

POWERPOINTS

ON

civil litigation

NIGERIAN LAW SCHOOL

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(WEEK 3)
GENERAL OVERVIEW OF CIVIL LITIGATION
INTRODUCTION

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. In consonance with the above concept, **Section 6(6)(b) CFRN 1999** provides thus: “the judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

SCOPE OF CIVIL LITIGATION

The initiations of cases at first instance to conduct of appeals in civil matters are all within the scope of civil litigation. A person proposing to commence an action will have to consider amongst other things, the appropriate court to go, which raises questions such as the hierarchy of courts and their corresponding jurisdiction. Civil litigation also covers issues such as the appropriate party to sue, service of court process, modes of commencement of action; pleadings; interlocutory applications; third party proceedings and inter pleader proceedings; pre-trial issues; summary judgment procedure; trial, evidence and examination of witnesses; closing address and judgment; enforcement of judgment and application pending appeal; and appeals.

Civil litigation constitutes adjectival law in contradistinction to substantive law. The former is the machinery by which the latter is applied in practice. While substantive law defines the legal rights, duties and liabilities of parties to a suit, adjective law is concerned with the procedure followed at the trial of the suit and the proof of facts to which the principles of substantive law are applied in the determination of dispute between parties. In addition to the general rules that ordinarily apply to most proceedings, there are special rules governing certain specific type of civil proceedings. Thus, **Matrimonial Cause Rules 1983** govern proceedings under the **Matrimonial Causes Act 1970** and the **Companies Winding Up Rules** apply in proceedings for winding up of companies under the **Companies and Allied Matters Act 1990**.

SOURCES OF CIVIL LITIGATION

1. Constitution of the Federal Republic of Nigeria

The function of the constitution as it relates to it being a source of civil litigation can be divided into the following:

1. **Creation of Courts - Section 230, 237, 249, and 270 of the CFRN 1999** create the Supreme Court, Court of Appeal, Federal High Court and State High Court respectively.
2. **Power to the Courts** - The following sections of the Constitution give power to the courts in terms of jurisdiction: **Section 232 and 233** (Supreme Court); **Section 239-246** (Court of Appeal); **Section 251** (Federal High Court); and **Section 272** (State High Court).
3. **Authority to Make Rules** - The Constitution prescribes the authority to make rules. For instance, Section 236 of the CFRN confers power on the CJN to make rules regulating the practice and procedure in the Supreme Court.
4. **Rules on Civil Litigation** - The constitution also has rule on civil litigation. For instance, Section 36 of the CFRN on fair hearing and **Section 233 of the CFRN** on appeal to the Supreme Court.

5. Enabling Law for Some of the Procedural Rules of Court: The Fundamental Right Enforcement Procedure Rules 2009 made by the CJN pursuant to **Section 46 (3) of the CFRN 1999**; the Court of Appeal Rules 2011 made by the President of the Court pursuant to Section 236 of the CFRN 1999 are procedural rules of court that are enabled by the Constitution.

II. Statutes Creating Courts

Rules of court are also made pursuant to statutes creating the courts. For instance, Section 8 (2) of the Court of Appeal Act empowers the President of the Court to make rules for the Court. Sometimes, such statutes contain provisions on practice and procedure in the court e.g. Section 7 of the Supreme Court Act provides for filing of notice of appeal in civil matter within 14 days of delivery of interlocutory judgment and 3 months of delivery of final decision; and Section 5 and 56 of the High Court of Lagos State provides for transfer of cases to Magistrates and from one Judge to another respectively. As between the statute creating courts and the constitution, the constitution is superior.

III. Rules of Courts A.

Concept 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

B. Objectives of Rules of Court

1. **Uniformity and Stability of Practice and Procedure:** rules of court help to maintain uniformity in the practice and procedure of courts. In this way, the courts also ensure the stability of their judicial decisions.
2. **Ease and Effectiveness of Co-ordination:** the fore-knowledge of the documents to file and procedure to be adopted as specified in the rules will assist the parties, their counsel and the courts to effectively co-ordinate their activities.
3. **Speedy Trial and Disposal of Cases:** rules of court assist the courts to dispose cases speedily, because the things to be done and how they are to be done are clearly stipulated and well known to both counsel and the court.
4. **Rules Based Precedents:** rules of court also create precedents of standard procedure, giving guideline on what must be done, how it must be done, and the time frame for doing same in the course of the proceedings. For example, precedent samples of most Civil Forms are provided as Appendices to the Rules.
5. **Consistency:** rules of court stipulate what must be done in each situation, thereby ensuring consistency of practice among co-ordinate courts in cases of similar circumstances.

C. Courts Rules Applicable And Its Sources

	Court	Applicable Rules	Source
1.	Supreme court	Supreme court Rule 1985	Section 236 CFRN 1999
2.	Court of Appeal	Court of Appeal	Section 248CFRN

		Rules 2011	1999
3.	Federal High Court	Federal High Court Rules	Section 254 CFRN 1999
4.	National Industry Court	National court	Section 22 NIC Act
5.	High Court of the FCT	High Court of FCT(Civil Procedure) Rules 2018	Section 259 CFRN 1999
6.	Sharia Court of Appeal of the FCT	Sharia Court of Appeal Rules of the 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	Rules of the Various High Courts of the states (Plateau State High Court (Civil procedure) Rule	Section 274 CFRN 1999
9.	Sharia Court States	Sharia Court of Appeal Rules of the States	Section 279 CFRN 1999
10.	Customary Court of Appeal of States	Customary Court of Appeal of States	Section CFRN 1999
11.	Magistrate/District Court	Magistrate Court Rules/District Court Rules	Magistrate Court Law/District Court Law

D.Resort to English Rules

Resort to English rules will only be made if an enabling law or the Rules of Court so provides. In most recent situations, the Rules of Court provide that “where a matter arises in respect of which no adequate provisions are made in the Rules, the Court shall adopt such procedure as will in its view do substantial justice between the parties concerned. See **Order 1 Rule 1 (3) High Court of Lagos State (Civil Procedure) Rules 2012**. Thus, in attaining this substantial justice, the court can resort to any other rule or procedure elsewhere including English rules.

IV. Special Statutes on Procedure (Civil) Aside rules of court, there are statutes which have provisions on civil litigation. These statutes can cover an aspect of civil litigation e.g. Admiralty. These special statutes and the procedure they regulate are:

1. **The Sheriffs and Civil Process Act/Law and the Judgment (Enforcement) Rules:** This is an Act of the National Assembly by virtue of the fact that the subject matter of the Act is found in item 57 of the exclusive legislative list, thus applicable in the whole federation. Hence, any law of a state in that respect is only applicable to Magistrate (South), District (North), Customary and Sharia Courts. This laws regulates the enforcement of judgment.

2. **Foreign Judgments (Reciprocal Enforcement) Act 1961:** It gives procedure on how a foreign judgment is to be enforced.

3. **Companies and Allied Matters Act 1990:** Under CAMA, there are the Companies Winding up Rules 2004 and Companies Proceedings Rules 1992. There are rules on civil litigation but apply only to companies or entities under CAMA. These rules regulates legal proceedings arising from administration of companies.

4. **Company Income Tax Act:** Under it, the Federal High Court (Tax Appeals) Rule 1992 was enacted. It regulates appeals from the Tax Appeal Commissioners to the Federal High Court.

5. **Admiralty Jurisdiction Act 1991:** Under it, the Admiralty Jurisdiction Procedure Rules was made. Covers matters concerning admiralty.

6. **Matrimonial Causes Act and Matrimonial Causes Rules:** these are all on practice and procedure for matrimonial causes.

7. **Fundamental Rights Enforcement Procedure Rules 2009:** regulates the enforcement of fundamental rights under Chapter IV CFRN 1999.

8. **Electoral Act; Election Tribunal and Court Practice Direction 2011:** regulates election petitions.

V. Practice Direction

These are rules and guidelines given by the necessary or appropriate authority when a lacuna exists in procedure. In the case of **University of Lagos v Agiro**, Per Bello JSC defined practice direction as a direction given by the appropriate authority (usually with the same authority that makes the rules) stating the way and manner a particular rule of court should be compiled with, served or obeyed. To this extent it is a source of civil procedure. Examples are:

1. **Multi-Door Court:** A multi-door court rules is a practice direction.

2. **Election Petition:** In election petitions, the 1st schedule to the Electoral Act had nothing like front loading but a practice direction was issued to that effect.

3. **National Industrial Court:** In the National Industrial Court, the president introduced front loading based on practice direction. Whenever the rules may be short or inadequate the appropriate authority can quickly issue guideline. It is pertinent to note that a practice direction is not expected to depart from or be inconsistent with the rules of court, because it is not an enactment therefore has no force of law.

VI. Decisions of Courts on Procedure

There are some rules of procedure that are derived from decision of courts. For instance, the rules relating to grant of injunctions were developed by the court through its decision. Also, the rule that require addressing the court before ordering a non-suit. For instance, where there are two motions before the court of which one will render the suit competent or preserve the suit and the other would strike it out, the rule is that the court would first hear the motion that would make the suit competent before the other. The question has been asked as to the relevance of English rules in civil litigation. **Section 26 of the Lagos High Court Act**, the position then was that when there is a lacuna, the English rules should be referred to. However, the position now is that where there is a lacuna, the court would take steps to do substantial justice. In this like, the court shall decide to go to England (English rules) when substantial justice will be done. Note that the High Court of Lagos (Civil Procedure) Rules 2012, the **High Court of FCT, Abuja (Civil Procedure) Rules 2018** would principally be referred to.

ALTERNATIVE DISPUTE RESOLUTION CONCEPT ADR

Relate to the alternative methods of dispute resolution that is aside litigation. In other words, should a potential litigant not willing to go to court, which other method can be used to resolve the dispute.

METHODS OF ADR

The following are the methods available.

- 1. Negotiation:** the process of achieving agreement through discussion.
- 2. Mediation:** this involves a third party, neutral facilitator who assists adverse parties in conducting effective communication and negotiation in order to find an appropriate resolution to resolve the dispute and result in settlement.
- 3. Conciliation:** this involves a neutral third party listening to the argument presented by both opposing parties and rendering a non-binding suggestion of how to resolve the dispute.
- 4. Arbitration:** this is a procedure where disputes may be resolved out of court using a neutral third party (arbitrator) or parties (arbitration panel). The process is similar to court and the arbitration uses the same rules of procedure and evidence although less formal and more quickly.
- 5. Hybrid Processes:** The notable hybrid ADR processes are ARB-MED, MED-ARB, NEG-MED, and CON-ARB. The fact that the parties have resorted to litigation or any of the ADR processes does not preclude them from adopting other ADR processes to resolve the dispute. The hybrid process allows the parties to commence the settlement of their dispute with one ADR process, then subsequently have recourse to another method in the course of the settlement of the dispute. The major advantage of the hybrid process is that it allows the parties the time to explore an ADR process to settle their dispute until they discover that a particular problem requires some other ADR process. Parties are therefore not restricted to one ADR process at a time in order to settle their dispute.
- 6. Private Judging:** parties hire a private judge.
- 7. Early Neutral Evaluation:** involving third party (a lawyer or a retired judge experienced in the area of dispute) who would evaluate the dispute, evaluate the relative strengths and weaknesses of each party's case, the probable outcome of litigation and advises the parties. His opinion is not binding, but it may lead to an amicable resolution of the dispute. All documents, records and statements made in the process are confidential and cannot be admissible as evidence.
- 8. Mini-Trial:** just like court trial in absence of live evidence
- 9. Multi-Door Court House:** this is not an ADR mechanism but a place or forum where ADR mechanisms can be exploited. The Lagos State High Court and High Court of FCT now have a multi-door court house. In Lagos, it is statutory. Approaching the multi-door court house could be court connected like in Lagos state or independent court. There are also Citizens' Mediation Centers as in tenancy cases.

ADVANTAGES OF ADR OVER LITIGATION

- 1. Cheaper than Litigation:** In short term, ADR can be more expensive than litigation but in long term it is cheaper than litigation. In ADR, all the expenses are borne by the parties while in litigation; some of the expenses are not borne by the parties.
- 2. Faster than Litigation:** In litigation, there is competition but in ADR, the parties' case is likely to be the only one. Thus, ADR takes less time than litigation.
- 3. Preservation of Relationship between the Parties:** Most ADR has a win-win situation on both sides, although arbitration is now similar to litigation as it is governed by stringent rules where there is a winner and loser. In litigation, it is strictly a win-lose situation but, ADR preserves the pre-dispute relationship between the parties. Again, most parties to litigation do not return as

friends even in matrimonial proceedings. And in commercial area of law, ADR is most relevant as there might still be need to continue business relationship.

4. **Privacy of the Parties:** ADR helps in preserving the privacy of the parties. In litigation, the process must be held in public except under certain conditions thus in private.
5. **Less Formal than Litigation:** The court room where litigation is carried out is usually tense. For the lawyers, it is difficult, there are a lot of rules and procedures which must be followed and for the layman, it is extremely difficult. In ADR session, it is more of business meeting where coffee can even be served. Hence the layman is likely to prefer such environment.
6. **Determining the Coram:** The parties in ADR determine the mediator or arbitrator or conciliator but in litigation, the parties cannot determine who will be the judge.
7. **Involvement of Parties:** ADR processes are parties driven. Parties can determine the time, venue and place in the ADR process. In litigation, parties are not involved. It is controlled by the court.

DISADVANTAGES OF ADR

1. **Exposure to Hostility:** In arbitration, the arbitrator is not protected against hostility while in litigation; the judge can give judgment without fear or favor.
2. **Impediment to Development of Case Law:** ADR hinders the development of case law. This is however seen as a positive limitation and not a negative one as case law is not an end in itself, but a means to an end.
3. **Lack of Binding Force:** ADR processes usually lack binding force except arbitration and conciliation as the Arbitration and Conciliation Act provides for its bindingness. However, for the others that have no binding force, the parties can and usually make an effort to reduce the decision reached in the ADR process into a binding agreement.
4. **Expensive in the Short Run:** ADR is more expensive in the short run.
5. **Difficulty in Finding Qualified Personnel:** it is more difficult to find qualified personnel to use in ADR.

CASES WHERE ADR IS NOT USEFUL

1. **Criminal Cases:** In criminal cases generally, ADR is not used but there are exceptions. For instance, plea bargaining in its effect involve some ADR issues as it is give and take position; negotiation of plea of guilty.
2. **Election Petitions:** Election petitions, being matters of public policy cannot be resolved through ADR.
3. **Matrimonial Causes:** In matrimonial causes, ADR can only be used for certain ancillary matters. But when it comes to serious matters in matrimonial causes like dissolution of marriage, nullity of void marriage, judicial separation and restitution of conjugal rights, ADR cannot be used.
4. **Certain Matters That Require Evidence to Be Proved:** For instance, a declaratory relief being sought must be proved by evidence.
5. **Dispute Relating to Binding Interpretations of Law, Statute or Document:** The court is the only institution that can do so.
6. **Cases of Urgency:** In cases of immediate help like seeking an injunction, ADR will not be necessary.

COURTS WITH CIVIL JURISDICTION

CONCEPT OF JURISDICTION

Jurisdiction simply refers to the power of the court to decide a dispute between parties. In the case of **Odufin v Agu**¹ the Supreme Court held that, jurisdiction is the authority by which the courts and judicial officers take cognizance and decide cases. It exists when courts take cognizance of class of cases involved, proper parties are present and points to be decided are within the powers of the court. Every court is established by some laws and it is usually the law establishing the court that also defines the jurisdiction of the court. In **Madukolu & Ors v Nkemdilim**, the court stated three conditions that must be in existence before the court can be said to have jurisdiction. These are:

1. There must be constitution as to qualification and numbers of members of the bench and no member is disqualified for one reason or another.
2. Subject matter of the dispute must be within the jurisdiction of the court and no feature in the case which prevents the court from exercising its jurisdiction.
3. The case must have been brought to court in accordance with due process after satisfaction of relevant provisions on condition precedents. The types of jurisdiction that exist are: original, appellate, supervisory, exclusive, limited, unlimited, procedural, substantive jurisdiction, etc. There is a distinction between procedural and substantive jurisdiction. Substantive jurisdiction is the jurisdiction that relates to the subject matter of the dispute. This kind of jurisdiction can be raised at anytime even at the Supreme Court for the first time. It can also be raised suo motu by the court. Procedural jurisdiction relates to matters on pre-action notice, and it must be raised timeously. If it is not so done, then such party would be deemed to have waived it. Jurisdiction may be by reference to the subject matter; the financial limit in such matter; the constitution or composition of the court; or the geographical area of operation of the court.

In a note shell, civil jurisdiction is the adjudicatory powers exercisable by the courts over civil matters. The regular courts with civil jurisdiction in Nigeria are: the Supreme Court, Court of Appeal, Federal High Court, High Court of the FCT, State High Court, Sharia Court of Appeal 1 (1992) 3 NWLR [Pt 229] 350 of the FCT, Sharia Court of Appeal of the State, Customary Court of Appeal of the FCT, Customary Court of Appeal of the State, National Industrial Court, Magistrate Court, District Court, Area/Sharia Courts, and Customary Courts. There are other specialized courts or tribunals that exercise civil jurisdiction such as the Election Tribunals (Presidential Election Tribunal, National Assembly Election Tribunal, Governorship and Legislative Houses Election Tribunal, and Local Government Election Tribunal); Security and Exchange Tribunal, Code of Conduct Tribunal; etc.

SUPREME COURT

I. Establishment and Composition

The Supreme Court is established by **Section 230 (1)** of the **CFRN 1999**. The Supreme Court is composed of the CJN and other Justices not more than 21 as may be prescribed by an Act of the National Assembly. See **Section 230 (2) of the CFRN 1999**.

II. Appointment and Removal

A. Appointment: The CJN and other Justices are appointed by the President on recommendation of NJC subject to confirmation of the Senate (**Section 231 (1) and (2) of the CFRN 1999**).

B. Qualification: A person is only qualified for appointment into the office of the CJN or a Justice of the SC if he is a legal practitioner with 15 years' post-call experience. See **Section 231 (3) of the CFRN 1999**. Amongst the Justices there must be persons learned in Islamic personal

law and customary law. In practice, only Justices of the Court of Appeal are appointed to serve as Justices of the SC paying regard to their seniority and ethnic representation.

C. Vacancy: In the event of vacancy in the office of the CJN, the President is to appoint the next most senior Justice of the Court to assume those functions for a period of 3 months until a new CJN is appointed. Except on the recommendation of the NJC, the President cannot re-appoint a person whose appointment has lapsed. See **Section 231 (4) and (5) of the CFRN 1999**.

D. Removal: Section 292(1) (a) (i) of the CFRN 1999 provides that the CJN can be removed by the President acting on address supported by 2/3 majority of the Senate for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct.

The question then is, does the National Judicial Council not have any role to play based on the express provision of Section 292. The Supreme Court in **Elelu Habeeb v Attorney-General of Kwara State** stated that other statutes and provision of the constitution should be read along **Section 292 of the CFRN**. It is by reading these other statutes that the function of the NJC which actually recommend removal to the president would be found. In effect, the proper interpretation of Section 292 cannot be done in isolation. Section 292 (1) (b) of the CFRN 1999 further provides that in the case of other Justices of the court, the removal can be made by the President of the FRN acting on recommendation of the NJC that the Justice be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

The Supreme Court has both original and appellate jurisdiction in civil litigation.

A. Original Jurisdiction: Section 232 (1) of the CFRN 1999 gives the Supreme Court original jurisdiction in disputes between:

1. Federal and State Government, and
2. States Government.

In the case of **AG Federation v AG Imo State**, the court held that the original jurisdiction of the Supreme Court only applies to dispute between states in their corporate and personal capacity. Therefore, a state cannot under this heading litigate on behalf of its citizens against another state in any dispute where benefit will go to the individual and not the state. **Section 232 (2) of the CFRN 1999** empowers the National Assembly to confer additional original jurisdiction in respect of civil matters on the Supreme Court. In line with this, the National Assembly enacted the Supreme Court (Additional Original Jurisdiction) Act 2002.

These additional original jurisdictions are as stated under Section 1 (1) (a)-(c) viz:

1. In dispute between the National Assembly and the President.
2. In dispute between the National Assembly and State Government/State of the Federation.
3. In dispute between the National Assembly and State House of Assembly. Hence the Supreme Court now has original jurisdiction in five aspects. The Schedule to Section 2 of the Act states that both the National Assembly (consisting of Senate and House of Representative) must have passed a resolution supported by a simple majority; and the State House of Assembly must have passed a resolution supported by a simple majority before any action is instituted on their behalf pursuant to the Act. The nominal parties as found in Section 3 are the National Assembly, and for the State House of Assembly is the speaker of the State House of Assembly. Generally, nominal parties for the federation and the states are AttorneyGeneral of the federation and Attorney-General of the state respectively.

