that gives people the right to sue or defend a lawsuit.

Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law matters)

Civil Procedure Rules are the rules of civil procedure used by the High Court of Justice, Court of Appeal and Supreme Court of Nigeria. They are designed to improve access to justice by making legal proceedings cheaper, quicker, and easier to understand for non-lawyers. They are contained in High Court Civil Procedures Rules, Court of Appeal Civil Procedure Rules, Supreme Court of Nigeria Civil Procedure Rules. The introduction of the new rules is intended to facilitate prompt case management and accelerated judicial service delivery.

**Sources of civil procedure in Nigeria**

The rules and regulations guiding the conduct of civil proceedings cab be gleaned from the following sources:

* Rules of Court.
* Statutes Creating Courts.
* Constitution.
* Judicial Decisions on Procedure.
* Practice Directions.
* Special Statutes on Procedure.

The main stages in civil proceedings in Nigeria include:

(i) commencement of the action in court by filing the originating and supporting processes; (ii) pre-trial or case management conference.

**Difference between criminal and civil procedure**

Civil law regulates the private rights of individuals. Criminal law regulates individuals' conduct to protect the public. Civil litigation is a legal action between individuals to resolve a civil dispute. Criminal prosecution is when the government prosecutes a defendant to punish illegal conduct.

**Factors to be considered before commencing a civil suit**

Before civil actions can be filed in Court, there are factors to be considered by the litigant (person filing the action). Some of these factors can be summarized as follows:

* **Cause of Action:**these are the series of events or events that gave rise to a civil action. It forms the basis upon which a person is entitled to obtain a remedy against another in Court. The cause of action is founded in the relief or claim sought by the litigant.
* **Jurisdiction:** this factor is important to decide the court to commence the civil action. The law is clear on the importance of jurisdiction. Where a matter is filed in a wrong jurisdiction, it is liable to be struck out for want of jurisdiction.

Jurisdiction has to do with the subject matter in dispute, the location where the cause of action arose, the court the matter is brought before, the competence of the court to decide on the matter and the composition of the judges sitting in that matter.

The Lawyer usually advises the client on the right court for the subject matter in dispute to be brought.

* **Limitation of Action:** this is another important factor to be considered before commencing an action in court. There is a limitation period set for almost all actions that can be filed in court. This is to prevent any individual from sleeping on their right and to promptly exercise their legal right when a wrong is done.

For example, where the subject matter of a suit is a contract, the limitation period is six (6) years, action for recovery of land is 12 years etc. Thus, it is important for the plaintiff counsel to consider whether the cause of action is out of time before venturing into the expense of issuing a process in court.

In order to successfully initiate a civil action in court, the lawyer and the litigants must ensure that these factors that may be determined and considered by the court, are strictly adhered to in order to undertake smooth and successful litigation.

**Modes of commencing a civil action in court in Nigeria**

Commencement of a civil action is the process taken to institute an action before a competent court to determine the issues between parties. Essentially, there are 4 modes of commencing a civil action in court in Nigeria namely;

* By Writ of Summons,
* By Originating Summons,
* By Application and
* By Petition.

Each of these modes is dependent on the specific nature of cases.

1. Writ of Summons

Writ of Summons: This is the most common form of commencing civil litigation especially in High Courts. It is used where the dispute in the civil litigation is contentious. In accordance with the rules of respective courts, writ of summons essentially contains the claim, statement of claim and prayers for judgment or order as the case may be. As a result of the flont-loading system now adopted by most High Courts, writ of summons must be accompanied by all necessary documents or annexures which the party intends to rely on during trial.

See Osun state Civil Procedure Rules 2008 as amended, Order 3 –

1. Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings;

(a). where a plaintiff claims:-

(i) any relief or remedy for any civil wrong or

(ii) damages for breach of duty, whether contractual, statutory or otherwise, or

(iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.

(b) where the claim is based on or includes an allegation of fraud, or

(c) where an interested person claims a declaration.

2. (1) All civil proceedings commenced by writ of summons shall be accompanied by:

(a) statement of claim;

(b) list of witnesses to be called at the trial;

(c) written statements on oath of the witnesses and

(d) copies of every document to be relied on at the trial.

(2) Where a plaintiff fails to comply with Rules 2(1) above, his originating process shall not be accepted for filing by the Registry.

Writ of summons is very appropriate in land matters , contract , negligence cases etc.

1. **Originating Summons**

Originating Summons are generally used for commencing non-contentious matters, particularly where the action involves an issue of construction of any written law or any instrument made under any written law or of any deed, will, contract or other document or some other question of law.

(1) An originating summons shall be in the Forms 3, 4, or 5 to these rules, with such variations as circumstances may require. It shall be prepared by the applicant or his Legal Practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by;

(a) an affidavit setting out the facts relied upon;

(b) all the exhibits to be relied upon;

(c) a written address in support of the application.

Order 3 Rule 5 - Any person claiming to be interested under a Deed, Will, Enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

3. Originating Motion or Application

Originating motion or application is used only to commence civil litigation only where the rules or any other law specifically states that the civil litigation can only be commenced by origination motion or applications. The Fundamental Human Rights (Enforcement Procedure) Rules provide that civil litigation for enforcement of fundamental human rights must be commenced by originating motion or summons.

Depending on the type of action and rules of court, parties in a civil litigation are variously referred to as Plaintiff/Defendant, Claimant\Defendant, Claimant\Respondent and Petitioner/Respondent.

4. Petitions

Civil litigation is also commenced by petition where the rules of court or any written law so provides. Examples of civil litigation commenced by petition are winding up of companies under Companies and Allied matters Act (CAMA), electoral matters, and matrimonial proceedings.

**OUTCOME OF CIVIL LITIGATION**

Civil litigation is a judicial process which eventually results in certain outcomes upon conclusion in the form of ruling or judgment. This outcome translates to benefit and consequence for parties. In other words, no matter the type of action, whether in contract, tort or enforcement of fundamental rights, the process of civil litigation definitely results in victory and loss for either party at the end of it all. This type of outcome which distinguishes civil litigation is the available remedy in favour of the successful party and against the losing party.

The remedy includes:

* 1. Damages: This is essentially the monetary value claimed by or ordered to be paid to a person as compensation for injury or loss suffered. In any civil litigation the remedy of damages is what the court usually awards to the successful party as compensation for personal injury such as injury to person or property and economic loss.

Damages may be in the form of compensatory damages which aim to compensate the victim of a tort for injury suffered or victim of a breach of contract. It may also be to compensate victim of fundamental rights violation. The purpose of compensatory damages is an attempt at putting the victim in the position he would have been had the tort or breach or violation not occurred. Damages may also be exemplary or punitive in which case it is not intended to compensate the victim but to punish the defendant and deter him from similar conduct in the future .

* 1. Injunctive Reliefs: An injunction is an order or decree by which one party to an action is required to do or refrain from doing a particular thing. Accordingly, an injunction may be restrictive or prohibitive in which it aims to prevent anyconduct whether in tort or contract that may potentially cause the other party personal or economic loss. Injunction may also be mandatory where it orders an affirmative act or mandates a specified course of conduct usually in favour of the other party.
  2. Declaratory Order: Civil litigation may also end in a declaratory judgment. A declaratory judgment is a judgment of court that merely declares the right of the parties in a civil litigation without making any order in favour or against either parties.