- B. **Appellate Jurisdiction: Section 233 of the CFRN 1999** empowered the SC with exclusive appellate jurisdiction to hear and determine appeals from the CA. The appeal may either lie to the SC as of right or with leave of the SC or the CA. The right of appeal shall be exercised at the instance of a party to the proceedings or with leave of the CA or the SC by any other interested party. Appeal as of right shall lie to the SC from the CA in the following civil cases:
1. Decisions in any civil proceedings in which the ground of appeal involves –
 - (a) Questions of law alone (applicable in interlocutory decisions)
 - (b) Interpretation or application of the Constitution.
 - (c) Provisions of Chapter IV of the Constitution.
 2. Decisions on any question whether –
 - (a) Any person has been validly elected into the office of the President, Vice-President, Governor or Deputy Governor of a state under the Constitution;
 - (b) The term of office of the President, Vice-President, Governor or Deputy Governor of a state has ceased; and
 - (c) The office of the President, Vice-President, Governor or Deputy Governor of a state has become vacant.
 3. Such other civil matters as may be prescribed by an Act of the National Assembly.

IV. Constitution

Section 234 of the CFRN 1999 provides that at least 5 Justices are required to seat on a particular matter. However, on the following, it must be 7 justices - exercising original jurisdiction, interpretation or application of the constitution, contravention of Chapter IV - fundamental rights. This is usually referred to as “full court”.

V. Finality in Decisions

Section 235 of the CFRN 1999 provides that the decisions of the SC is final, but without prejudice to the powers of the President or of the Governor of a State pertaining to prerogative of mercy.

VI. Practice and Procedure

Section 236 of the CFRN1999 empowered the CJN to make rules for regulating the practice and procedure of the SC, subject to the provisions of any Act of the NA.

COURT OF APPEAL

I. Establishment and Composition

Section 237 (1) of the CFRN1999 creates the Court of Appeal. The Court is composed of the President plus not less than 49 Justices, which not less than 3 shall be learned in Islamic personal law and customary law respectively. However, in practice, the number of Justices of the Court has been increased to 71 by the **Court of Appeal Act**.

II. Appointment and Removal

A. Appointment: The President and other Justices of the Court are appointed by the President of the FRN on recommendation of the NJC subject to confirmation of the Senate, only in the case of the President. (**Section 238 (1) and (2) of the CFRN 1999**)

B. Qualification: A person is only qualified for appointment into the office of the President or a Justice of the CA if he is a legal practitioner with 12 years’ post-call experience. See **Section 238 (3) of the CFRN 1999**. Amongst the Justices there must be persons learned in Islamic personal law and customary law. In practice, only Judges of the HC are appointed to serve as Justices of the CA.

C. Vacancy: In the event of vacancy in the office of the President, the President of the FRN is to appoint the next most senior Justice of the Court to assume those functions for a period not

exceeding 3 months until a new President is appointed. Except on the recommendation of the NJC, the President cannot re-appoint a person whose appointment has lapsed. See **Section 238 (4) and (5) of the CFRN 1999**.

D. Removal: Section 292(1) (a) of the CFRN 1999 provides that the President of the CA can be removed by the President acting on address supported by 2/3 majority of the Senate for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Justices of the court, the removal can be made by the President of the FRN acting on recommendation of the NJC that the Justice be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

A. Original Jurisdiction: Section 239 (1) of the CFRN 1999 empowered the CA with exclusive original jurisdiction to determine matters touching on questions as to whether –

1. Any person has been validly elected into the office of the President or Vice President under the Constitution;
2. The office of the President or Vice President has become vacant;
3. The term of office of the President or Vice President has ceased; and
4. Any other civil matter as may be prescribed by an Act of the NA.

The matters listed above are touching on matters under the election petitions and as such, the CA is referred to as the “Presidential Election Tribunal”.

B. Appellate Jurisdiction: Section 240 of the CFRN 1999 empowered the CA with exclusive jurisdiction to entertain appeals from the following courts –

1. Federal High Court
2. High Court of the FCT
3. State High Court
4. Sharia Court of Appeal of the FCT
5. Sharia Court of Appeal of a State
6. Customary Court of Appeal of the FCT
7. Customary Court of Appeal of a State
8. National Industrial Court
9. Court Marshal
10. Any other court of law or tribunal as may be set by an Act of the NA e.g. (a) Code of Conduct Tribunal
- (b) National and State House of Assembly Election Tribunals
- (c) Governorship Election Tribunal, etc.

Such appeals may lie to the CA from the courts as of right or with leave of the CA or of that court.

C. Appeals from the FHC or SHC

1. Appeals as of Right: Section 241 of the CFRN 1999 provides that appeals shall lie as of right to the CA from the FHC or SHC in civil proceedings where the grounds of appeal involves –

- (a) Decisions of the FHC or SHC sitting at first instance
- (b) Questions of law alone
- (c) Interpretation or application of the Constitution
- (d) Provision of Chapter IV of the Constitution

- (e) Liberty of a person
- (f) Custody of an infant
- (g) Injunction or the appointment of a receiver
- (h) Case of a creditor or the liability of a contributory or other officer under the enactment relating to companies
- (i) Decree nisi (temporary order to nullify a marriage, which becomes absolute after 3 months if the other party fail to appeal)
- (j) Liability in admiralty actions
- (k) Interlocutory appeals touching on questions of law alone
- (l) Any other case as may be prescribed by an Act of the NA or other statutes in force.

2. Appeals with Leave: Section 242 of the CFRN 1999 provides that the grounds of appeal in civil proceedings from the FHC/SHC to the CA may lie with leave of the FHC/SHC, as the case may be, or the CA on interlocutory appeals touching on questions as of –

- (a) Facts;
- (b) Mixed law and facts; or
- (c) Any other civil matter as the NA may include.

3. Absence of Right of Appeal: Section 241 of the CFRN 1999 provides that civil matters that cannot be sustainable on grounds of appeal are –

- (a) When the FHC/SHC grant an unconditional leave to defend an action (undefended list; matters of liquidated money demands)
- (b) Decree nisi that has not become absolute
- (c) Decisions reached by consent of the parties without the leave of the FHC/SHC
- (d) Ex Parte order (application made without notice).

4. Who May Appeal: Section 243 (1) of the CFRN 1999 provides that in civil proceedings, the right of appeal shall be exercised at the instance of a party to the proceedings or with leave of the FHC/SHC or CA, by any other interested party.

D. Appeals from the NIC

1. Appeals as of Right: Section 243 (2) of the CFRN 1999 provides that appeals may lie as of right to the CA from the NIC in respect to issues under **Chapter IV** as it relates to matters upon which the NIC has jurisdiction.

2. Appeal with Leave: Section 243 (3) of the CFRN 1999 provides that an appeal shall only lie from the decisions of the NIC to the CA with leave as may be prescribed by an Act of the NA.

E. Appeals from the SCA: Section 244 of the CFRN 1999 provides that appeals may lie as of right to the CA from the SCA in any civil proceedings on questions involving Islamic personal law, which the SCA is competent to decide. All right of appeal must be exercised in accordance with an Act of the NA, rules of court or practice direction.

F. Appeal from the CCA: Section 245 of the CFRN 1999 provides that appeals may lie as of right to the CA from the CCA in any civil proceedings on questions involving customary law, which the CCA is competent to decide. All right of appeal must be exercised in accordance with an Act of the NA, rules of court or practice direction.

G. Special Tribunal and Other Courts: Section 246 of the CFRN 1999 provides that appeals may lie to the CA as of right from –

- 1. Code of Conduct Tribunal (**5th Schedule**)
- 2. National and State Houses of Assembly Election Tribunals (**6th Schedule**)
- 3. Governorship Election Tribunals (**6th Schedule**) on any question as to whether:

- (a) Any person has been validly elected into the office of a member of the NA or member of a SHA; Governor or Deputy Governor of a State.
- (b) The term of office of any such person has ceased or the seat of any such person has become vacant.

By virtue of the **Second Alteration to the CFRN 1999, in Section 8 (3)** the decisions of the CA in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final.

IV. Constitution

Section 247 of the CFRN 1999 provides that for the purpose of exercising its original or appellate jurisdiction, the court shall be duly constituted by at least 3 Justices. However, where the appeal is from the SCA or CCA, the court shall be duly constituted by at least 3 Justices learned in Islamic personal law or customary law respectively.

V. Practice and Procedure

Section 248 of the CFRN 1999 empowers the President of the CA to make rules for regulating the practice and procedure of the court.

FEDERAL HIGH COURT

I. Establishment and Composition

The FHC was first established as Federal Revenue Court by the **FRC Decree No. 13 of 1973**. It was renamed or re-styled as the Federal High Court in 1979. **Section 249 of the CFRN 1999** currently makes provision for its establishment. There is only one FHC but divided into Divisions for convenience.

II. Appointment and Removal

- A. **Appointment:** The Chief Judge and other Judges of the Court are appointed by the President of the FRN on recommendation of the NJC subject to confirmation of the Senate, only in the case of the President. (**Section 250 (1) and (2) of the CFRN 1999**)
- B. **Qualification:** A person is only qualified for appointment into the office of the CJ or a Judge of the FHC if he is a legal practitioner with 10 years' post-call experience. See **Section 250 (3) of the CFRN 1999**.
- C. **Vacancy:** In the event of vacancy in the office of the CJ, the President of the FRN is to appoint the next most senior Judge of the Court to assume those functions for a period not exceeding 3 months until a substantive CJ is appointed. Except on the recommendation of the NJC, the President cannot re-appoint a person whose appointment has lapse. See **Section 250 (4) and (5) of the CFRN 1999**.
- D. **Removal:** **Section 292(1) (a) (i) of the CFRN 1999** provides that the CJ of the FHC can be removed by the President of the FRN acting on address supported by 2/3 majority of the Senate, for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Judges of the court, the removal can be made by the President of the FRN acting on recommendation of the NJC that the Judge be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

A. **Original Jurisdiction:** **Section 251 of the CFRN 1999** gives the FHC exclusive original jurisdiction in civil causes and matters relating to –

1. Administration and control of the Federal Government or any of its agencies;
2. Arms, Ammunitions and Explosives;
3. Admiralty actions;
4. Aviation and aircraft safety;
5. Banking and financial institutions, provided that it those not apply to disputes arising from transactions between the individual customer and his bank;
6. Bankruptcy and insolvency;
7. Custom, excise and export duties;
8. Copyright, patent design, trade mark and industrial standards;
9. Citizenship, immigration and emigration;
10. Companies and Allied Matters Act;
11. Diplomatic, consular and trade representations;
12. Drugs and poisons;
13. Federal Government revenue;
14. Federal Government taxation;
15. Interpretation of the Constitution as it affects the Federal Government or any of its agency;
16. Injunction granted to the Federal Government or any of its agency;
17. Mines and minerals;
18. Weight and Measures;
19. Other civil jurisdiction as may be prescribed by an Act of the NA.

B. **Concurrent Jurisdiction:** The FHC has concurrent jurisdiction with the SHC in respect of the following matters:

1. **Disputes Arising from a Banker-Customer Relationship** – Disputes arising from the relationship between a banker and its customer may be taken either before the Federal High Court or a State High Court. See Proviso to Section **251(1) (d) CFRN 1999; Federal Mortgage Bank of Nigeria v NDIC**.
2. Reference to Constitutional Questions for Interpretation, Etc. – Inferior courts may refer questions of law either to the Federal High Court or to a State High Court for interpretation or application of the Constitution. See **Section 295(1) CFRN 1999**.
3. Enforcement of Fundamental Rights – The FHC and the HC of a State have concurrent jurisdiction over actions for the enforcement of fundamental rights. See **Section 46(1) and (2) CFRN 1999; Grace Jack v University of Makurdi**.
4. Actions for Damages, Injunctions and Breach of Contract involving the Federal Government or Its Agencies – the proviso under **Section 251 (1) also made it possible** for items under Paragraph (p), (q) and (r) (Administration and control of the Federal Government or its agency; Interpretation of the Constitution as it relates to the FG; and Injunction granted to the FG or any of its agency respectively) of the section relating to action for damages, injunctions and breach of contract to be instituted in a SHC by an individual seeking redress against the Federal Government or any of its agencies. The permissive language of the proviso has accommodated the jurisdiction of the SHC without shutting out the jurisdiction of the FHC. In the case of **Shugaba Darman v Federal Minister of Internal Affairs**, where the Plaintiff alleged before the SHC in Maiduguri that his fundamental right of freedom of movement under **Section 41 of the CFRN 1999** has been infringed upon by the virtue of his deportation from Nigeria to Chad Republic by the Defendant. The court held that the action was properly instituted despite the fact that the Defendant was a FG agent. However, where the matter in respect to Paragraph (p), (q) (r) involves a simple contract, only the High Court of a State has jurisdiction to entertain it. In the

case of **Onuorah v KRPC Ltd**, **5 the Supreme Court** held that where the subject matter is a simple contract, the FHC lacks jurisdiction and the SHC will have jurisdiction. The fact that one of the parties is a Federal Government agency would be irrelevant. The court further held that in determining whether a court has jurisdiction in a matter or not, the Court will examine or consider the claims or reliefs as only the claims or reliefs donate jurisdiction to the court. The court cannot determine its jurisdiction by making reference to the subject matter or parties before it. In a nutshell, only the SHC has jurisdiction to entertain matters arising from simple contract irrespective of the fact that a Federal Government agency is one of the parties.

- C. **Transfer of Cases between FHC and SHC/Magistrate Court:** **Section 22 (2)** of the FHC Act empowers the FHC to transfer to the appropriate High Court of a State or of the FCT, any matter instituted in the FHC in respect of which it has no jurisdiction but which the SHC has jurisdiction. **Section 22 (3)** confers similar powers on the SHC to also transfer to the FHC. However, the SC held the provisions of **Section 22 (3)** to be unconstitutional, null and void in the case of **Aluminum Manufacturing Co (Nig) Ltd v Nigerian Ports Authority**, as the FHC cannot legislate on behalf of the SHC. A SHC can only exercise power to transfer a matter to another court if its own establishment statute clearly empowers it to do so. In the absence of such empowerment by its establishment statute, it can only strike out a matter where it discovers that it lacks jurisdiction. See **Okoye v NCFC Ltd**. In respect to Magistrate Courts, **Section 26 FHC Act** allows a Judge of the FHC to transfer a case to the Magistrate Court if he is of the opinion that the case will be handled expeditiously by the MC. However, this only applies to matters that the FHC share concurrent jurisdiction with the MC and which the MC can try summarily. The rationale for this is that the cause or matters where the FHC is conferred with exclusive jurisdiction under **Section 251 CFRN 1999**, it would lack power to transfer such cause or matter to any Court. Transfer of cases from the MC to the FHC is provided under **Section 27 FHC Act**. However, this provision cannot apply as the same argument made for the transfer of cases from SHC to the FHC is adopted here.
- D. **Appellate Jurisdiction:** the FHC has appellate jurisdiction over civil causes and matters as provided by the FHC Act or by any other Federal enactment. Its appellate jurisdiction includes:
1. Civil and criminal appeals arising from the decisions of Magistrates' Courts (transferred to such court pursuant to the FHC Act);
 2. Decisions of Tax Appeal Commissioners;
 3. Decisions of Immigration and Prison Services Board; and
 4. Decisions of any other body established by or under any other Federal statute or law in respect of matters over which the FHC has jurisdiction. See **Section 28 FHC**.

IV. Constitution

Section 253 of the CFRN 1999 provides that the FHC shall be duly constituted if it consists of at least one Judge of the Court.

V. Practice and Procedure

Section 254 of the CFRN1999 empowers the CJ of the FHC to make rules for regulating the practice and procedure of the court, subject to the provisions of any Act of the NA.

NATIONAL INDUSTRIAL COURT

I. Establishment and Composition

Section 254 (A) (i) of the CFRN (Third Alteration) Act establishes the NIC as a superior court of record with the powers of a High Court. It consists of a President and other number of Judges not less than 12 as may be prescribed by an Act of the NA.

II. Appointment

- A. **Appointment: Section 254 (B) (1) & (2) of the CFRN (Third Alteration) Act** provides that the President and Judges of the NIC are appointed by the President of the FRN on the recommendation of the NJC, subject to the confirmation of the Senate only in the case of the President.
- B. **Qualification:** To be appointed as the President or Judge of the NIC, the person must be a legal practitioner with not less than 10 years post call experience and must have a considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria. A non-law graduate of a recognized university of not less than 10 years standing with considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria may also be appointed as a Judge but not as a President of the Court.
- C. **Vacancy:** In the event of vacancy in the office of the President of the NIC, the President of the FRN shall appoint the next most senior Judge of the Court to assume those functions for a period not exceeding 3 months, until a substantive President is appointed. Except on the recommendation of the NJC, the President of the FRN cannot re-appoint a person whose appointment has lapse.

III. Jurisdiction

- A. **Jurisdiction: Section 254 (C) of the CFRN (Third Alteration) Act** vests the NIC with exclusive jurisdiction in civil cases and matters relating to the following:
 - 1. Labour, including trade unions, industrial relations, environment, conditions of work, health, safety, welfare of labour and incidental matters.
 - 2. Grant of order to restrain a strike, lock-out any industrial action or any conduct contemplating these.
 - 3. Determination of any question as to the interpretation of any collective agreement, arbitral award relating to labour, terms of settlement of labour dispute, trade union constitution and any award or judgment of the court.
 - 4. Any additional jurisdiction as may be conferred on the court by an Act of the NA. The exclusive jurisdiction of this court is inconsistent with the provision of **Section 272 of the CFRN 1999**. Hence, it can at best be a concurrent jurisdiction with the SHC. Also, the court is divided into judicial divisions for the purpose of exercising its jurisdiction.
- B. **Transfer of Cases:** The NIC is empowered to transfer cases from one panel to the other or from the court to the FHC or SHC where it lacks jurisdiction. The FHC and SHC may also transfer matters to the NIC in accordance with the rules of such High Court.

IV. Constitution

Section 21 of the NIC Act, 2006 provides that the court shall be duly constituted if it consists of a single Judge or not more than three Judges as the President of the Court may direct. Also, for the purpose of exercising its jurisdiction, the court may call in the aid of assessors (a person who is qualified and experienced in his field of specialization for not less than 10 years) specially qualified to try and hear the cause or matter wholly or partly with the assistance of such assessors.

V. Practice and Procedure

Section 22 of the NIC Act, 2006 provides that the president of the court is empowered to make rules and regulations to regulate practice and procedure of the court, but subject to any Act of the NA.

HIGH COURT OF THE FCT

I. Establishment and Composition

Section 255 of the CFRN 1999 establishes the HC of the FCT consisting of a CJ and other number of Judges of the court as may be prescribed by an Act of the NA.

II. Appointment and Removal

- A. **Appointment: Section 256 (1) and (2) of the CFRN 1999** provides that the CJ and Judges of the court are appointed by the President of the FRN on the recommendation of the NJC, subject to the confirmation of the Senate, only in the case of the CJ.
- B. **Qualification:** To be appointed as the CJ or Judge of the HC of the FCT, the person must be a legal practitioner with not less than 10 years post call experience. See **Section 256 (3) of the CFRN 1999**.
- C. **Vacancy:** In the event of vacancy in the office of the CJ of the Court, the President of the FRN shall appoint the next most senior Judge of the Court to assume those functions for a period not exceeding 3 months, until a substantive CJ is appointed. Except on the recommendation of the NJC, the President of the FRN cannot re-appoint a person whose appointment has lapse. See **Section 256 (4) and (5) of the CFRN 1999**.
- D. **Removal: Section 292 (1) (a) (i) of the CFRN 1999** provides that the CJ of the HC of the FCT can be removed by the President of the FRN acting on address supported by 2/3 majority of the Senate, for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Judges of the court, the removal can be made by the President of the FRN acting on recommendation of the NJC that the Judge be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

Section 257 of the CFRN 1999 provides that subject to the provisions of Section 251 of the Constitution (Jurisdiction of the FHC) this court has original, appellate and supervisory KILLI NANCWAT – CIVIL LITIGATION (NLSE – 2018/2019) 18 jurisdiction to hear and determine civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.

IV. Constitution Section 258 of the CFRN 1999 provides that the court is duly constituted by at least one Judge of the court.

V. Practice and Procedure Section 259 of the CFRN 1999 provides that the CJ of the court is empowered to make rules and regulations to regulate practice and procedure of the court, but subject to any Act of the NA.

SHARIA COURT OF APPEAL OF THE FCT

I. Establishment and Composition Section 260 of the CFRN 1999 establishes the SCA of the FCT consisting of the Grand Kadi and such number of Kadis as may be prescribed by an Act of the NA. **II. Appointment and Removal**

A. Appointment: Section 261(1) and (2) of the CFRN 1999 provides that the appointment of the Grand Kadi and Kadis of the court is made by the President on the recommendation of the NJC, subject to the confirmation of the Senate in the case of the Grand Kadi only.

B. Qualification: Section 261 (3) of the CFRN 1999 provides that to be qualified to be appointed as the Grand Kadi or Kadi of the Court, the person must:

1. Be a legal practitioner in Nigeria with 10 years' post-call experience and must have obtained a recognized qualification in Islamic law from an institution acceptable to the NJC; or

2. Have attended and obtained a recognized qualification in Islamic law from an institution approved by the NJC for at least 12 years; and either –

(a) Has a considerable experience in the practice of Islamic law; or

(b) Is a distinguished scholar of Islamic law.

C. Vacancy: In the event of vacancy in the office of the Grand Kadi of the Court, the President of the FRN shall appoint the next most senior Kadi of the Court to assume those functions for a period not exceeding 3 months, until a substantive Grand Kadi is appointed. Except on the recommendation of the NJC, the President of the FRN cannot re-appoint a person whose appointment has lapse. See **Section 261 (4) and (5) of the CFRN 1999**.

D. Removal: Section 292 (1) (a) (i) of the CFRN 1999 provides that the Grand Kadi of the SCA can be removed by the President of the FRN acting on address supported by 2/3 majority of the Senate, for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Kadis of the court, the removal can be made by the President of the FRN acting on recommendation of the NJC that the Kadi be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

Section 262 of the CFRN 1999 provides that in addition to such other jurisdiction as may be conferred upon this court by the NA, the court has appellate and supervisory jurisdiction in civil proceedings involving questions of any Islamic personal law. IV. Constitution Section 263 of the CFRN 1999 provides that this court is duly constituted if it consist of at least 3 Kadis of the court. KILLI NANCWAT – CIVIL LITIGATION (NLSE – 2018/2019) 19 V. Practice and Procedure Section 264 of the CFRN 1999 provides that the Grand Kadi of the court is empowered to make rules and regulations to regulate practice and procedure of the court, but subject to any Act of the NA.

CUSTOMARY COURT OF APPEAL OF THE FCT

I. Establishment and Composition

Section 260 of the CFRN 1999 establishes the CCA of the FCT consisting of the President and such number of Judges as may be prescribed by an Act of the NA.

Appointment and Removal

A. Appointment: Section 266 (1) and (2) of the CFRN 1999 provides that the appointment of the President and Judges of the court is made by the President of the FRN on the recommendation of the NJC, subject to the confirmation of the Senate in the case of the President only.

B. Qualification: Section 266 (3) of the CFRN 1999 provides that to be qualified to be appointed as the President or Judge of the Court, the person must either be:

1. A legal practitioner in Nigeria with 10 years' post-call experience and in the opinion of the NJC, he has considerable knowledge and experience in the practice of customary law; or

2. In the opinion of the NJC, he has considerable knowledge and experience in the practice of customary law.

- C. Vacancy:** In the event of vacancy in the office of the President of the Court, the President of the FRN shall appoint the next most senior Judge of the Court to assume those functions for a period not exceeding 3 months, until a substantive President is appointed. Except on the recommendation of the NJC, the President of the FRN cannot re-appoint a person whose appointment has lapse. See **Section 266 (4) and (5) of the CFRN 1999.**
- D. Removal: Section 292 (1) (a) (i) of the CFRN 1999** provides that the President of the CCA can be removed by the President of the FRN acting on address supported by 2/3 majority of the Senate, for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Judges of the court, the removal can be made by the President of the FRN acting on recommendation of the NJC that the Judge be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

II. Jurisdiction

Section 267 of the CFRN 1999 provides that in addition to such other jurisdiction as may be conferred upon this court by the NA, the court has appellate and supervisory jurisdiction in civil proceedings to determine matters arising from any customary law.

III. Constitution

Section 268 of the CFRN 1999 provides that this court is duly constituted if it consist of at least 3 Judges of the court.

IV. Practice and Procedure

Section 269 of the CFRN 1999 provides that the President of the court is empowered to make rules and regulations to regulate practice and procedure of the court, but subject to any Act of the NA.

HIGH COURT OF A STATE

I. Establishment and Composition

Section 270 of the CFRN 1999 establishes a High Court for each State of the Federation consisting of the Chief Judge and such number of Judges as may be prescribed by a Law of the SHA concern.

II. Appointment and Removal

A. Appointment: Section 271 (1) and (2) of the CFRN 1999 provides that the CJ and Judges of the court are appointed by the Governor of the state concern on the recommendation of the NJC, subject to the confirmation of the SHA, only in the case of the CJ.

B. Qualification: To be appointed as the CJ or Judge of the HC of a State, the person must be a legal practitioner with not less than 10 years' post call experience. See **Section 271 (3) of the CFRN 1999.**

C. Vacancy: In the event of vacancy in the office of the CJ of the Court, the Governor of the State concern shall appoint the next most senior Judge of the Court to assume those functions for a period not exceeding 3 months, until a substantive CJ is appointed. Except on the recommendation of the NJC, the Governor of the State concern cannot re-appoint a person whose appointment has lapse. See **Section 271 (4) and (5) of the CFRN 1999.**

D. Removal: Section 292 (1) (a) (ii) of the CFRN 1999 provides that the CJ of the HC of a State can be removed by the Governor of the State concern acting on address supported by 2/3 majority of the SHA, for his inability to discharge the functions of his office or appointment

(whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Judges of the court, the removal can be made by the Governor of the State concern acting on recommendation of the NJC that the Judge be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

Section 272 of the CFRN 1999 provides that subject to the provisions of Section 251 (original jurisdiction of the FHC), the court has original, appellate and supervisory civil jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue. The SHC is the only court under the Constitution with the widest civil jurisdiction.

IV. Constitution

Section 273 of the CFRN 1999 provides that the court is duly constituted by at least one Judge of the court. A state is divided into judicial divisions depending on the volume of cases and geographical size. A judicial division may have more than one High Court; each presided over by a Judge of the High Court.

V. Practice and Procedure

Section 274 of the CFRN 1999 provides that the CJ of the court is empowered to make rules and regulations to regulate practice and procedure of the court, but subject to any Law of the SHA.

SHARIA COURT OF APPEAL OF A STATE

I. Establishment and Composition

Section 275 of the CFRN 1999 establishes the SCA for any State that may require it, consisting of the Grand Kadi and such number of Kadis as may be prescribed by a Law of the SHA concern.

II. Appointment and Removal

A. Appointment: Section 276 (1) and (2) of the CFRN 1999 provides that the appointment of the Grand Kadi and Kadis of the court is made by the President on the recommendation of the NJC, subject to the confirmation of the Senate in the case of the Grand Kadi only.

B. Qualification: Section 276 (3) of the CFRN 1999 provides that to be qualified to be appointed as the Grand Kadi or Kadi of the Court, the person must:

1. Be a legal practitioner in Nigeria with 10 years' post-call experience and must have obtained a recognized qualification in Islamic law from an institution acceptable to the NJC; or
2. Have attended and obtained a recognized qualification in Islamic law from an institution approved by the NJC for at least 10 years; and either – (a) Has a considerable experience in the practice of Islamic law; or (b) Is a distinguished scholar of Islamic law.

C. Vacancy: In the event of vacancy in the office of the Grand Kadi of the Court, the Governor of the State concern shall appoint the next most senior Kadi of the Court to assume those functions for a period not exceeding 3 months, until a substantive Grand Kadi is appointed. Except on the recommendation of the NJC, the Governor of the State concern cannot reappoint a person whose appointment has lapse. See **Section 276 (4) and (5) of the CFRN 1999**.

D. Removal: Section 292 (1) (a) (ii) of the CFRN 1999 provides that the Grand Kadi of the SCA of a State can be removed by the Governor of the State concern acting on address supported by 2/3 majority of the SHA concern, for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or

contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Kadis of the court, the removal can be made by the Governor of the State concern acting on recommendation of the NJC that the Kadi be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

Section 277 of the CFRN 1999 provides that in addition to such other jurisdiction as may be conferred upon this court by the SHA concern, the court has appellate and supervisory jurisdiction in civil proceedings involving questions of any Islamic personal law. The jurisdiction of this court is subject to the existence of a connecting factor linking one of the parties to Islamic law, either by virtue of the nature of the subject matter or the religion of the parties.

IV. Constitution

Section 278 of the CFRN 1999 provides that this court is duly constituted if it consist of at least 3 Kadis of the court.

V. Practice and Procedure

Section 279 of the CFRN 1999 provides that the Grand Kadi of the court is empowered to make rules and regulations to regulate practice and procedure of the court, but subject to any Law of the SHA concern.

CUSTOMARY COURT OF APPEAL OF A STATE

I. Establishment and Composition

Section 280 of the CFRN 1999 establishes the CCA for any State that may desire it, consisting of the President and such number of Judges as may be prescribed by a Law of the SHA.

II. Appointment and Removal

A. Appointment: **Section 281 (1) and (2) of the CFRN 1999** provides that the appointment of the President and Judges of the court is made by the Governor of the State concern on the recommendation of the NJC, subject to the confirmation of the SHA concern in the case of the President only.

B. Qualification: **Section 281 (3) of the CFRN 1999** provides that, to be qualified to be appointed as the President or Judge of the Court, the person must either be:

1. A legal practitioner in Nigeria with 10 years' post-call experience and in the opinion of the NJC, he has considerable knowledge and experience in the practice of customary law; or
2. In the opinion of the NJC, he has considerable knowledge of and experience in the practice of customary law.

C. Vacancy: In the event of vacancy in the office of the President of the Court, the Governor of the State concern shall appoint the next most senior Judge of the Court to assume those functions for a period not exceeding 3 months, until a substantive President is appointed. Except on the recommendation of the NJC, the Governor of the State concern cannot reappoint a person whose appointment has lapse. See **Section 281 (4) and (5) of the CFRN 1999**.

D. Removal: **Section 292 (1) (a) (ii) of the CFRN 1999** provides that the President of the CCA of a State can be removed by the Governor of the State concern acting on address supported by 2/3 majority of the SHA concern, for his inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or of body) or for misconduct or contravention of the Code of Conduct. **Section 292 (1) (b) of the CFRN 1999** further provides that in the case of other Judges of the court, the removal can be made by the Governor of the State concern acting on recommendation of the NJC that the Judge be so removed for his

inability to discharge the functions of his office or appointment (whether arising from infirmity of the mind or body) or for misconduct or contravention of the Code of Conduct.

III. Jurisdiction

Section 282 of the CFRN 1999 provides that in addition to such other jurisdiction as may be conferred upon this court by the SHA, the court has appellate and supervisory jurisdiction in civil proceedings to determine matters arising from any customary law.

IV. Constitution

Section 283 of the CFRN 1999 provides that this court is duly constituted if it consist of at least 3 Judges of the court.

V. Practice and Procedure

Section 284 of the CFRN 1999 provides that the President of the court is empowered to make rules and regulations to regulate practice and procedure of the court, but subject to any Law of the SHA concern.

MAGISTRATE COURTS

I. Establishment

Section 6 (2) (4) and (5) (k) of the CFRN 1999 indirectly established the Magistrate Court as an inferior court of record by empowering the NA and SHA to create such other courts that are subject to the powers of the SHC. Every state of the federation has its own law establishing and providing for MCs. Apart from minor variations relating to the grades of the court and their financial limits, the subject matter in respect of which MCs are vested with jurisdiction are more or less the same in all the states of the federation. However, for the purpose of convenience, the discussion shall be limited to MC of Lagos State. The **Magistrate Courts Law of Lagos State** establishes a MC for the State. Under Section 3, the state is divided into magisterial districts by the CJ of the state and a MC is established for each district.

II. Appointment

A. Appointment: Section 7 of the MCL of Lagos State provides for the appointment by notice in the state gazette, of such number of Chief Magistrates, Senior Magistrates, and Magistrates as may be specified in the notice. The law also permits the appointment of acting Magistrate.

B. Grades of Magistrates: Currently, there are 6 grades of Magistrates in Lagos State namely:

1. Chief Magistrate Grade I
2. Chief Magistrate Grade II
3. Senior Magistrate Grade I
4. Senior Magistrate Grade II
5. Magistrate Grade I
6. Magistrate Grade II

III. Jurisdiction

A. Entertainment of Matters: Section 8 of the MCL of Lagos State empowers the different magisterial districts with jurisdiction throughout the state i.e. Magistrate in one district can entertain a matter arising from or in another district or a matter involving parties that are outside such a district provided they are within the state.

B. Civil Jurisdiction: The court has civil jurisdiction via **Section 17 of the MCL of Lagos State** entertain the following matters –

1. All personal actions whether arising from contract or tort or form both;
2. All actions between landlord and tenant for possession of any land or houses claimed under an agreement or refused to be delivered up;

3. All actions for recovery of any penalty, rates, expenses, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force;
4. Actions to grant injunction or order to stay waste or alienation or for the detention and preservation of property or to restrain breach of contract or torts;
5. To appoint guardian ad litem and to make orders, issue and give directions relating to their appointment; and
6. To handle appeals from customary court

C. Financial Limitation: All grades of Magistrates can entertain the foregoing matters subject to the following financial limits –

1. Chief Magistrate Grades I and II (N 1,000,000)
2. Senior Magistrate Grades I and II (N 750,000)
3. Magistrate Grades I and II (N 500,000)

D. Additional Jurisdiction: Section 19 of the MCL of Lagos State empowers the AG of the State on the recommendation of the CJ to increase by notice in gazette, jurisdiction of Magistrate in civil cases.

E. Limitation of Jurisdiction: The jurisdiction of the Magistrate is expressly excluded with respect to the following cases: 1. Title to land or to any interest in land; and 2. Issue as to the validity of any devise, bequest or limitation under any will or settlement.

F. Abandonment of Excess: The law allows a plaintiff who has a cause of action for an amount exceeding N 1,000,000 to abandon the excess in order to bring the matter within the jurisdiction of the court.

DISTRICT COURT

I. Establishment

Magistrate courts exercising civil jurisdiction in Northern States are known as District Courts. The various states in the North have their laws establishing and defining the jurisdiction of District Courts which are more or less the same except for a few variations in the subject matter of jurisdiction and the financial limits of the District Court Judges.

II. Grades of District Judges

In the FCT Abuja for instance, **Section 17 of the District Courts Act of the FCT Abuja 1990** makes provision for the 6 grades of District Judges namely:

1. Chief District Judge I
2. Chief District Judge II
3. Senior District Judge I
4. Senior District Judge II
5. District Judge I
6. District Judge II

III. Jurisdiction

A. Civil Jurisdiction: All grades of District Judges are vested with jurisdiction in respect of the following matters –

1. All personal suits arising from contract or tort or both;
2. All personal suits between landlord and tenant for possession of premises;
3. All actions for recovery of any penalty, rates, expenses, contribution or other like demand which is recoverable by virtue of any written law;
4. All civil proceedings in respect of which jurisdiction has been conferred upon a district court by the Land Tenure Law and the Land Use Decree; and

5. Any civil proceedings in respect of which by virtue of any other written law may be instituted in a District Court.

B. Financial Limitation: The financial limits of the various grades of DC Judges in respect of the above matters are –

1. Chief District Judge I (N250, 000)
2. Chief District Judge II (N200, 000)
3. Senior District Judge I (N150, 000)
4. Senior District Judge II (N 100, 000)
5. District Judge I (N50, 000)
6. District Judge II (N25, 000)

C. Limitation of Jurisdiction: The jurisdiction of the DCs is excluded in the following matters:

1. Issue as to title to land or to any interest in land;
2. Issue as to the validity of any devise, bequest or devolution under any will or settlement; and
3. Matters that are subject to the jurisdiction of an Area Court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death.

AREA COURT

I. Establishment

Area courts exist in Northern States of Nigeria including the FCT, Abuja. They are regulated by laws of the various states that have them and the laws are more or less similar. In Kano State for instance, Area Courts are regulated by **the Area Court Law of Kano State**.

II. Grades of Area Court Judges

There are three grades of AC Judges under the Area Court Law of Kano State namely:

1. Upper Area Court
2. Area Court Grade I
3. Area Court Grade II

III. Jurisdiction

A. Civil Jurisdiction: The jurisdiction of the Area Court in Kano State are-

1. All questions of Islamic personal law;
2. Matrimonial causes and matters between persons married under customary law;
3. Suit relating to custody of children under customary law;
4. Civil actions involving debt demand and damages;
5. Matters relating to succession to property and the administration of estate under customary law; and
6. Matters concerning ownership, possession or occupation of land subject to customary right of occupancy.

B. Persons with Jurisdiction: Only persons who are subject to the jurisdiction of the court can institute an action in that court. These are –

1. Any person whose parents were members of any tribe or tribes indigenous to some part of Africa and the descendants of any such person;
2. Any person of whose parents was a member of such tribe; and
3. Any person who consents to the exercise of the jurisdiction of the court.

C. Area and Extent of Jurisdiction: The law empowers the CJ of the state to make warrant establishing an AC and stating the territorial jurisdiction of the court and the jurisdiction to be exercised as contained in the law.

IV. Appeal

Appeals lie from AC Grades I and II to Upper AC in all matters except cases regarding Islamic law which lie to the Sharia Court of Appeal.

SHARIA COURT

I. Establishment

Sharia Court is a feature of the judicial system of the Northern States. Some states in the North have established Sharia Courts as a replacement for Area Courts on matters of Islamic personal law. For instance, in Zamfara State, the Sharia Court system is regulated by the **Sharia Courts Law No. 5 of Zamfara State 1999**.

II. Grades of Sharia Court

Under the **Sharia Courts Law No. 5 of Zamfara State 1999**, there are three grades of Sharia Courts namely:

1. Sharia Court
2. Higher Sharia Court
3. Upper Sharia Court

III. Jurisdiction

1. Civil Jurisdiction: The jurisdiction of the Sharia Court relating to civil proceedings in Islamic law in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.

2. Area and Extent of Jurisdiction: The CJ with the approval of the Governor of the State may make warrant specifying the area and extent of the jurisdiction of any Sharia Court. However, the jurisdiction conferred in such warrant shall not be inconsistent with the above stated jurisdiction of the court.

3. Persons with Jurisdiction: The Sharia court can only exercise jurisdiction over persons that profess Islamic faith (Muslims) or any other person (non-Muslim) who voluntarily consents to the exercise of the jurisdiction of the court.

CUSTOMARY COURT

I. Establishment

Customary court exists in the Southern States as an alternative to the Area Courts in the North. The various states in the South have customary court regulated by state laws. However, some states may confer more jurisdiction on the court than others.

II. Jurisdiction

A. Civil Jurisdiction: The jurisdiction of customary court in Lagos State, via **Section 16 of the Customary Court Law of Lagos State**, covers the following matters:

1. Matrimonial causes and other matters between persons married under customary law;
2. Suits relating to guardianship and custody of children under customary law;
3. Matters relating to inheritance upon intestacy and the administration of intestate estate under customary law; and
4. Other cases or matters for debt demand or damages.

B. Additional Jurisdiction: Apart from state laws, other statutes may confer jurisdiction on customary courts. For instance, **Section 41 of the Land Use Act** confers jurisdiction on Customary Court in respect to land subject to customary right of occupancy.

ELECTION TRIBUNALS

I. Presidential Election Tribunal

A. Establishment: The Court of Appeal is the election tribunal for election to the office of the President and Vice president as provided under **Section 237 of the CFRN 1999**.

B. Jurisdiction: Section 239 (1) of the CFRN 1999 empowered the CA with exclusive original jurisdiction to determine matters touching on questions as to whether –

1. Any person has been validly elected into the office of the President or Vice President under the Constitution;
2. The office of the President or Vice President has become vacant; and
3. The term of office of the President or Vice President has ceased.

C. Appeals: Appeal from it lies to the Supreme Court. See **Section 233 (2) (e) of the CFRN 1999.**

II. National Assembly Election Tribunal

A. Establishment: The National Assembly Election Tribunal is established via **Section 285 (1) of the CFRN 1999.**

B. Composition: The tribunal is composed of a Chairman and two other members. See **Section 1 (1) of the Sixth Schedule of the CFRN 1999.**

C. Appointment: The Chairman and other members are appointed by the President of the Court of Appeal in consultation with the Chief Judge of the state concern, Grand Kadi of the Sharia Court of Appeal of the State concern or the President of the Customary Court of Appeal of the State concern. See **Section 1 (3) of the Sixth Schedule of the CFRN 1999.**

D. Qualification: The Chairman shall be a Judge of a High Court and other members (two) shall be appointed from Judges of a High Court, Kadis of a Sharia Court of Appeal, or Judges of a Customary Court or other members of the judiciary not below the rank of a Chief Magistrate. See **Section 1 (2) of the Sixth Schedule of the CFRN 1999.**

E. Jurisdiction: Section 285 (1) of the CFRN 1999 empowers the tribunal with exclusive original jurisdiction to hear and determine petitions as to whether –

1. Any person has been validly elected as a member of the National Assembly;
2. The term of office of any person under the Constitution has ceased;
3. The seat of a member of the Senate or member of the House of Representatives has become vacant; and
4. A question or petition brought before the election tribunal has been properly or improperly brought.

F. Appeals: Appeal from the National Assembly Election Tribunal lie to the Court of Appeal and ends there. See **Section 7 (3) of the CFRN (Second Alteration) Act.**

G. Constitution: Section 285 (4) of the CFRN 1999 provides for a Chairman and 2 other members as the quorum.

III. Governorship and Legislative Houses Election Tribunal

1. Establishment: the Governorship Election Tribunal is established via **Section 285 (2) of the CFRN 1999.**

2. Composition: The tribunal is composed of a Chairman and two other members. See **Section 2 (1) of the Sixth Schedule of the CFRN 1999.**

3. Appointment: The Chairman and other members are appointed by the President of the Court of Appeal in consultation with the Chief Judge of the state concern, Grand Kadi of the Sharia Court of Appeal of the State concern or the President of the Customary Court of Appeal of the State concern. See **Section 2 (3) of the Sixth Schedule of the CFRN 1999.**

4. Qualification: The Chairman shall be a Judge of a High Court and other members (two) shall be appointed from Judges of a High Court, Kadis of a Sharia Court of Appeal, or Judges of a Customary Court or other members of the judiciary not below the rank of a Chief Magistrate. See **Section 2 (2) of the Sixth Schedule of the CFRN 1999.**

5. Jurisdiction: Section 285 (2) of the CFRN 1999 empowers the tribunal with exclusive original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as member of any legislative house.

6. Appeals: Appeal from the governorship election tribunal lie to the Court of Appeal and then to the Supreme Court. See **Section 6 (2) (e) (vi) of the CFRN (Second Alteration) Act.** It is the only election tribunal that enjoys two appeals.

7. Constitution: Section 285 (4) of the CFRN 1999 provides for a Chairman and 2 other members as the quorum.

ECOWAS COMMUNITY COURT OF JUSTICE

I. Concept

The Community Court of Justice is established by the Economic Community of West African States (ECOWAS) as a regional court with civil jurisdiction over all member States. The decisions of the Court are binding on all member states, community institutions, individuals and corporate bodies. Its composition, jurisdiction and powers are contained in the **Protocol of the Community Court of Justice 1991** as amended by the **Supplementary Protocol 2005.**

II. Jurisdiction of the Community Court

The Court has jurisdiction to hear and determine any dispute relating to the following:

1. The interpretation and application of the Treaty, Conventions, Protocols, regulations, directives and decisions of the Community;
2. The failure by Member States to honor their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of ECOWAS;
3. The provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States;
4. The Community and its officials; and
5. The action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions.
6. Cases of violation of human rights that occur in any Member State.
7. The Court shall have jurisdiction over any matter provided for in an agreement where the parties provide that the Court shall settle disputes arising from the agreement.
8. Any specific dispute referred to the Court by the Authority of Heads of State and Government.

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

I. Filing Action in the Wrong Court

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

1. The case will be struck out
2. Cost may be awarded in favour of the defendant
3. Counsel may be personally liable and made to pay cost to the client
4. Counsel can be sued for professional negligence
5. Action might be statute barred.

II. Wrong Use of Rules of Court

Where the wrong rules of court is used or where there was no compliance with the rules of court, it will not invalidate the proceedings except where it is shown that the wrong use or non-compliance will manifest hardship or injustice on the other party.

WEEK 4

PARTIES TO A CIVIL ACTION

Presentation By: Sylvester Udemezue,

LESSON CONTENT

1. Types of Parties
2. Capacity to sue & be sued
3. Classes of legal persons
4. Representative actions/Procedure
5. IsJoint plaintiff & Joint Defendants
6. Class Actions
7. Joinder & Misjoinder of Parties
8. Alteration of Parties
9. Survival of Parties
10. Third party Application/proceedings
11. Drafting of Relevant Processes /Applications
12. Ethical Issues

MEANING & NATURE OF PARTIES

- A party to a civil action is a person or persons who institute civil claims in court or against whom civil claims are instituted.
- In actions commenced by **Writ of Summons or Originating Summons**, a party may be either a Claimant (this is the position in Abuja, Lagos and some other jurisdictions; but referred to as “Plaintiff” in others) or a Defendant
- In actions commenced by **Petition**, the Parties are known as the Petitioner and the Respondent
- In Actions commenced by **Originating Motion/Application**, the parties are known as Applicant and Respondent
- On **appeal**, parties are known as Appellant & Respondent
- In respect of **Counter-Claim**, Parties are Known as CounterClaimant & Defendant to Counter-Claim

NB: Names of parties to any civil action and their respective statuses must be reflected in the originating processes.

- Is any default in this respect fatal?
- Note the difference between “Party” and “person;” a party must be a person in law, but in some instances, more than one person may constitute one party

TYPES OF PARTIES

- Failure to join the appropriate person to an action, or joinder of an inappropriate person may be fatal; hence the need to identify the various types of parties. See **OKOMU OIL PALM v ISERHIENRHIEN(2001)**

The following are the various types of parties:

1. Proper parties
2. Desirable Parties
3. Necessary Parties
4. Nominal parties

A. PROPER PARTY: Is a person whose interest would be directly affected by the outcome of the action, (See **Mobil v LASEPA**) but whose non-joinder is not fatal to the action (Black's law Dictionary). A person made a party for some good reasons. – **Green v Green**.
NB: Is the Supreme Court right in describing a proper party as one who has no interest in the suit (as it did in Green v Green)?

B. DESIRABLE PARTY: Not originally a party to the action & presence not essential for the just determination of the suit, yet made a party so as to be bound because the outcome may directly affect him. See **GREEN v GREEN; PEENOCK v. HOTELPRESIDENTIAL (1982); YAKUBU v GOV, KOGI STATE (1995); INAKOJU v ADELEKE (Ladoja's case) (2007)**

C. NECESSARY PARTY: A person:

- I. who is interested in the subject matter;
- II. whose presence is essential for the just, effectual and complete determination of the suit; and
- III. Who would be affected by the outcome of the suit.

See **UNION BEVERAGES v PEPSI COLA (1994); YADISA v OYINWOLA (2000); OJO v OGBE (2007)**

A person who is ordinarily a necessary party and who is aware that a case is pending in court in which he is interested and the outcome of which would affect him, but neglects, fails or refuses to apply to join the suit, may be treated as a Party "By Standing By," and as such would be estopped from re-opening the case after the conclusion of the case. See **KAMALU V UMUNNA (1997) 5 NWLR (PT505) OGUEJIOFOR V EJIDIKE (2002)**

D. NOMINAL PARTY: Not interested in the subject matter, not involved in the transaction that gave rise to the cause of action; would not be personally affected by the outcome, but made a party only by virtue of the office he occupies. See **PADAWA v JATAU (2003)**. Sometime, described as a Statutory Party. Examples: Actions by/against the FG must be commenced by/against the AGF; actions against a State must be commenced by/against the State AG; Actions the House of Assembly, must be commenced against the Speaker.

NB: Plaintiff's action may be defective under the technical rules if he were not made a party. See Black's Law Dictionary. Court may waive such procedural irregularity, where action is commenced by the principal.

CAPACITY TO SUE & BE SUED

A party to an action (both plaintiff & defendant) must be competent to institute or defend the action; must be a legal person (a person in law). Else, action would be incompetent and liable to be struck out. See **SHITTA v LIGALI (1941)**; **AGBONMAGBE BANK LTD v GENERAL MANAGER, GB OLILVANT LTD; OKECHUKWU & SONS v. NDAH (1967)**; **NJEMANZE v SHELL DEV COY, PORT HARCOURT (1966)**

Action brought in a representative capacity is competent, provided instituted by a legal person on behalf of identifiable persons having a common purpose. See **YUSUF v AKINDIPE (2000)**

MISNOMER

Misnomer or misdescription of a party (mistake in describing a party) would not be fatal unless parties are misled or there is miscarriage of justice – **KALU v ODILI (1992)**; Misnomer occurs when the correct person is described under a wrong name: **EMESPO CONTINENTAL v. CORONA (2006) NWLR (PT.991) 365 @378**

In such cases, an application for an amendment to reflect the correct name of the legal person may be granted because courts are now concerned more with substantial justice, then with mere technicalities. See **MAERSK v ADDIDE INVEST LTD (2002)**; See 13/2, Abuja, 2018 & 15/2 & 5, Lagos 2019

Where amendment would amount to substitution, court would not grant the application. **IBRAHIM v CHAIRMAN, KACHIA LG (1998)**

CLASSES/TYPES OF LEGAL PERSONS

Legal person may be either *a natural person or an artificial person*.

1. **ARTIFICIAL PERSONS:** Artificial persons are divided into:
 - Corporate Sole
 - Corporation Aggregate
 - Registered Firms/Partnerships
 - Juridical Persons
2. **NATURAL PERSONS:** Natural persons include:
 - Competent Adults (must be of sound mind, not bankrupt)
 - Infants
 - Lunatics
 - Personal Representatives
 - Attorneys
1. **COMPETENT ADULTS:** Natural person 18 years and above may sue or be sued in his or her own name, provided is of sound mind, and not bankrupt, nor under any other legal disability
2. **INFANTS:** Infants are persons who are below 18 years. Cannot sue or be sued in his/her own name because such person lacks legal capacity to do so. May sue or defend only through the Guardian appointed for that purpose. 15/9, Lagos; 13/11, Abuja. The Guardian is usually a relative -- father, mother, other relative or friend, etc. *A person with adverse*

interest or a volunteer is disqualified from acting as Guardian. See **WOLF V. PEMBERTON (1877)**

Infants can only enter appearance through the Guardian ad litem. **11/9, Lagos; 9/9, Abuja.** Actions filed by the infant in his own name may be stayed until a Guardian is appointed. Actions against infants where no person is willing to act as Guardian, plaintiff must apply to the judge to get a proper person appointed as guardian. **12/2, L; 10/1, A.** Before anyone would act as a guardian, a written authority to that effect must be filed in court **15/10, L; 13/12, A.**

HOW TO COUCH THE PARTIES` CLAUSE WHERE AN INFANT IS SUING

BETWEEN:

JOHN MARTIN

(an infant, suing through his Guardian, Dele Obi) -----

CLAIMANT

AND

BLESSED HOSPITAL LIMITEDDEFENDANT

**HOW TO COUCH THE PARTIES` CLAUSE WHERE AN INFANT IS
DEFENDING**

BETWEEN:

BLESSED HOSPITAL LIMITED CLAIMANT

AND

JOHN MARTIN

(an infant, defending through his Guardian, Dele Obi) ----- DEFENDANT

- 3. LUNATICS/PERSONS OF UNSOUND MIND:** Cannot sue or be sued in his/her own name because lacks legal capacity to so do. May only sue through the Next Friend and may defend only through the Committee or Guardian appointed for that purpose.

LUNATICS/PERSONS OF UNSOUND MIND

BETWEEN:

JOHN MARTIN (suing through his Next Friend, Dele Obi) ----- CLAIMANT

AND

BLESSED HOSPITAL LIMITED ----- DEFENDANT

Note: the fact he is a lunatic should not be stated in the parties' clause, to avoid stigmatization. But may be pleaded.

PERSONAL REPRESENTATIVES

Personal representatives include Trustees, Executors, Administrators who may sue or be sued in their own individual names.

BETWEEN

1. JOHN MARTIN

2. JudethPaul
(Executors of theEstate of Chief Dim Doye, deceased) ----- CLAIMANT
AND
BLESSED HOSPITAL LIMITED DEFENDANT

ATTORNEYS

An attorney or a donee is a person to whom a power of attorney has been donated. A Power of Attorney is an instrument by which one person known as Principal/Donor authorizes another known as Attorney/Donee to do what the Principal/Donor may himself lawfully do, either generally or specifically.

Where an attorney has a power of attorney to prosecute or defend an action on behalf of the principal, such attorney should institute the action in the name of the principal. Note that both must necessarily possess legal capacity. See **VULCAN GASES V GFIG**

BETWEEN:

JOHN MARTIN
(suing through hisLawful Attorney, DIM DOYE) ----- CLAIMANT
AND
BLESSED HOSPITAL LIMITED-----DFENDANT
OR

BETWEEN:

BLESSED HOSPITAL LIMITED-----DFENDANT
AND
JOHN MARTIN
(sued by his LawfulAttorney, Dim Doye)----- CLAIMANT

CORPORATION SOLE

An artificial corporate person consisting in only one person. Examples: The Sovereign (In England); The Traditional Stool; Attorney-General; Governor;The President of the FRN; The Attorney-General; The Speaker of the House of Assembly, office of a Minister, CJN, COP, IGP, etc. Corporate aggregate is an artificial corporate person consisting in a group of persons together vested with juristic powers as one corporate personality Examples:

1. Companies incorporated under part A of CAMA. May sue or be sued in theircorporate name. **Section 37, CAMA, Cap C20, LFN, 2004; Salomon v Salomon.** Examples: Julius Berger Nigeria Plc, Union Bank ofNigeria Plc, ABC Nigeria Ltd, Faith Foundation LTD/GTE, Okeyson& Sons Ltd; Mayor Enterprises Ltd;Peace Mass Transit Ltd; Akiyi Supermarkets Ltd, AdaPharmacy Ltd, Heal-Quick Hospital Ltd, Faith High School Ltd, etc.
2. Bodies incorporated under Part C, CAMA. Can sue or be sued in the corporate name. See **s. 596, CAMA.** But the name must begin with “Incorporated Trustee(s) of...” Else, the case would be struck out. See **Mosesv. NBA (2019) LPELR-46918(SC); section 591(1)(a)CAMA**

Example:

BETWEEN:

INCORPORATED TRUSTEES OF REDEEMED CHURCH ---CLAIMANTS
AND

INCORPORATED TRUSTEES OF ISLAMIC SOCIETY-----DEFENDANTS

3. Statutory Corporations: Bodies or institutions created by statute and expressly given legal capacity to sue or be sued. May sue or be sued in their own corporate names. Examples: Council of Legal Education -- See section 1(1) Legal Education (Consolidation) Act, Cap L10, LFN 2004; Corporate Affairs Commission -- See s. 1, CAMA; SEC, University of Lagos, NNPC, NIPC, INEC, NPC, NOTAP, NJC, etc

JURIDICAL PERSONS

Juridical persons are created by statutes but not vested with juristic personality (power to sue or be sued), but is given powers the exercise of which may adversely affect right of others. They can be sued even though they are not juristic persons. Government Agencies not expressly made juristic persons but having similar powers are included. See

- a. TAFF VALE RAILWAY V. AMALGAMATED SOCIETY RAILWAY SERVANTS (1901);
- b. THOMAS V LOCAL GOVERNMENT SERVICE BOARD (1965);
- c. KPEBIMOH V BOARD OF GOVERNORS, WESTERN IJAW TEACHERS TRAINING COLLEGE (1966)

REGISTERED FIRMS/PARTNERSHIPS

Generally, not a legal person; may only sue in the name of the partners. Note the rule governing institution of action against partners. See BOSHALI V OKOI ARIKPO. However, may sue or be sued in firm's name if registered. See 13/25, Abuja, 2018; 15/24 & 28, Lagos, 2019; IYKE MEDICAL MERCHANDISE V PFIZER (2001)

UNINCORPORATED BODIES/ASSOCIATIONS

Unincorporated bodies/associations cannot sue or be sued. In their own names; may only sue or be sued through their leaders or accredited members in a representative capacity. Examples: unincorporated town union, unincorporated residents associations etc: "Lekki Residents Association"

ACTIONS AGAINST THE FEDERATION, STATE OR LOCAL GOVERNMENT

- a. Actions by/against Federation or a state (as a corporate entity) or against Federal or State governments are commenced/ defended in the name of the Attorney-General of the respective government. See section 20, SC Act, Cap S16, LFN, 2004. AG Federation v ANPP (2004).
- b. Note that actions by/against a Local Government area council are commenced in the name of the affected LG.

TRADE UNION

Although not a corporate body, it may sue or be sued in its registered name, if registered. BONSOR V MUSICIANS' UNION (1955)

PERSONS UNKNOWN

In land matters, a claimant who is unable to identify the persons against whom he claims, may describe such a person as "a Person Unknown." See 13/9, Abuja. Similarly, a defendant may apply to be substituted in lieu of a "Person Unknown." See also Form 38 pursuant to 57/2(2), Lagos wherein such a person is described as "The Occupier."

HUSBAND & WIFE

They may sue or be sued in their respective names and in their individual capacities. See MARRIED WOMEN PROPERTY ACT 1882 as amended in 1893: a married woman may now sue in her individual capacity. Suing as “Mr&Mrs John Musa” is improper. See **LION OF AFRICA INSURANCE V MRSEAN (1999)**.

REPRESENTATIVE ACTIONS/PROCEDURE

When a person or persons sue/defend in their individual names but on behalf of a group of persons having a common interest in the action, such an action is called a rep action. **13/14, Abuja & 15/12, Lagos.**

The judgment in a rep action is binding to all, both the representatives and the represented, including those whose names do not appear individually on the writ, provided they fall the membership of the group represented. **OKETIE V OLUGHOR (1995)**

Reasons Behind Rep. Actions

- a. Members of the group may be so numerous it may not be convenient to reflect all their individual names on the originating process.
- b. The group may not have capacity to sue– unincorporated/unregistered associations; unregistered corporative societies, family, community, etc.
- c. It may be in compliance with provisions of statute/law--- Representative actions under section 301 (2) CAMA; trustees/executors/ admins

Conditions Precedent to Rep. Actions

- i. The Representative(s) must have prior written authority of the Represented
- ii. The Representatives must obtain leave of court. Procedure for leave is by Motion Ex Parte + Affidavit + Written Brief. Failure to obtain leave is not fatal – **MBANEFO V MOLOKWU (2014)**
- iii. The Written Authority given by the Represented must be attached as an exhibit to the affidavit in support of the Ex Parte Application
- iv. Both the represented and the representatives must have a common interest or common grievance in the action
- v. The relief sought must be beneficial to both the representatives and the represented. **ADEDIRAN V INTERLAND TRANSPORT (1991)**
- vi. The fact that the action is a rep action must be reflected on the face of the Writ
- vii. The names of the representatives and the capacity in which they are suing must be reflected on the writ

NB: If action is not initially brought as a Rep action, the processes could be amended with leave of court to so reflect. **VULCAN GASES V OKUNLOLA (1993)**. This may be done at any stage of the proceeding, before judgment. But where the amendment is not done or no authorization is given until judgment, action would be deemed to have been instituted in a personal capacity. See **NDULUE VONYEKWULUNNE (2002)**

Objection to Rep Actions

A Respondent/Defendant may challenge the capacity or authority in which a Rep Action is instituted by **Motion on Notice + Affidavit + Written Brief**

ALTERNATIVE PROCEDURE: Notice of preliminary Objection + Written Brief

Note: Resp/Defendant cannot challenge a Rep Action in the Statement of Defence or by and Affidavit. See **WALI V AMAEFULE (2014)**

DERIVATIVE ACTIONS

It is a specie of Rep Actions. The difference is, that the action may be commenced by the representative not in his own name, but in the name of the Represented or on behalf of the represented or to intervene in a pending action by/against the represented. The represented is usually a legal person (usually an Incorporated Company).

Note, the action is still commenced with leave of court. Also, action must be in the interest of the Represented. See **section 303, CAMA**

It is a specie of Rep action. The difference is that the represented are so numerous that it may be impracticable to ascertain /identify members of that class. Some members of that class institute an action in the interest of all members of that class or to rectify wrong to the class

Unlike in the usual Rep Action, the Represented need not to have previously authorized the Reps. However, the represented must be a well-defined class having a common interest in the subject, but they need not be known to one another. **The trial court must certify the suit as a class action.** It is to avoid multiplicity of actions. Examples – actions by some person on behalf of Glo/MTN/ Airtel customers

Scope of Class Actions

Class actions are not available in all instances. The scope of the areas in which this type of action may be resorted to is set out in **13/15, Abuja, 2018 and 15/13, Lagos, 2019. V**

JOINT PARTIES

Two or more persons may be joined in one suit as claimants or defendants to prosecute or defend their common reliefs jointly. **13/1 & 4, Abuja & 15/1 & 4, Lagos.** Joint claimants must have the same interest in the subject matter. They are not allowed to bring conflicting claims. It is also desirable that they act by one counsel. **IGE v. FARINDE (1994).** Joinder of parties is not joinder of causes of action. If causes of action are different, no joinder. See **AMACHREE V NEWINGTON (1952)**

- Claimant may join as a party to the action any one or more persons jointly or severally liable. See **13/7, Abuja & 15/7, Lagos.**
- Where claimant is in doubt as to who to join, he may join two or more person so that during the action, leaving the court to settle the question as to who is liable. **15/8, L; 13/8, A.** But note that the court may make a Bullock Order in respect of the Innocent defendants. See **BULLOCK V LONDON GENERAL OMNIBUS (1907); EKUN V YOUNMAN & SONS**
- Aim of joinder is avoid multiplicity of parties, to save time and cost and to avoid abuse of the court process. See **OGOLO V FUBARA (2003)**
- Court cannot give judgment against a person who is not made a party. **BABATOLA ALADEJANA (2001)**

CONDITIONS FOR JOINDER

1. Proposed Joint parties must have a right to the relief sought, whether jointly or severally
2. Such right to relief must arise out of the same transaction or series of transactions

3. Should they bring separate actions, a common question of law would still arise in all. See **ANYAOKU V OLUKOYA (1996)**. If common questions would not arise, no need for joinder

FORMS OF JOINDER

1. **NON-JOINDER** – failure to join a person who ought to be joined. Consequence is an order by the court joining the person wrongly not joined. Court may do this *suomotu* or on application. Application is by Motion on Notice + Affidavit + Written Brief. 15/17, L; 13/19, A.
2. **MISJOINDER** – joining a person who ought to not be joined, either because he has no interest or because he lacks capacity to sue or be sued. Consequence is striking out of the person wrongly joined. Court may do this *suomotu* or on application. Application is by Motion on Notice + Affidavit + Written Brief. 15/17, L; 13/19, A.
Note: Application may be made by any party, but must be served on all parties interested. 13/18, A. Once you have been served, you are bound by the ruling and by the outcome of the action, whether you appear or not.

EFFECT OF MISJOINDER & NON- JOINDER

It is not fatal to the action as the court may deal with the matter in controversy so far as regards the rights & interest of the parties before it. (15/16, Lagos & 13/18, Abuja)

See **DONTSOHO V MOHAMMED (2003)**; **MIN OF LAGOS AFFAIRS V ONIGBONGBO COMMUNITY (1961)**;

If non-joinder may lead to injustice, it may be a ground for setting aside the judgment on appeal

CAN A PERSON NOT JOINED BRING AN APPLICATION FOR JOINDER?

Yes, he must show he is a necessary party.

Besides, his application must be accompanied by his defense or claim as the case may be, together with the necessary documents except where the application is to substitute a deceased party. 15/17, L; 13/19, A.

When joined, all other parties must amend their processes to reflect the addition. 15/18, L; 13/20, A.

All processes must be served on the new defendant/claimant

CLASS ACTIONS

STAGES OF JOINDER

1. At any stage of the proceedings. 15/16, L; 13/18, A. See **EZENWA V MAZELI (1955)**; **ODAHE V OKUJENI (1973)**
2. May even be ordered on appeal. **INAKOJU VADELEKE (LADOJA'S CASE) (SUPRA)**; **LAIBRU V BUILDING & CIVIL ENG CONTRACTORS (1962)**; **YAKUBU V GOV OF KOGI STATE (1995)**
3. MISJOINED PARTY could be struck out on appeal. **OKAFOR V NNAIFE**

PARTY BY INTERVENTION

When a person who was not originally joined is now permitted to join as a Co-plaintiff or Co-Defendant, the process is called Party By Intervention. The party who is joined by his own intervention is called an “Intervener.” See **AKANBI V FABUNMI (1986)**

CONDITIONS FOR PARTY BY INTERVENTION

1. The intervener ought to have been joined initially
2. The intervener is a necessary party
3. Is the cause liable to be defeated by non-joinder
4. The interest of the intervener must be identical with that of existing defendants/plaintiffs
5. The intervener would be affected by the outcome of the action
6. That the plaintiff has a claim against him and he desires to pursue same

See **ORIARE V GOVT OF WESTERN NIG**

CAN THE COURT THAT MADE AN ORDER FOR JOINDER REVIEW SAME?

- 1) No. Review is possible only on appeal **ONWUKA V MADUKA (2002)**

ALTERATION OF PARTIES

1. Means substitution of a party to a pending proceeding
Reasons: death, bankruptcy, marriage (not necessary though), assignment, transfer, transmission, devolution of interest of liability, change of name, take-over/ acquisition, merger,
2. Application for alteration/substitution is made Ex Parte. **15/30, L; 13/31, A.**
3. Note application of substitution in case of bankruptcy. See s. 58(1)(b), **Bankruptcy Act, Cap B2, LFN 2004**

DEATH OF A PARTY

If a dead party is a sole party, action abates (and terminates) unless

- a. the cause of action survives the dead party **15/29, L; 13/30, A.** The principle is “actioperosnalismoritur cum persona” (personal action dies with the person)
- b. If death occurs between the finding of issues of fact & judgement or after hearing is concluded but before judgment. **15/30, L; 13/31, A.**

NOTE:

- a. Court may, on application, order any person to take the place of the deceased. **15/15, L; 13/17, A.**
- b. After substitution, processes would be amended to reflect change. **15/18, L; 13/20, A.**

THIRD PARTY APPLICATION/PROCEEDINGS

This will be treated in details under Interlocutory Applications. It is a specie of joinder. A procedure whereby a defendant (or a claimant who is a defendant to a counterclaim) applies to bring in a third party. When joined, the third party becomes the defendant’s defendant. See **BRITISH AIRWAYS V NAHCO (1993)**

In TPP, the defendant asserts a claim against the 3rd party which is related to the claim the claimant has against the defendant. **The aim is to avoid multiplicity of actions.** See **15/19, Lagos & 13/21 Abuja.**

DRAFTING OF RELEVANT PROCESSES

- ❖ Third Party Application
- ❖ Application for Joinder
- ❖ Application to correct misjoinder
- ❖ Application for substitution/alteration
- ❖ Application to amend a Misnomer
- ❖ Application for leave to file a Rep Action
- ❖ Application to File a Derivative Action
- ❖ Application for appointment of NF/Guardian
- ❖ Proper drafting of the parties` clause in a civil action
- ❖ Application to amend Rep Action already begun without reflecting its true status as rep action
- ❖ Drafting Objection to Rep Actions
- ❖ Application as an Intervener

**ETHICAL DUTIES & PROFESSIONAL
RESPONSIBILITY**

Identify the lawyer`s ethical duties & professional responsibility in respect of parties

- a. Prior due diligence to determine true, necessary, capable parties, etc
- b. Representation withing the bounds of law
- c. Honest & Candid advice to clients
- d. Dedication & Devotion
- e. Professional Secrecy & Privilege
- f. Meticulousness in drafting
- g. Take full instruction (client interview essential, to avoid errors)Etc

WEEK 5

PRELIMINARY MATTERS: PRE-ACTION ISSUES AND COMMENCEMENT OF ACTION IN THE MAGISTRATES' COURT (LAGOS).

Before commencing an action there are some preliminary matters the claimant/defendant needs to consider before filing his suit. These are referred to as pre-action issues.

These issues are as follows:

- a. **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. It is a legal right which has been breached which is capable of being remedied, See *Mobil v. LASEPA* (2003) 104 LCRN 240 at 268; *AG OF THE FEDERATION V. AG OF ABIA STATE* (2001) 11 NWLR (PT. 725) 689; *IBRAHIM V. OSIM* (1988) 3 NWLR (PT. 82) 257. Before commencement, the legal basis or principles of law on which the factual claim is based must be ascertained.
- b. **LOCUS STANDI:** It means a right to be heard in court or some other proceedings or the competence to institute an action in a court of law to ventilate certain rights. Such interest must be factual to confer locus standi. *Egolum v. Obasanjo* (1999) 7 NWLR (pt. 611) 423. The strict and narrow interpretation of locus standi in *Adesanya v. President, FRN* (1986) 1 NWLR (pt. 18) 523 at 539 has been relaxed in *AG Kaduna state v. Hassan* (1985) 2 NWLR (pt. 8) 453 and *Fawehinmi v. Akilu* (1987) 4 NWLR (pt. 67) 797. *Oloriode v. Oyebi* (1984) 5 SC. See also *Fundamental Enforcement Procedure Rules, 2009*.
- c. **JURISDICTION:** See *Madukolu v. Nkemdilim* (1963) 1 All NLR (Pt. 4) at 587. A practitioner must decide and satisfy himself that the court he intends to commence his action is the proper court. It is the claim of the claimant that determines the jurisdiction of the court. The issue of jurisdiction is so fundamental that it can be raised for the first time on appeal. Jurisdiction may be geographical or territorial. It could also be divisional. Jurisdiction can also be subject matter or monetary.
- d. **STATUTORY LIMITATION:** For almost all cases, there is a limitation period within which the proceedings must be commenced. See *PUBLIC OFFICERS PROTECTION ACT, Ajayi v. Military Administrator of Ondo state* (1997) 5 NWLR (pt. 504) at 237, *Egbe v. Adefarasin* (1987) 1 NWLR (PT. 47) at 1; *N. R. M.A. & F. C. V. Johnson* (2019) 2 NWLR (pt. 1656) 247. Where a statute provides for a specific time to commence an action, failure to commence within the time frame will defeat the claim. As the matter will be said to be statute barred. Such failure will also deprive the court of the jurisdiction to determine the suit.
- e. **PARTIES:** It is also of immense importance to consider the parties to a proposed action. The claimant must be imbued with the legal capacity to sue and be sued. The defendant must also be capable of being sued.
- f. **VENUE:** This suggests the location or judicial division of the court you have identified to commence your action.
- g. **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; NNONYE V. ANYICHIE* (2005) 2 NWLR (PT. 910) 623, *AMADI V. NNPC* (2000) 10 NWLR (674) 76.

- h. **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.
- i. **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.
- j. **ALTERNATIVE DISPUTE RESOLUTION:** A Lawyer must advise his client on the availability of alternative dispute resolution methods. It is mandatory for a Lawyer to advise his client on the availability of ADR, see **r.15 sub.3(d)RPC and O. 5 rule 1 (3) Lagos and o.2 r.2 (4) Abuja.**
- k. **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.**
- l. **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.**
- m. **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.

COMMENCEMENT OF ACTION IN THE MAGISTRATE COURT OF LAGOS STATE.

PLACE OF INSTITUTION AND TRIAL OF CLAIMS

Order 1 R.1 MCL

An Action can be commenced in magistrate court of Lagos state by the Claimant if:

- a. the defendant or one of the defendants resides or carries on business in Lagos
- b. the cause of action arose wholly or partly in Lagos and
- c. Where the Claimant sues as an assignee of a debt or chose in action provided that the assignor might have commenced such action in Lagos but for the assignment

JURISDICTION

- All personal actions arising from a debt, contract or tort where the money claim does not exceed #10,000,000
- Actions between landlords and tenants
- Appeal from customary court.

See S. 28 MCL Lagos.

No more grading of magistrate courts. All magistrate courts have the same monetary jurisdiction.

MODE OF COMMENCEMENT

Commenced by way of

- 1. claim and
- 2. Originating application

1. **Claim:** Either by Ordinary summons or Summary Summons. **O.1 R.4 (1) MCCPR, 2009. See O.1 Rules 4 & 8 MCCPR, 2009.**

- **Ordinary summons:** an ordinary summons will be used where the matter is contentious. It is commenced by filing a claim attached with particulars of claim which must be signed by the Claimant or his Counsel with address for service, telephone No. and email address. **Nicholls v. GM, NRC (1938) 14 NLR 87.**

On the filing of particulars of claim by the Claimant, a summons is issued by the Magistrate accompanied with particulars of claim with Form 4A and served on the defendant

On the service of the ordinary Summons on the defendant, he (the defendant) may, admit the claim or file a defence or counter-claim within 6 days from the date of service of the summons.

Lifespan of Summons:

The lifespan of an ordinary summons is 3 months from the date of issue if not served.

- **Summary Summons:** An action by summary summons: (a debt or liquidated money demand) requires the Claimant to file the following documents:

- a. File a claim with particulars of claim
- b. A letter requesting endorsement of the claims as summary summons

On filing of the claim the Magistrate will issue a summons accompanied with Form 4A. **See O. 3 RR. 1-10. MCCPR**

On service of the summons on the defendant, he (the defendant) may admit the claim within 5 days if he wishes to admit or file a defence or counter-claim.

Note: JJ will be entered against the def. if he fails to file a defence, a counterclaim or notice of admission within 5 days of service.

Note that a claim under Summary summons shall not be issued against the following:

- a. An infant or a person of unsound mind or a person adjudged a lunatic
- b. To recover money by a money lender
- c. On behalf of an assignee of a debt to recover money secured by a mortgage
- d. A defendant who is outside jurisdiction

Guidelines for preparing particulars of claim:

- If it is a debt it should contain date of all items supplied to the defendant or credit granted to him
- That the Claimant has demanded for payment of the debt and the defendant refused to pay.
- If the action relates to a mortgage; the particulars of claim must contain the following:
 - a. Date of the mortgage
 - b. The amount of the principal sum
 - c. Amount due with interest
 - d. Steps so far taken by the Claimant

By way of originating Application: This procedure is rarely used. It may however be used in matters of interpretation of documents or where the facts are not likely to be disputed.

SMALL CLAIMS PROCEDURE

The objective of small claims procedure is to provide easy access to an informal, inexpensive and speedy resolution of simple debt recovery disputes in the Magistrates' Courts.

Jurisdiction:

Under **Article 2**, actions may be commenced:

- Where the claimant resides/carries on business in Lagos
- The defendant resides/carries on business in Lagos
- The cause of action arose in Lagos
- It is a monetary claim not exceeding #5m, excluding interest and costs
- The Claimant has served a letter of demand on the defendant Form SCA 1.

Commencement:

By completing Small Claims Complaint Form i.e Form SCA 2.
The Registrar shall issue a Summons in Form SCA 3
Service must be effected within 7 days.

Filing of Defence/Admission/ Counter-claim.

When served with the summons together with the claim, the defendant shall file his defence/Admission or Counter-claim within 7 days.

Where the defendant fails to respond to the claim, he will be held to have admitted the claim.

Where the defendant has a counter-claim in excess of #5m but not exceeding #10m, such a claim can be entertained by the small claim court **ART. 7 R. 2**. But JJ in favour of the defendant shall be limited to the general jurisdiction of the Magistrates' court.

Where a claimant has a reply to the counter-claim he shall do so within 5 days **ART. 7 R. 6**. Hearing in the matter must be from day to day. By **Article 9(6) of the Practice Direction**, the hearing of a small claim shall not be more than 30 days from the day of first hearing. Judgment is expected to be delivered within 14 days of completion of hearing.

The entire proceedings from filing till judgment shall not exceed 60 days. A party that is dissatisfied with the judgment shall file appeal in SCA 8 within 14 days.

By **14(2) & (3)** the appeal is lodged with the Assistant Registrar of the Small claims court who compiles the records and forwards same to the Registrar of the Fast Track Court (of the High court).

TASKS FOR WEEK 5 (ONLINE TEACHING)

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 your 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. OkeMadu 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. OkeMadu 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. OkeMadu. However, Mr. OkeMadu eventually saw the receipt in the breast pocket of his shirt and presented it to Mr. Ade Okoro. Nonetheless, Mr. OkeMadu 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, MrJide 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 6

COMMENCEMENT OF ACTION IN HIGH COURT

Pre action Protocol and Pre action Counselling

Or. 2 r.2(2)(e) Abj & Or. 5 r. 1(2)(e) & r. 5(3)(d) Lag.

Before an action is commenced in the High Courts of Lagos State and the FCT, Abuja, a lawyer is expected to comply with some steps, geared towards amicable settlement of the dispute and to avoid the filing of frivolous suits.

Compliance is evidenced by filing alongside the Originating Process a **Pre action Protocol Form 01 [Lagos]** or **Certificate of Pre action Counselling Form 6 [FCT, Abuja]**.

In Abuja, the **Certificate of Pre action Counselling Form 6** is a statement that Counsel has advised party on the relative strength and weakness of the case and informed them of the opportunity for Alternative Dispute resolution amicable settlement and is willing to bear the cost of the suit where the suit turns out to be frivolous.

In Lagos, the **Pre action Protocol Form 01** is a Statement on Oath of compliance with the **protocol or steps that must be followed for amicable settlement** of the dispute as required by the *High Court of Lagos State Expeditious Disposal of Civil Cases and Practice Direction, 2019*

VENUE: place for institution of trial or suits. See **O 4 Lagos, O 3 Abuja**. **There is One High Court per State. Judicial Divisions exist for Administrative Convenience.** See *Nigerite (Nig) Ltd v Danlami (Nig) Ltd (1992) 7 NWLR (Pt. 253) 288*.

- In land matters & all actions relating to personal property detained or seized for any cause. The action shall be commenced & determined in the Judicial division where the land is situate.
- In action for recovery of penalties & forfeitures & all actions against public officers. Where the cause of action arose.
- Breach of contract. Where the contract ought to have been performed or where the defendant resides.
- All other suits may be commenced and determined in the judicial division
- Where there are several defendants residing or carrying on business in different judicial division. It may be commenced in any of the judicial division subject to the direction or order of the Judge.

ACTIONS COMMENCED IN A WRONG DIVISION

- Generally, the High court of a state and that of the FCT is one. It is for convenience and administrative purposes that it is divided into divisions.
- **O 2 R 5 Lagos**: it may be tried in that division unless the CJ otherwise directs.
- **O 3 R 6 Abuja**: The Judge may order subject to being proved to his satisfaction that it be transferred to the appropriate division. Failure of such proof it may be retained and proceed in the court which it has been commenced.

NOTE: the question of commencing a suit in one division or the other is a question of form and convenience and not that of jurisdiction. See **EGBO VAGBARA**

FORM OR MODES OF COMMENCING CIVIL ACTIONS IN HIGH COURT

Actions in the High Courts may be commenced by any of the following ways:

- Writ of summons.
- Originating summons.
- Originating motion or application.
- Petition.

WRIT OF SUMMONS

- It is a written order of court or judge requiring a specific action by a person or entity to which it is direct.
- A writ of summons is an order commanding the defendant to enter appearance answer to the claim of the claimant.
- It is in commencing every contentious matter.

KINDS OF ACTIONS COMMENCED BY WRIT OF SUMMONS

Where the claimant claims:

- Any relief or remedy for any civil wrong
- Damages for breach of duty whether contractual, statutory or otherwise.
- Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to property.
- Where the claim is based on or includes an allegation of fraud
- Where an interested person claims a declaration. See **O 5 R1 Lagos, O 2 R2 & 2 Abuja.**

CONTENTS OF WRIT OF SUMMONS

- a. The court in which the action is brought and the judicial division
- b. In certain actions the heading of the matter
- c. Names of parties and capacities which the sue and are sued
- d. Name and address of the Defendant
- e. Time within which the defendant is commanded to enter appearance and
- f. Life span of the writ
- g. How the defendant may enter appearance, either personally or through a solicitor
- h. particulars of claim
- i. Name and address of claimant's solicitor
- j. The address of the claimant.

NOTE: A writ of summons is usually expected to be completed as appropriate. In practice lawyers draft it in their offices which must be in conformity with the exact precedent in **form 1**. e.g. endorsement of claim is on the reverse side of the writ of summons. Typing it on a separate paper and gumming it to the reverse side is non-compliance of **O 3 R 4** of the then Lagos Rules. See **ALATADE VFALODE**.

INDORSEMENT

These refer to those items the plaintiff or claimant or his practitioner is required to enter on the writ of summons. They include:

1. The judicial division in which the suit is filed
2. Names of parties
3. Indorsement of claim
4. General endorsement (concise nature of claim on the writ). Details is contained in the statement of claim which normally supersedes the writ. See **I.T.P.P LTD V UNION BANK OF NIG PLC**
5. Special endorsement (fuller version of claim on the writ) statement of claim may be dispense with if there is
6. Indorsement of address of claimant and his legal practitioner. See **O 6 R6 Lagos and O 4 R6 Abuja**. Address of the claimant and his counsel must be within jurisdiction. Where claimant and or his counsel live or carry on business outside jurisdiction, they must provide address for within jurisdiction. Where the

address is not provided it will not be received for filing by the Registrar. It is the duty of the claimant to furnish the address of the defendant.

7. Endorsements required in specific case

DOCUMENTS TO ACCOMPANY WRIT OF SUMMONS

- **O 5 R 2 Lagos** the following documents shall accompany the writ of summons:

1. Statement of claim
2. A list of witnesses to be called at the trial
3. Written statements on oath of witnesses except witnesses on subpoena
4. Copies of document to be relied on at the trial
5. Pre-action protocol form 01 with necessary documents.

NOTE: Failure to comply with the above shall nullify the action. **O 5 R 3 Lagos**

WHAT CONSTITUTES NECESSARY DOCUMENTS?

What constitutes necessary documents has been provided in the High Court of Lagos State (Expedition Disposal of Civil Cases) Practice Direction, No 2 of 2019. It includes all pre-action correspondence duly acknowledged and exchanged between parties known as pre-action protocol bundle. These documents are:

1. The reminder in the event the defendant failed to respond to the memorandum of claim within 7 days.
2. Evidence of attempts at settlement
Affidavit of the respondent's failure to participate in settlement talks; and

NOTE: the Pre-action Protocol Bundle and the originating processes and their accompanying documents must be bound separately. Unlike under the old rules the pre-action protocol form 01 is attached to the originating process.

Under **O 2 R 2 Abuja** the following documents shall accompany the writ of summons:

- Statement of claim
- List of witness(es) to be called at the trial
- Written statement on oath of witnesses except those on subpoena
- Copies of every document to be relied on at the trial
- Certificate of pre-action counseling as in form 6

THE FRONT LOADING SYSTEM

This is the filing upfront of the documents to be used at the trial.

ADVANTAGES

- It makes for quick dispensation of justice
- It makes for efficient effective case management by the court.
- It guards against springing of surprises on opposing parties and it helps court
- It discourages presentation of frivolous cases and defences.

STATEMENT ON OATH AND AFFIDAVIT SIMILARITIES:

- both are given on oath to be valid
- both are used in proceedings before the court
- the law on perjury is applicable to both

- both have formal requirements
- DIFFERENCES**

1. Facts contained in an affidavit as well as documents attached therein are evidence while statement on oath are not evidence unless it is adopted.
2. Affidavit are replied by counter affidavit while statement on oath is replied by another statement on oath.
3. Hearsay is permitted in an affidavit while statement on oath does not permitted hearsay
4. In statement on oath like pleadings opinion and prayers are allowed but in an affidavit OPLAC is not allowed.

PAYMENT OF FEES

- After all endorsements have been made on the writ together with all the other documents the processes are assessed and paid by the claimant.
- Failure to pay the prescribed fees robs the court of jurisdiction. See **G.E INT'L OPERATION LTD V QOIL & GAS SERVICES LTD**

ISSUANCE OF A WRIT

- A writ is issue by the Registrar on application. It is said to be issued when:
 - The Registrar signed it (Abuja)
 - The Registrar seal it (Lagos)

COMMENCEMENT OF A SUIT

- A suit said to be commenced when the claimant has presented his originating processes and the other documents and has paid the prescribed fees.
- The writ need not be issued by the Registrar before it can be said to have commenced. See **SHUAIBU V MUAZU**

CONCURRENT WRIT

See **O 6 R 9(2) Abuja, O 8 R 10 Lagos**

A writ which could be served within an outside the state of issue.

LIFE SPAN OF A WRIT

Both Abuja and Lagos is 6 months. See **O 8 R 6(1) Lagos, O 6 R 6(1) Abuja.**

RENEWAL OF WRIT

- In Lagos the Judge will allow two renewals (of 3 months each) upon a prompt application. See **O 8 R 6(2) Lagos**
- In Abuja the court will allow two renewals (of 3 months each) upon a prompt application. See **O 6 R 6(1) Abuja**

SERVICE OF WRIT OF SUMMONS

The writ has to be served on the defendant to enable him know he has a pending case.

WHAT THE DEFENDANT IS EXPECTED TO DO AFTER HE HAS BEEN SERVED WITH THE WRIT

Enter appearance. See **O 11 R 1 Lagos, O 9 R 1 Abuja**

TIME TO ENTER APPEARANCE

- Lagos 42 days. (**form 11 Lagos**)
- Abuja 14 days. (**form 12 Abuja**)

TYPES OF APPEARANCE

- Conditional appearance
- Unconditional appearance

DEFAULT OF APPEARANCE

- In Lagos late appearance attracts penalty of N 1000 for each day of default see O 11 R 5 Lagos
- The claimant may apply for judgment

ORIGINATING SUMMONS

- It is a speedy way of disposing of matters that are not contentious in facts.
- Where the dispute between the parties are purely on the construction or interpretation of a particular law, rule, deed, contract or any other instrument.

In Lagos under **O 5 R 5** Originating Summons can be used:

- Where any person claim to be interested under a deed, will, enactment or other written instrument for the determination of the question of construction arising under the instrument and declaration of rights of the person,
- Where the principal questions in issue is one of construction of a law.
- O.S is also used in Lagos under order 55 for an order of foreclosure and redemption.
- O.S is also used in Lagos under order 57 for summary proceedings for possession of landed property occupied by squatters or without the owners consent.

NOTE

- originating summons does not require pleadings
- witnesses are not called
- actions commenced by originating summons are decided on affidavit evidence

DOCUMENTS TO ACCOMPANY AN ORIGINATING SUMMONS

LAGOS O 5 R 5(3):

1. An affidavit setting out the facts relied upon
2. All exhibits to be relied upon
3. A written address in support of the application
4. Pre-action protocol form 01 with necessary documents. Failure to comply with above nullify the action

ABUJA:

1. An affidavit setting out the facts relied upon
2. All exhibits to be relied upon
3. A written address in support of the application
4. Certificate of pre-action counseling

ORIGINATING MOTION OR APPLICATION

The procedure is used:

Where the rules or any other written law provides that proceedings may be so commenced. E.g. actions for prerogative orders of certiorari, mandamus

Where a statute provides for a right but does not specify the means by which applications may be brought under the statute. See **AKUNNIA V AG ANAMBRA**

PETITION

It is used in specific cases such as election petition, divorce cases and company winding up proceedings.

SERVICE OF PROCESSES

- Where a defendant is not served with the processes filed against him, any order made against him including proceedings related therein is void and liable to be set aside. See **Odutola v. kayode**
- Service of processes is regulated by the Sheriff and Civil Process Act
- RIGHT TO COMPLAINT OF LACK OF SERVICE
- Person who is entitled to be served.
- A complainant who ought to serve and failed to serve when judgment is given against him cannot turn and complain. See **AUGUSTA CHIME V MOSES CHIME**

WHO CAN SERVE PROCESS?

- The sheriff, deputy sheriff, bailiff, special marshal or other officer of the court.
 - Any other person or by electronic means mutually agreed to.
 - Law chamber
 - A courier company.
- See generally **O 9 Lagos and O 7 Abuja**

MODE OF SERVICE

PERSONAL SERVICE:

Service to the person named therein **O 9 R 2 Lagos, O 7 R 2 Abuja**. See **MANAGEMENT ENTERPRISE LTD V OTUSANYA**

The person so served is required to acknowledge service.

DEFENDANT REFUSING SERVICE

- Where the defendant sought to be served with the originating processes refuses service or threatens violence.
- A copy may be left within his reach. See **O 9 R 12 Lagos and O 7 R 12 Abuja**.
Where it is impossible to get too close to the defendant to serve him with the originating process. The process server may leave for him the processes at a distance as reasonably close to him as possible. See **O 9 R 12 Lagos and O 7 R 12 Abuja**.

HYBRID MODE OF SERVICE:

1. Service through a legal practitioner **O 9 R 3 Lagos, O 7 R 3 Abuja**. In Lagos there must be a written authority. In Lagos the written authority will be attached to the memorandum of appearance.

2. Service on an infant **O 9 R 6(1) Lagos, O 7 R 5(1) Abuja**

3. Service on person of unsound mind **O 9 R 6 Lagos, O 7 R 6 Abuja**

4. Service on a prisoner **O 9 R 7 Lagos, O 7 R 6 Abuja**

5. Service on a firm **O 9 R 8 Lagos, O 7 R 7 (1) Abuja**

6. Service on a company or other corporate body **ABUJA**: delivery at the head office or other place of business within jurisdiction **O 7 R 8 LAGOS**: in accordance with the provision of statute regulating same. If no such provision then by: Giving it to any director, secretary or other principal officer or by leaving it at the office of the company

7. Service on foreign corporation (on its principal officer or representative within jurisdiction) **O 9 R 10 Lagos, O 7 R 10 Abuja**

8. Service on government employee (both rules are silent)

9. Service on board a ship (both rules are silent)

SUBSTITUTED SERVICE

- When it is impracticable to serve the named person personally.
- An ex parte application with an affidavit for leave for an order of substituted service is required. See **O 9 R 5(2) Lagos, O 7 R 11(2) Abuja**

COMMONEST MEANS OF SUBSTITUTED SERVICE

- Delivery of the document to an adult inmate at usual or last known place of abode or business of the person to be served
- Delivery of the document to some persons being an agent of the person sought to be served
- Advertisement in a gazette or newspaper
- Pasting at the court house or some other place of public resort or at the last known place of abode or business or person to be served
- Email
- Courier service

WAYS OF PROVING SERVICE

- Affidavit of service **O 7 R 13 Abuja**
- Certificate of service (where the service is by post)
- Appearance in court of the party to be served on the return date
- Endorsement of the duplicate
- **O 9 R 15 Lagos** a register shall be kept at the registry for recording of service to include the method and mode of service.

EXPENSES OF SERVICE

- The party requiring service pays for service. **O 9 R 13(1) Lagos and O 7 R 14 Abuja**

TIME OF SERVICE

- DAY: any day except on Sunday or public holiday unless the court so order which the order must be endorsed on the document to be served. See **O 7 R 15(1) Abuja, O 9 R 14(1) Lagos. NWANKO V KANU**

ABUJA TIME: 6am -6pm. Where it is served after 6pm it is deemed to be served the next day. See **O 7 R 15(1)**

LAGOS TIME: 6am -6pm. See **O 9 R 14(1) Lagos.**

Service after 6pm in Lagos would be bad service except where the defendant waived it.

NON SERVICE AND IRREGULAR SERVICE

- Non service: it robs the court of its jurisdiction
- Irregular service: it is a procedural defect that can be remedied. See **RFG LTD & 1 OR V SKYE BANK PLC**

SERVICE OUTSIDE JURISDICTION

Service outside jurisdiction of originating court process is in the exclusive list

- It is guided by the sheriff and civil process Act
- Leave is required to serve outside jurisdiction an originating process

SPECIAL ENDORSEMENT OF WRIT TO BE SERVED OUTSIDE JURISDICTION

“This summons is to be served out of XYZ state of Nigeria and in YYY State”. See **Section 97SCPA**

THE 30 DAYS RULE

Section 99 SCPA provides for a period required for in a writ of summons within which the defendant is to answer before the court shall not be less than 30 days.

SERVICE OF PROCESS OUTSIDE NIGERIA

It is regulated by
SCPA

Rules of court

O 5 R 3 Lagos a writ of summons to be served outside Nigeria shall be in form 2 with modification.

Similar provision in **O 2 R 6 Abuja**

Service of process outside Nigeria depends on whether there is convention has been made or not.

WHERE THERE IS CONVENTION

- No need for leave
- The party seeking the service shall file form 11 stating the medium through which he wants the process to be served either:
 1. Through diplomatic channel
 2. Through foreign judiciary
- 3. The request shall be accompanied by the original document and a translation thereof in the language of the country which service is to be effected
- 4. The documents to be served shall be sealed with the seal of the court and shall be forwarded by the Chief Registrar of the court to the permanent Secretary, FMFA for onward transmission to the foreign country
- 5. A certificate, declaration, affidavit or other notification of due service will be transmitted through diplomatic channel or other appropriate authority of the foreign country is sufficient service.

WHERE THERE IS NO CONVENTION (PROCEDURE)

See O 8 R 1-8 Abuja and O 10 R 1-8 Lagos Rules.

- Leave of court must first be obtained to serve outside Nigeria
- The process shall be sealed with the seal of the court for service outside Nigeria.
- the party wishing the process to be served outside Nigeria shall file a praecipe in form 8
- A certificate, declaration, affidavit or other notification of due service will be transmitted through diplomatic channel or other appropriate authority of the foreign country is sufficient service.

SERVICE OF PROCESSES ISSUED BY FOREIGN COURT OR TRIBUNAL IN NIGERIA

Where a letter has been received to effect a service foreign court the following procedure is adopted:

- The letter of request for service shall be accompanied by a translation in English language
- Two copies of the processes to be served accompanied with two copies thereof in English Language.
- The service of the processes shall be effected by a process server unless the Judge otherwise directs.
- Service shall be effect by delivering to the person to be served one copy in accordance with the rules and practice of the court regulating service.

- After service an affidavit of service shall be filed by the process server containing the charges for the cost of effecting service.
- The affidavit shall be transmitted to the chief registrar with one copy of the process annexed.
- The chief registrar verify the affidavit of service he can approved the particulars of charges or lesser figure.
- The chief registrar forward it to the CJ who shall in turn forward to the AG the letter of request for service, the approved amount for service, evidence of service and a certificate.

SUBSTITUTED SERVICE OFFOREIGN PROCESS

O.10 R8 Lagos

- Application for substituted service to a Judge ex parte supported with affidavit as well as written address.

PROOF OF SERVICE OF FOREIGNPROCESS

By certificate or declaration on oath transmitted through the diplomatic channel or court of foreign country to the Nigerian Court. **See O 8 R4(1)(d) Abuja and O 10 R4(1)(e) Lagos**

ETHICAL ISSUES

- Representing client competently **Rule 16 RPC 2007**
- Duty and conduct to a court **Rule 31(5) RPC**. A lawyer should not deliver to a judge any letter, memorandum, brief or any written communication without delivering a copy to the opposing lawyer
- Lawyer as an officer of the court. **Rule 30 RPC**. A lawyer should not raise frivolous objection to non-compliance just to delay a matter.

WEEK 7
INTERLOCUTORY APPLICATIONS

043 Lagos, O 43 Abuja

- Interlocutory applications are applications made to the court while an action is pending.
- It is “interlocutory” because it is tied to a suit.
- It can be made during or after trial
- It is “interlocutory” because it results in an order other than a final decision in a suit.
- The parties in an interlocutory application are the “APPLICANT” and “RESPONDENT”

USES OF INTERLOCUTORY APPLICATIONS

- It can be used to remedy some defects in a pending suit.
- In some instances, it is condition precedent to the commencement of a substantive action. As is the case of application for leave to issue a writ especially when it is to be served out
- It can be used to seek some temporary reliefs or additional reliefs to the ones contained in the claim of the party.
- It is also an effective tool in stopping or killing a substantive suit.
- It is used to remedy delay when the
The ultimate aim is to assist parties in the orderly presentation of their cases and in getting speedy judgment.
- It should be noted however, that some lawyers use it negatively as a delay tactics. See **PROFESSOR STEVE UGBA V GAGRIEL SUSWAM (2014) LPELR**

MODE OF APPLICATION TO COURT

An interlocutory application is required to be made either in open court or to the Judge in chamber:

- Orally;
- By motion. See O 43 R1 Abuja, O 43 R1 Lagos.
- Summons (where the rules of court provides for it) e.g. interpleader proceedings. See O 48 R 5 Abuja

MOTION

A motion is an application, usually in writing made to the court for an order in terms of the prayers sought.

TYPES OF MOTION

- MOTION EX PARTE
- MOTION ON NOTICE

MOTION EX PARTE

It is an application for an order of court without the notice of the other party to the suit. Even where the party to be affected is in court he cannot respond to same. See **7-UP BOTTLING CO. V ABIOLA & SONS LTD (1995) 2 SCNJ37,**

Ex parte applications are normally permitted in two circumstances:

Where time is of the essence

Where from the nature of the application, the interest of the adverse party will not be affected negatively. See **LEEDO PRESIDENTIAL**

NOTE: no application for an injunction can be made ex parte except the applicant files with it a motion on notice. See **O 43 R 3(1) Abuja and O 43 R 3(2) Lagos**

SOME APPLICATIONS THAT CAN BE MADE BY MOTION EX PARTE

- Application for leave to bring a suit in a representative capacity
- Application for substituted service
- Application for interim injunction
- Application to renew a writ
- Application for garnishee order nisi

ORDERS THE COURT MAY MAKE AFTER HEARING EX PARTE APPLICATION

- Grant the application
- Refuse the application
- Direct that the motion be served on the other party
- Order that the party sought to be affected appear in court within a given time and show cause why the order

LIFE SPAN OF EX PARTE ORDER

- Any order obtained ex parte is expected to last for a short period.
- In Lagos and Abuja, it shall abate after 7 days see **O 43 R 3(3) Lagos and O 43 3(2) Abuja**.
- However, **O 43 R 3(4) Lagos and O 43 R 3 (3) Abuja** gives the judge power to extend the period where

MOTION ON NOTICE

A motion on notice is one which is served on the other party and asking him to appear in court on a named date for the hearing of same. Personal service of motion is not mandatory.

SERVICE OF MOTION

In Abuja, there shall be at least 2 clear days between the date of service and hearing except there is leave of court to the contrary. **O 43 R 6 Abuja**

The respondent is expected to file counter affidavit within 7 days.

In Lagos every motion must be served within 5 days of filing see **O 43 R 1(2b) Lagos**. The respondent is expected to file counter affidavit within 7 days. See **O 43 R 1(3) Lag**. The Applicant has 7 days to file reply if any See **O 43 R 1(4) Lag**

SOME APPLICATIONS THAT CAN BE MADE BY MOTION ON NOTICE

- A. Application for joinder of parties
- B. Application for interlocutory injunction
- C. Application for amendment of pleadings
- D. Application for striking out of pleadings

ORDERS THE COURT MAY MAKE AFTER HEARING A MOTION ON NOTICE

- Grant the order as prayed
- Grant an order less than what was prayed
- Make an order striking out or dismissing the application
- NOTE: the court cannot make an order over and above what has been prayed

CONTENTS OF A MOTION

- Heading of the court
- The suit number
- Parties ('applicant', 'respondent')

- Type of motion (ex parte or on notice)
- The order/ rule or law under which the application is brought. **O 43 R1 Lag, O 43 R 1 Abuja, FALOBI V FALOBI (1979) 1 NMLR 169; UCHENDU V. OGBONI**
- The notice itself. (TAKE NOTICE that....)
- The order or relief sought
- Date of the application
- Name, signature of counsel. It cannot be signed by a law firm see the case of **OKAFOR V. NWEKE (2007) ALL FWLR (Pt. 368) 1016**
- The address of applicant's counsel

HEARING OF MOTION

- When the motion is moved.
- It is simply moving the application either in court or in chambers
- Contentious applications are heard in open court while non contentious may be heard in
- In Abuja, motion ex parte may be deemed moved and the written address adopted without actually moving same **See O 43 R4 Abuja**

HOW TO MOVE MOTION

- Identify the application
- State the rule or law under which the application is brought
- State the prayers being sought on the motion paper
- Draw the attention of the court to the affidavit in support of the application including further affidavit if any
- Make references to any exhibit attached if any.
- Draw the court's attention to the written address and adopt same.
- Where the respondent has filed a counter affidavit, respond to it.
- Urge the court to grant the application
- Where the respondent is opposing the application by way of a counter affidavit he will indicate and refer the court to his counter affidavit, adopt his written address and urge the court not to grant it.
- The court will deliver a bench ruling, stand down for ruling or adjourned for ruling as the case may be.

LIMIT TO FILING OF INTERLOCUTORY APPLICATION

- As a general rule there is no limit to the number of application to be filed in a particular suit.
- Where an application is meant to delay proceedings or it is frivolous it will be struck out.
- In Abuja, an application for amendment of pleadings can be brought only twice
- In Lagos, an application for amendment of pleadings can be brought only twice during trial and without limit during case management conference. See O 26 R1

OBLIGATION TO HEAR EVERY MOTION

Once an application has been filed except it is withdrawn, the court is duty bound to hear the application and make pronouncement. See **DANDUME LGC V YARO (2011) 11 NWLR (PT 1257) 159**

ORDER OF HEARING MOTIONS

- The order of hearing a motion is at the discretion of the court.
- It is usually taken in the order in which they are filed.

- However, where there are two pending motions, one seeking to destroy and the other seeking to save the suit(constructive or destructive motions) the one seeking to save the suit will be given priority.

AFFIDAVITS

- Every motion shall be supported by an affidavit. **See O 43 R 1 Abuja, O 43 R1(1) Lagos.**
- Where the application is one brought on point of law there is no need for an affidavit see **EREJUWA II V. DEDUWA (1970) MSNLR15**
- It is a written statement of facts made by the maker under oath
- Every affidavit must comply with the provisions of **section 115 of the Evidence Act.**
- If the deponent deposed to the affidavit in a language other than the language of the court, (English language) the affidavit must be translated to the language of the court.

CONTENTS OF AFFIDAVITS

- Heading of court before which the oath is sworn
- The suit number where it has been given
- The names of parties
- The application
- Name, nationality, religion profession and address of deponent
- Where deponent is not a party, the person by whose authority he deposes
- Where the facts are not within his knowledge, the source of his knowledge or information must be stated
- The oath's clause

SOME PRINCIPLES RELATING TO AFFIDAVIT

- A court may in civil proceedings order proof of facts by affidavit evidence. **See section 107 of EA**
- An affidavit must not contain any extraneous matter.
- An affidavit shall not contain objection.
- An affidavit shall not contain prayers (reliefs).
- An affidavit shall not contain legal arguments.
- An affidavit shall not draw conclusions whether of facts or law. **Section 115(2) Evidence Act.**
- An affidavit shall contain statement of facts only. **Section 115(1) Evidence Act**
- If the deponent is making the affidavit on the ground of his belief derived from other sources(not being his personal knowledge), he must state the facts and circumstances forming the ground of his belief. **Section 115(3) Evidence Act.**
- If the deponent derived his information from another person rather than his personal knowledge, he shall state the name of his informant and also furnish reasonable particulars of the time, place and circumstance of the information. **Section 115(4) Evidence Act.**
- A deponent shall not swear to an affidavit before himself.
- A deponent shall not swear to an affidavit before his legal practitioner.
- A deponent shall not swear to an affidavit before a clerk of his legal practitioner.
- A deponent shall not swear to an affidavit before his partner.
- A defective or erroneous affidavit may be amended and re-sworn by leave of court

COUNTER AFFIDAVIT

- A party who intends to oppose an application is required to file a counter affidavit in opposition.

- Where a respondent fails to file a counter affidavit the facts deposed to in the affidavit are deemed true. See **MATO V HEMBER (2018) ALL FWLR (PT 925) 146 @ 190.**
- General denials in a counter affidavit will not be sufficient rebuttal of facts alleged in the affidavit of the adverse party. See **OKEREKE V EJIOFOR (1996) 3NWLR (PT 434) 90.**
- Where the respondent intends to rely on points of law alone, he needs not file a counter affidavit.

FURTHER AFFIDAVIT

- If the applicant, upon being served with the counter affidavit, sees the need to oppose the facts deposed to in the counter affidavit, he is expected to file a further affidavit.

CONFLICTS IN AFFIDAVITS

- Where there is a conflict in affidavits of parties the court has a duty to resolve the differences by calling oral evidence. See **FALOBİ V. FALOBİ Supra and section 116 Evidence Act.**

PROPRIETY OF COUNSEL DEPOSING TO AN AFFIDAVIT

Counsel must avoid the habit of deposing to an affidavit on behalf of client. In the event of conflict, he will be required to enter the witness box and be subjected to the rigours of cross examination. See **UKPABIO V. NIGERIAN FILMS & CENSORS**

WRITTEN ADDRESS

Under the Abuja and Lagos rules, interlocutory applications are to be accompanied by written address. See **O 43 R 1(2) Abuja and O 43 R 1(2) Lagos.**

CONTENTS OF A WRITTEN ADDRESS

See **O 33 R 2 & 3 Abuja and O 35 R 2 & 3(1) & (2) Lagos**

- The claim upon which the application is based
- Brief statement of facts with references to exhibit(s) attached
- Issues for determination
- Legal arguments incorporating the
- List of cited authorities
- Certified true copies of unreported decisions.

SOME SPECIFIC INTERLOCUTORY APPLICATIONS

- Application for injunction
- Application for Anton Pillar injunction
- Application for Mareva injunction
- Interpleader proceedings

APPLICATION FOR INJUNCTION

An injunction is a court order commanding an action, preventing or forbidding an action. See **O 42 R 8 Lagos, O 42 R 8 Abuja**

There are two types:

INTERIM INJUNCTION

- It is a temporary order of court granted to preserve the res until a named date or hearing of the motion on notice

- It is granted in urgent situation
- It is normally ex parte
- It has a short life span
- It last pending the determination of motion on notice.

INTERLOCUTORY INJUNCTION

- It is granted after both parties have been heard.
- It is to last during the pendency of the suit.
- It is through motion on notice. See **KOTOYE V CBN** Supra
- It is not granted in respect of a completed act. See **OKAFOR V AG**

CONDITIONS FOR GRANT OF INTERLOCUTORY INJUNCTION

- Existence of legal or equitable right
- Existence of substantial issue to be tried
- Balance of convenience
- Irreparable damage or injury
- Conduct of the parties(i.e. behaviors of the parties before and during the time of the application)
- Undertaking as to damages

MANDATORY INJUNCTION

It is an order compelling a party to do an act in some cases (e.g. to forestall executive lawlessness). It is to compel a Respondent to retrace his steps and to restore the parties to the status quo ante bellum. See **SULU GAMBARI V BUKOLA(2004) 1NWLR (PT853)122 @**

ANTON PILLER INJUNCTION

It is an ex parte order permitting the applicant to enter into the respondent premises to seize, detain and preserve goods or articles in possession of the respondent. It is granted in case of infringement of copy right, trademark, patent. See **ANTON PILLER'S CASE**

PRINCIPLES GUIDING THE GRANT OF ANTON PILLER INJUNCTION

The guiding principles was laid in **FERDO LTD V UNIBRO STORES (1980) Fleet Street Report 489** as follows:

- ✓The Applicant must show that there is an infringement against his trademarks, copy right, patent right or designs.
- ✓The Applicant must show that if an application is made on notice, the Respondent is likely to destroy or hide the property away
- ✓The Applicant must further show that his case would be seriously frustrated if the court refuses to grant the injunction

MAREVA INJUNCTION

This is an order restraining a defendant from removing his assets within jurisdiction so as to render a judgment nugatory. See **MAREVA COMPANIANAVIERA V INTERNATIONAL BULK CARRIER LTD (1975)**

GUIDING PRINCIPLES FOR THE GRANT OF MAREVA INJUNCTION

The guiding principles are laid in **SOTIMINU V OCEAN STEAMSHIP NIG LTD (1992) 5 SCNJ 1** as follows:

- That he has a cause of action which is justifiable
- That there is real and imminent risk of the Defendant removing his assets from jurisdiction and thereby rendering nugatory
- That he has given full particulars of the Defendant's assets within the jurisdiction
- That the balance of convenience is on the side of the applicant
- That he is prepared to make undertakings as to damages.

INTERPLEADER

People often find themselves in possession of property or money claimed by two or more persons. The person in possession becomes confused as to who is the right owner. To avoid this the party in possession applies to court by way of interpleader to compel the claimants to interplead (take proceedings between themselves to determine who is entitled to the subject matter

TYPES OF INTERPLEADER

- Sheriff interpleader. See section 34 of the Sheriff & Civil process Act.
- Stakeholder interpleader. See O48R 1 Abuja, O 47 R1 Lag ,NWEKESON V ONUIGBO (1991) 3

PROCEDURE FOR INTERPLEADER

By way of originating summons

Where a suit is pending it will be by way of ordinary interlocutory summons. See O 47 R 2(1) and O 48 R 5 Abuja

WHAT THE AFFIDAVIT FOR AN INTERPLEADER SHOULD CONTAIN

- That the applicant has no interest in the subject matter
- That the applicant has not colluded with any of the claimants.
- That the applicant is willing to

SHERIFFS INTERPLEADER

Where a sheriff carries out attachment pursuant to a judgment and a third party is laying claim to the property to be attached.

It is applicable when the goods or chattel of a person who is not named in the writ of fi fa is attached.

The third party and the judgment creditor are called upon to substantiate the claim.

It operates as a stay pending the determination of the matter. See SHELLE V OSHUN 11 NLR 43

TIME FOR BRINGING INTERPLEADER

No time frame but it must be brought before the sale of the property attached.

ETHICAL ISSUES AND ABUSE OF EX PARTE INJUNCTIONS

The whole purpose is to ensure that the subject matter is not irreversibly altered before the motion on notice is heard.

In recent past there had been cases of abuse and misuse of ex parte injunction.

Examples of such abuse are;

- Where a court in one state refused to grant ex parte injunction and the applicant rushed to another state and filed a similar suit with an ex parte application for injunction without disclosing the previous application to the court.
- A court granted ex parte order of interim injunction in favor of a Claimant. The defendant served. Counsel for the defendant went ahead to file a similar suit and obtained an ex parte order of injunction against the claimant on the same subject matter.

- A case where a Judge adjourned the hearing of an ex parte application for interim injunction, for two weeks. After hearing, ruling adjourned for another one week. **MORGAN AIRLINES LTD V TRANSNET LTD & ORS** see Interlocutory Applications by Afe Babalola page 40
- Where a ruling for ex parte application for interim injunction was adjourned sine die because the defendant who had notice that the judge had adjourned for ruling, filed a motion arresting the ruling. **MORGAN AIRLINE's Case**, Hon Justice Mohammed Bello, CJN as he then was admonished Judges and practitioners at the All Nigerian Judges Conference held in Abuja in 1985 in the "the decision of some of our courts on ex parte injunction seem to put individual interest over national interest in Nigeria. public functionaries have been strained without given at their constitutional and statutory duties at the instance of exuberant individual. I had of occasion to point out early this year that it was only in Nigeria that a court of law would restrain a university by ordering an ex parte injunction from holding convocation to award. A court of law denied the deserving students their degrees because two students who had failed the examinations had applied to the court for a declaration that they too were. Indeed, there is urgent need among some of us, the Judges, to appreciate that ex parte injunction which was devised as vehicle for the carriage of stant justice in proper cases converted into bulldozer for demolition of substantial justice..."

THE CODE OF CONDUCT FOR JUDICIAL OFFICERS

Rule 2(2) Code of Conduct for Judicial Officers.

A Judicial officer must avoid the abuse of the power of issuing interim injunctions, ex parte.

ETHICAL ISSUES

- **Rule 32 RPC 2007.** A lawyer shall deal candidly and fairly with the court.
- **Rule 27 RPC 2007.** A lawyer shall not take undue advantage of opposing lawyer.
- Swearing of affidavit by counsel-
- Suppression of facts in ex parte application. **Rule 32 RPC 2007**
- Late filing of motions and counter affidavits with a view to delay proceedings. **Rule 30(5) RPC 2007**

ASSIGNMENTS - WEEK 7 - 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. ShaakkaaMangu. While his letters of administration is still being processed, his two sons have been disturbing Mr. ShaakkaaMangu about the title document. RikiciZamzam 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. ShaakkaaMangu 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. ShaakkaaMangu, 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 RikiciZamzam 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 HakuriZamzam to prevent Mr. ShaakkaaMangu 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-Iya 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.

WEEK8

SUMMARY JUDGMENT PROCEDURE AND JUDGMENT BY DEFAULT

Summary Judgment Procedure:

- Available where the claimant conceives that the defendant has no defence to his claim. In clear cases where the defendant lacks any defence to the claimant's claim and a full trial will be dilatory – **NISHIZAWA V JETHWAN I (1984) 12 SC 234; FMG V SANI (1990)**; by-passes plenary or full trial- **THOR LTD V FCMB (2005) 14 NWLR (PT 946) 700**
- heard on affidavit evidence
- judgment on the merits – **MACGREGOR ASS. LTD V NMB LTD (1996)**
- as a general rule, it can only be set aside on appeal/ cannot be set aside by the court that granted same.

TYPES

1. Summary judgment procedure under the undefended list; (the undefended list procedure) **O. 35 FCT, ABUJA**
2. Summary judgment procedure under **ORDER 11 / ORDER 13 – (FCT, ABUJA)/ (LAGOS)**;
3. Summary judgment under **O. 60 (FCT ABUJA) & O. 57 (LAGOS)** for recovery of land from any squatter/occupier occupying without the consent of the landowner
4. Judgment upon admission made by Adverse party/parties- **O. 20, RR. 1 & 4 (FCT, ABUJA, 2018); O. 21, RR. 1 & 4 (LAGOS, 2019); S. 123 EVIDENCE ACT**

THE UNDEFENDED LIST PROCEDURE REQUIREMENTS- O. 35 FCT ABUJA RULES

I. **Pre-condition:** the claim – a debt or liquidated money demand, only - **O. 35, R. 1 FCT, ABUJA** (liquidated sum = an amount that is due and payable, already ascertained or ascertainable by arithmetic calculation. It may also be an amount fixed by agreement of parties as a genuine pre-estimate of damages for a future breach of contract - **maja v samouris nwlr pt. 765 78 ; odume v nnachi (1964) 1 all nlr 329**)

II. The claimant/deponent should in an affidavit depose to the grounds for the claim; and that, in his belief, the defendant has no defence to the claim.

Thanks
PROCEDURE

- The claimant files in court:
 - i. An application as in form 1 appendix (the writ of summons), and
 - ii. An affidavit disclosing the grounds on which the claim is based statement- deposition- that in the belief of the deponent, there is no defence to the claim
 - iii. A certificate of pre-action conflicting court of appeal decisions on the recommended mode for the application-
 - 1. **CASH AFFAIRS FIN.LTD V INLAND BANK(2005) 5 NWLR (Pt. 658) 568; MALEY V. ISAH(2000)5 NWLR (Pt 658) 651**- by motion ex parte and affidavit
 - 2. **IMONIYAME HOLDINGS LTD V SONEB ENT. – (2002) 4 NWLR (Pt. 785) – oral application.**
 - 3. **THE KWARA HOTELS** position accords with **O. 35 R.1 FCT, ABUJA** which clearly recommends that an undefended list application be made by filing of form 1 (the writ of summons) in the appendix to the rules, with an affidavit in support. Also see **BONA TEXTILE LTD v ASABA**
- Where the requisite conditions are satisfied, a judge in chambers enters the suit for hearing in the “undefended list” – **O.35 R.1(1) (FCT, ABUJA)**
- The writ bears a return (hearing) date – **O. 35 R. 1(2) & O. 1 R. 5 (FCT , ABUJA)**
- Service on the defendant
 - Personal service; or
 - in appropriate cases- by Substituted service by order of court made sequel to an application for such service.
- A defendant who seeks leave to defend an undefended list action
 - 1. Delivers to the registrar a written notice of his intention to defend the action- before 5 days to the day fixed for hearing (the return date) – files along therewith an affidavit disclosing a defence on the merit. **O.35 R.3(1) (FCT, ABUJA)**

HEARING/ DECISION

On the return date, the court considers the court processes before it –the writ as endorsed with the claim, the notice of intention to defend, the affidavit evidence of the claimant/applicant & the defendant/respondent, only-without hearing any argument- considers the court processes before it –thewrit as endorsed with the claim, the notice of intention to defend, the affidavit evidence of the claimant/applicant & the defendant/respondentonly - without hearing any argument–**MALEY V. ISAH .BONA V. TEXTILE LTD. v. ASABA TEXTILE MILL, PL**
However, the court may call for oral evidence where there is a compelling need thereof, **O.35 R 5**

▪ If in the opinion of the court, the defendant has disclosed by his affidavit a defence on the merit to the action:

- leave to defend is granted upon terms as determined by the court **O. 35 R. 3(1)(FCT ABUJA)**

- the matter is transferred from the undefended list to the ordinary cause list for hearing/plenary trial **O 35 R 3 (2) (FCT ABUJA); BONA V TEXTILE**

▪ Generally, the court orders pleadings to be filed; or it may proceed to hearing without further pleadings: **O. 35. R. 3 (2) (FCT, ABUJA)**-(a rare course of events). The suit proceeds in the normal course of events.

▪ Where the defendant fails to disclose a defence or defaults to file notice of intention to defend & affidavit. The action is heard as an undefended suit with judgment entered against the defendant, accordingly. **O.35, R.4 (FCT, ABUJA)**. Nothing prevents a defendant from raising a preliminary disclosure of a defence.

A defendant may be granted leave to defend if he shows by affidavit evidence:

That there is at least a triable issue for trial/ that there is a prima facie good defence/ that there is a question or matter that requires further enquiry by the court in a full trial. **ADEBISI MACREGOR & ASSOCIATES V. NMB (1996) 2 NWLR (PT 431) 378 , MALEY V. ISAH . BONA V. TEXTILE LTD. v. ASABA TEXTILE MILL,**

B. SUMMARY JUDGMENT UNDER ORDER 11 AND 13 ABUJA & LAGOS

Available where the claimant respectively believes that the defendant has no defence to his claim. **SEE O. 11 R.1(FCT, ABUJA); O.13 R.1(LAGOS).**

Appropriate where there is no real defence/where the defence apparently is a sham. **NISHIZAWA V JETHWANI (1984) 12 SC 234; MACAULAY V NAL MERCHANT BANK (1990) 4 NWLR (Pt 144) 283**

2. Application for summary judgment is made by motion on notice, with an affidavit in support and a written address/ brief. **SEE O. 11 R.1 & O. 43, R. 1 (FCT, ABUJA) ;O.13 R.1 & O. 43 R. 1 (LAGOS)**

COURT PROCESSES REQUIRED TO BE FILED BY THE CLAIMANT/APPLICANT – O. 11, R.1 FCT, ABUJA

The claimant applies, as he files the following along with the originating process-(the writ of summons)

- The statement of claim;
- The exhibits;
- Depositions of witnesses;
- An application for summary judgment (motion on notice);
- An affidavit in support of the application stating the grounds for his belief that there is no defence to the action;
- A written brief in support of the application;
- A certificate of pre-action counseling – **SEE O. 2, R. 2 (2) (E) (FCT, ABUJA)**

COURT PROCESSES REQUIRED TO BE FILED BY THE CLAIMANT/APPLICANT – O. 13, R.1 LAGOS

A claimant files along with the originating¹ process (the writ of summons);

- - The statement of claim;
 - - a list and copies of documents to be relied upon;
 - - a list and depositions of witnesses;
 - - an application for summary judgment motion on notice;
 - - an affidavit in support of the application stating the grounds for the belief
- Service on the defendant –**
- - personal
 - - substituted
 - **O. 11 R. 3; O. 7 (FCT, ABUJA) O. 13, R. 3; O.8 (LAGOS)**

DEFENDANT/RESPONDENT'S RESPONSE- O. 11, R. 4 (FCT, ABUJA)

The defendant who wishes to defend the action, must file the following court processes not later than 21 days after service of the writ- (the time prescribed for defence- **O.15 R.1(2)**)

- The statement of defence
- Depositions of witnesses
- The exhibits to be used in his defence
- A counter affidavit
- A written brief in reply to the application.
- Defendant/respondent's response- **O. 13, R. 4 (LAGOS)**

The defendant who intends to defend the suit should not later than 42 days from date of service- (the time prescribed for defence) file:

- A statement of defence;
- A list and depositions of witnesses;
- A list and copies of all documents to be used in the defence;
- A counter affidavit;
- a written brief in reply to the decision of court

1. The application is moved in open court; the defendant/respondent opposes.
2. The court may grant leave to the defendant to defend the claim where it appears to the court that the defendant has a good defence to the claim – **O. 11, R.5 (1) (FCT, ABUJA); O. 13, R. 5(1) (LAGOS)**
3. However where it appears to the court that the defendant has no good defence to the claim the court may enter judgment in favour of the claimant

4. Where a defendant discloses a good defence to only a part of the claim but fails to show such defence to some other part of the claim, the court may:
 - Enter judgment only for the part of the claim in respect whereof there is no defence .
 - grant leave to the defendant to defend the part of the claim in respect whereof there is good defence. **O 11 R 5 (3) FCT ABUJA; O 13 R 5 (3) LAG**

Where there are several defendants and one or more defendants show good defence to the claim but some other defendants fail to disclose such defence:

The court shall grant leave to defend to the defendant or defendants with the defence to the exclusion of the defendants without such defence showing good defence

1. That there is prima facie defence
2. That there is at least a matter suitable for trial/ triable matter
3. That the defendant is entitled to defend on grounds of law or disputed facts
4. That there is a real defence to the action
 - **COW V CASSEY (1949) 1 KB 481**
 - **MACAULAY V NAL MERCHANT BANK SUPRA**
 - **NISHIZAWA V JETHWANI SUPRA**
 - **SODIPOVLEMMINKAINEM (1986) 1 NWLR**

CAN DEFAULT JUDGMENT ARISE IN THE COURSE OF O.13 FCT ABUJA OR O. 11 LAGOS SUMMARY JUDGMENT PROCEEDINGS?

1. Where parties have filed all court processes required by the rules and the defendant fails to satisfy the court of the existence of some good defence = summary judgment on the merits.
2. If the judgment results from default in compliance with requirements of the rules on court processes that ought to be filed = a default judgment & same may be compared between the undefended list procedure & the summary trial procedure under **O.13 (FCT, ABUJA) / O. 11 (LAGOS)**

SIMILARITIES

Deposition in affidavit in support of either procedure that in the deponent's belief, the defendant has no defence to the claimant's claim;

- Affidavit evidence is used;
- Summary judgment on the merits;
- Cannot be set aside by the trial court;
- Appeal lies to a higher court
- No right of appeal against any order granting unconditional leave to the defendant to defend - **S. 241(2) CONSTITUTION**

DIFFERENCES

1. In the undefended list-debt & liquidated claims, only; procedure of **O.11/13** – liquidated & unliquidated claims;
2. Pleadings and other court processes- not filed with the undefended list application; whereas, pleadings and other processes for frontloading are required of parties under **O.11/13**
3. Writ & affidavit = the application in the undefended list procedure; whereas application is by motion on notice in **O. 11/13**
4. As a general rule the court solely relies on affidavit evidence in the undefended list application- no hearing of parties; parties/counsel are heard while the motion is moved under **O.11/13**;

5. No default judgment can result from the undefended list procedure; default judgment may arise in **O.13/11**
6. Return date

THE SUMMARY JUDGMENT PROCEDURE FOR ACCOUNTS:

O. 12 (FCT, ABUJA) & O. 14 (LAGOS, 2019)

1. Available under the Lagos and the FCT, Abuja rules where an application for account is made in an action and the claimant seeks an account or where the claim involves taking an account.
2. Application is by motion on notice, and affidavit, with written address. **O. 12, RULES 1 & 2 (FCT, ABUJA); O. 14, RULES 1 & 2 (LAGOS); O. 43 R. 1 (FCT, ABUJA & LAGOS)**
3. The application may be made only after the lapse of the period prescribed

JUDGMENT FOR POSSESSION OF LAND OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT

Available where a land owner seeks to recover his land from any person who occupies same, without his consent in the first place. **O. 57 R. 1 (LAGOS) O. 60 R. 1 (FCT, ABUJA)**

PROCEDURE

1. Commencement of action by originating summons as in form 38 Lagos or form 47 (FCT, Abuja); - **O. 57 R. 1 (LAGOS); O. 60, RULES 1 (2) & 2 (FCT, ABUJA)**
2. An affidavit in support of the originating summons should disclose:
 - The claimant's interest in the land
 - The circumstances whereby the land became occupied without his licence or consent.
 - The fact that he does not know the Name of any occupier who is not Named in the summons. **See o. 57, r. 3**

JUDGMENT UPON ADMISSION BY ADVERSE PARTY

SEE O. 20, RR. 1 & 4 (FCT, ABUJA, 2018); O. 21, RR. 1 & 4 (LAGOS, 2019); S. 123 EVIDENCE ACT

Where a claim is admitted by a party to an action, the party in whose favour the admission was made may apply to the court for judgment upon the admission.

The application is by motion on notice, with a supporting affidavit as well as a written address. Judgment on admission = a judgment

DEFAULT JUDGMENT

Default judgment may result from noncompliance with a stipulation of the rules of court or an order of court.

1. Not a judgment on the merits- parties are not heard on the merits
2. As a general rule, it is not final.
3. May be set aside by the court that granted the judgment. **UTC V PAMOTEI SUPRA; WILLIAMS V HOPE RISING FUNDS SOC SUPRA; BANK OF BARODA V MBN LTD (1987) 3 NWLR (PT 60) 233**

TYPES OF DEFAULT JUDGMENTS

The main types:

- Default of appearance;
- default of pleadings/defence;

Other types:

- default in complying with the requirements of a pre-trial Conference or case management Conference;

1. DEFAULT OF APPEARANCE – O.10 FCT, ABUJA; O.12 LAGOS

Where the defendant makes default in filing a memorandum of appearance within the time limited in the rules, the claimant may apply by motion on notice for judgment.

The processes that should be filed are

1. Motion on notice
2. Affidavit in support of the application

DEFAULT OF PLEADINGS- O. 21 FCT, ABUJA; O. 22 LAGOS

- Occasioned by default by a party
- (usually the defendant) to file pleadings within the prescribed length of time.

The claimant may apply for judgment in default of defence by motion on notice. Other processes required are an affidavit and

- Where claim is liquidated- “final judgment”
- Where claim is unliquidated “interlocutory judgment” and the claimant will be required to prove his damages.
- Judgment may be set aside, at the instance of the defaulter- **O. 21 R 12 FCT ABUJA; O.22 R 12 LAGOS**, on grounds of fraud non service and lack of default of appearance at trial- **O.32 RULES 3&4 FCT, ABUJA; O.33 RULES 3 & 4 LAGOS**

1. Where both or all parties and their counsel are absent in court – court strikes out of the case- **O. 32 R. 2 (FCT, ABUJA) 33 R. 2 (LAGOS)**

2. Where the defendant - absent and the claimant – present: the claimant may prove his case to the extent he bears the burden of proof-- **O. 32 R. 3 (FCT, ABUJA) 33 R. 3 (LAGOS)**

DEFAULT OF APPEARANCE & FAILURE TO PARTICIPATE AT THE PRE- TRIAL/ CASE MANAGEMENT CONFERENCE- O. 27 R. 5 LAGOS & O.27 R.18 FCT ABUJA

1. Default on the part of the claimant- attracts the claim being dismissed
2. Default by the defendant attracts a judgment being entered against the defendant
3. May be set aside upon an application made within 7 days of the judgment accompanied by an setting aside default judgment.

Not a judgment on the merit; liable to be set aside- by the court which granted same- not necessarily by the same judge who made the order. The application to set aside a default judgment is by motion on notice, with an affidavit in support and a written address. **O. 43 R 1 (FCT ABUJA & LAGOS); N. A WILLIAMS v. HOPE RISING VOL. FUNDS SOCIETY**

CRITERIA/ PRINCIPLES APPLICABLE TO APPLICATIONS FOR SETTING ASIDE DEFAULT JUDGMENT

As a general rule the court considers the following principles:

1. The reason for the default;
2. Any undue delay on the part of the applicant in bringing the application?
3. Whether the party in whose favour the judgment was granted would be prejudiced or embarrassed by a rehearing of the matter
4. Is the applicant's case manifestly unsupportable?
5. The conduct of the applicant during the proceedings from the time he was served with the originating process until when the court granted the judgment sought to be set aside **NA WILLIAMS v HOPKINS**

LIMITATION ON THE EXERCISE OF THE DISCRETION TO SET ASIDE DEFAULT JUDGMENTS

SEE O. 21 R. 12 FCT, ABUJA; O. 22 R. 12 LAGOS

—any judgment entered upon default these rules shall be final and valid;

Such judgment may be set aside only on grounds of (1) fraud, (2) non-service or (3) lack of jurisdiction

DIFFERENCES BETWEEN SUMMARY JUDGMENT & DEFAULT JUDGMENT

1. Summary judgment is a judgment on the merits—can only be set aside on appeal—cannot be set aside by the court that granted same: default judgment is not a judgment on the merits; it may be set aside, by the court which granted it.
2. Summary judgment – obtains where there is apparently no good defence to the claim
3. Default to carry out stipulation of the rule or an order of court is not a sine qua non for summary judgment; whereas default judgment essentially results from failure to comply with rules/order of court.

SIMILARITIES

1. Affidavit evidence is used in either procedure (at least in judgments by default of appearance & pleadings);
2. Judgment without plenary trial;
3. By application- motion on notice (at least in judgments by default of appearance & pleadings).

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 9
PLEADINGS

Meaning

Pleadings are written or printed statements of facts filed and served by each party in a case, stating the facts relied on, to establish his case or defence as the case maybe. Pleadings are used in actions commenced by writ of summons in the High Court.

Types

- Statement of Claim
- Statement of Defence
- Reply
- Counter-claim
- Set off
- Further and better particulars of pleadings

See O. 17 r. 1(1) – (4) and r. 4 (Lagos); O. 15 r. 1(1) – (3) and r. 4 (Abuja).

Functions of Pleadings

Pleadings define the issues in dispute between the parties and also highlight matters in which there is agreement between them. Facts that are admitted need not be proved. Issues are thus narrowed down.

By pleadings, each party gives a fair notice to the other, of the case he intends to put up in court. This enables the other party to prepare his own case in advance.

No party is allowed to adduce evidence on an issue not raised in the pleadings. Such evidence “goes to no issue”. **Vincent Bello v Magnus Eweka (1981) 1 SC101**

○ Evidence that is adduced which is contrary to or at variance with pleadings also goes to no issue and must be expunged from the record of court if already admitted - **Ambrosini v. Tinko (1929) 9 NLR 8; Adegbenro v. AG (Fed) (1962) 1 All NLR 431**

○ A fact pleaded, on which no evidence is adduced, also goes to no issue - **Olarewaju v. Afribank (Nig) Plc (2001) 7 SCNJ 493**

Pleadings inform the court what dispute exists between the parties. The court is in turn, bound or guided by the pleadings in deciding whether or not it has jurisdiction over the matter.

Pleadings constitute permanent records of what was decided on in a particular case; and forms the basis on which a plea of estoppel per rem judicata may be raised in subsequent actions.

Pleadings assist the court in determining the party on whom the onus of proof lies - **Bakare v. ACB Ltd. [1986] 5 SC 48**

Formal requirements of Pleadings

1. Every pleading must be correctly headed in the title of the court in which the action is filed, showing clearly, the parties to the suit, suit number, and where necessary, the capacities in which the parties are suing or being sued.

2. Description of pleading. Each pleading must state its description e.g. “Statement of Claim”, “Statement of Defence,” “Reply”, etc. When there are more than one Claimant or Defendant, the

pleading should indicate which of the parties are relying on it e.g. “Statement of Claim of 1st – 3rd Claimants” or “Statement of Defence of 5th – 7th Defendants”, or “Statement of Claim of the Claimants” and vice versa.

IN THE HIGH COURT OF BAYELSA STATE
IN THE YENAGOA JUDICIAL DIVISION
HOLDEN AT YENAGOA
SUIT NO.....
BETWEEN
RABIU ANYANWUCLAIMANT
AND
CHRIS AHMED.....DEFENDANT

STATEMENT OF CLAIM

3. Every pleading must be divided into paragraphs and numbered successively with each paragraph containing as much as may be a separate allegation of facts.
4. Facts in pleadings must be stated in a chronological order (order of sequence). This makes for easy flow of evidence during trial and easy following by court and counsel.
5. Statements of fact must be positive, precise, distinct and brief. Allegation of facts must not be stated in an evasive manner. The indicative and not the passive voice should be used. For example, instead of pleading, “The car was unlawfully held unto by the Defendant”, plead, “The Defendant unlawfully held unto the car”.
6. Pronouns should be sparingly used as such use may lead to ambiguity. Say, “The Claimant” if you mean to say so; not “He”. Always maintain a nomenclature in your pleadings. If you have referred to a “deed of lease” in a paragraph, do not refer to the same document as “the indenture” or the “agreement” in another paragraph.
7. Expression of dates, sums and numbers should be in figures e.g. ₦100,000.00 30/7/2001 or 30th July, 2001 etc. but may also be expressed in words - **O. 15 r. 2(2) (Abuja); O. 17 r. 2 (Lagos)** This requirement is designed to simplify the ready appreciation of dates, sums and numbers in pleadings.
8. Every pleading must be dated and signed by the legal practitioner settling same or by the party if he acts in person. **O. 15 r. 2(3) (Abuja); O. 17 r. 2(3) (Lagos); Idowu (2006) All FWLR (Pt. 293) 361; Auman (Nig)Ltd. v. Leventis Motors (Nig) Ltd . [1990] 5 NWLR (Pt. 151) 458 at 568**
9. Every pleading must contain the addresses for service on the parties.
10. Every pleading like all other court processes must be printed, written clearly and legibly or typewritten, typeset by computer or by means of carbon. The paper on which the pleading is written must be of durable quality.

Matters that must be Specifically Plead

1. Matters that will take the adverse party by surprise if not pleaded must be specifically pleaded. Examples are limitation of action, immunity, commission of crime, fraud and illegality.
2. Counterclaim or set-off must be specifically pleaded and relevant particulars furnished.
3. Insanity must be specifically pleaded in probate matters. A party who intends to challenge a will on the ground that the testator was insane, of unsound mind, memory and understanding must specifically plead same and state particulars of such instances of delusion and shall confine his evidence to the instances pleaded, at the trial.
4. Adultery in matrimonial causes must be specifically pleaded, giving particulars as to date, time and place of occurrence as well as particulars of the person with whom the adultery is allegedly committed.
5. In defamation cases, the words that are alleged to be defamatory must be specifically pleaded and particulars of publication, the names of person(s) to whom the words were uttered, in the case of slander, furnished. If the defamatory words were written or spoken in a foreign language, the exact foreign version must be pleaded, followed by an interpretation or translation of same. If the words complained of are ordinarily not defamatory or did not specifically refer to the Plaintiff, the fact from which the court can infer the innuendo or reference to the Plaintiff must be pleaded. Particulars of special damages if any and any defence like qualified privilege or justification must be pleaded.
6. Equitable maxims and “special pleas” like *res ipsa loquitur*, estoppel, laches, acquiescence and undue influence must be specifically pleaded or sufficient facts from which such maxims or doctrines could be implied, must be pleaded if intended to be relied on at the trial - *Ololo v. NAOC Ltd.* [2001] 6 SCNJ 124 at 131, [2001] 6 SC 136 at 140
7. Evidence of traditional history where it is to be relied on in land matters must be specifically pleaded. Particulars of custom, family history and the ancestral lineage relevant to the claimant’s title must be pleaded.
8. Unenforceability of a document or waiver of a right must be pleaded specifically by party relying on same as defence.
9. A purchaser of a legal estate, subject of a prior equitable mortgage must specifically plead that he is a purchaser for value without notice or else, notice will be imputed.
10. Special damages must be specifically pleaded and particulars of same itemised and proved at the trial for the Claimant to succeed.
11. Customary law, foreign law and Islamic law must be specifically pleaded unless already judicially noticed by the court.
12. Documents that are material facts to the establishment of a fact must be pleaded. Although, decided authorities are replete that say it is not necessary to plead a document, it is however submitted that the guiding question is whether the document itself is a material fact.

Statement of Claim

Introductory Averments (Matters of Inducement)

Body

Relief or Prayer : “WHEREOF the Claimant claims as follows:” or “AND the Claimant claims as follows:”

- A declaration of title to all that piece and parcel of land, lying and situate at Agbani...
- The sum of ten million naira (N10,000,000.00), being general damages for trespass “WHEREOF the Claimant claims as per the writ of summons”.

Okomu Oil Palm Co. Ltd. v. Iserhienrhien, (2001) 85 LRCN 873 at 895, [2001] 3 SCNJ 79 Uwaifo JSC held as follows:

I think reference in a statement of claim to the writ for the reliefs claimed makes the statement of claim complete as it incorporates the writ ... Once there is such incorporation, the statement of claim is taken to contain the reliefs stated in the writ, which statement of claim would otherwise have been defective and contrary to the requirement of 0.13 r. 7.

Cf *Amusan v. Oluwani*, [2002] 12 NWLR (Pt. 780) 30 at 51, Tabai, JCA, (as he then was), described the practice as “lazy and ought to be discouraged.”

Relationship between Statement of Claim and Writ of Summons

The writ of summons initiates proceedings and states the nature of the claim (cause of action) and reliefs sought from the court. The statement of claim on the other hand, elaborates or amplifies the claims earlier on set out in the writ. Once a statement of claim has been filed, it supercedes the writ.

Elf (Nig.) Ltd. v. Sillo [1994] 7-8 SCNJ 119; *Enigbokan v. AILCO (Nig.) Ltd.* [1994] 6 SCNJ 168

Statement of Defence (response to Statement of Claim)

- By admission of allegations of fact in the statement of claim;
- By traverse or denial of allegations of fact in the statement of claim;
- By confession and avoidance;
- By objection in point of law; and
- By set-off or counterclaim

Admission

The Defendant may choose to admit facts which are true. He admits thus:

The defendant admits the facts averred in paragraph..... of the statement of claim; or

The defendant admits paragraph..... of the statement of claim.

Such admitted facts need not be proved and will be taken as having been established at the trial - S.

123 Evidence Act 2011; *Egbunike v. ACB* [1995] 2 SCNJ 58

Traverse

An unequivocal denial of an allegation of fact in the statement of claim. Whatever is not traversed or denied expressly or by necessary implication is deemed to have been admitted and discharges the Claimant from the burden of proving such fact by evidence at the trial.

Traverse or denial could be in any of two ways:

- The Defendant denies the allegations of fact in paragraph..... of the statement of claim; or
- The Defendant does not admit the allegations of fact in paragraph etc

- Negative Pregnant Traverse – “or at all”
- Traverse of Allegations partly true and partly false
- Defendant not in a position to admit or deny – *Lewis & Peat (NRI) Ltd. v. Akhimien* [1976] 7SC157 at 163; *Aja v. Okoro* [1991] 9-10 SCNJ I, [1991] 7 NWLR (Pt. 203) 260. Possible under O. 23 r. 13 (2004 Abuja Rules).

Omitted in new Rules but may be persuasive

The General Traverse; Used to evade an inadvertent admission, which should have been denied. It should not however, be used to traverse a material allegation of fact - O. 15 r. 5(2) (Abuja) and O. 17 r. 5(2) Lagos). Normally stated at the beginning of the S/D thus:

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

Confession and Avoidance: Defendant admits an allegation in the statement of claim but proceeds to allege new facts which give entirely different consequences to such admission, probably a defence. E.g. “*The Defendant admits that the Claimant was evicted without a lawful court order but the Defendant avers that the Claimant was a trespasser*”.

Set-Off: This is a monetary claim by the Defendant against the Claimant which the Defendant pleads in his defence against an equally monetary claim by the Claimant. The effect of a set-off is that if it succeeds, it mitigates the Defendant’s liability to the amount of the set-off; i.e. it reduces

the Claimant's claim by the amount of the set-off. But Defendant may have judgment in his favour for balance O. 17 rr. 6 & 12 (Abuja) and O. 19 rr. 6 & 12 (Lagos)

Counterclaim: A counterclaim is by nature, a cross-action raised in the Defendant's statement of defence against the Claimant - **O. 15 r. 1(2) (Abuja) and O. 17 r.1(3) (Lagos).**

Unlike a set-off, a counterclaim needs not be a monetary claim. The Rules of court make it available for any claim either in law or equity, that the Defendant has against the Claimant; whether arising out of the same or series of transactions or not - **O. 17 r. 6 (Abuja) and O. 19 r. 6 (Lagos).**

It must be an action in which the Defendant can sue as Claimant. The Claimant in the substantive action must be a Defendant to the counterclaim.

However, it is possible to include some other persons who are not parties in the substantive action, in the counterclaim - **O. 17 rr. 7 & 8 (Abuja) and O. 19 rr. 7 & 8 (Lagos).**

Since a counterclaim is a cross-action raised in the statement of defence in the substantive action, it must be one capable of being tried in the same action and by the same court. It must be pleaded separately, in paragraphs in the statement of defence.

It must contain a relief or prayer; otherwise it would be deemed to have been abandoned - **Isichei v. Allagoa [1998] 12 NWLR (Pt. 577) 196 at 207; Regd Trustees of Anglican Diocese of Ibadan v. Managing Proprietor, Liberty Secondary Commercial Academy (1971) 1 UILR 46.**

The fate of a counterclaim does not depend on the substantive claim. The counterclaim may still proceed even if the substantive action has been withdrawn or dismissed – **R. Benkay (Nig) Ltd. v. Cadbury (Nig) Ltd. [2006] 6 NWLR (Pt.976) 338 at 360-362**

A counterclaim must be in respect of a cause of action accruing to the Defendant at the time of issue of the writ. If it accrues subsequent to the issue of the writ, it will not be allowed - **Gowon v. Ike-Okongwu , (2003) 104 LRCN 10 at 17**

REPLY

A reply is a second pleading that may be filed by the Claimant in answer to new issues raised in the Defendant's statement of defence which were not originally contained in the statement of claim e.g. counterclaim.

Traversed thus, "The Claimant joins issue with the Defendant upon his defence" or "upon paragraphs 5, 6 & 8 of his statement of defence and counterclaim".

If there is a defence to a counterclaim, it must be so stated and headed in a separate paragraph.

Time for Filing Pleadings

- Statement of Claim filed with writ of summons – **O. 3 r.2(1) Lagos; O. 2 r. 2(2)(Abuja)**
- Statement of Defence filed within 42 days of the service of the writ and statement of claim on the Defendant - **O. 17 r. 1(2) (Lagos);** within 21 days of service of writ and S/ C on Defendant - **O. 15 r. 1(2) (Abuja)**
- Reply filed within 14 days of service of defence – **O. 17 r. 1(4); O. 20 r. 1 (Lagos); O. 15 r. 1 (3) (Abuja).** within 7 days in Abuja where there is no counterclaim – **O. 18 r. 1 (Abuja)**
- Defence to counterclaim filed within 14 days of service of defence – **O. 17 r. 1(4); O. 20 r. 1 (Lagos)**

Close of Pleadings

Deemed closed upon the expiration of 42 days if no defence is filed – **O. 17 r. 18(1) (Lagos).**

Deemed closed upon the expiration of 7 days after service of defence or reply where a pleading subsequent to reply is not ordered – **O. 17 r. 18(2)(Lagos); O. 15 r. 19(1) (Abuja)**
If there is a counterclaim, and the Claimant fails to file a defence to the counterclaim, upon the expiration of 14 days after service of counterclaim, facts therein shall be deemed admitted – **proviso to O. 17 r. 18 (4)(Lagos); proviso to O. 15 r. 19 (2) (Abuja)**

Default of Pleadings

Judgments may be entered in favour of Claimant if Defendant defaults in filing a defence – **See O. 22 generally in Lagos and O. 21 generally in Abuja**

Such judgments are final and valid and may only be set aside on grounds of fraud, nonservice or lack of jurisdiction upon terms – **O. 22 r. 12 (Lagos); O. 21 r. 12 (Abuja)**

Amendment of Pleadings

When Amendment May Be Allowed?

Amendment of pleadings may be allowed where its purpose is to determine the real question or issue between the parties. It would generally be allowed where:

- It would secure substantial justice;
- It will settle the controversy between the parties and related issues;
- It will bring pleadings in line with evidence already adduced on record.

When Amendment May Be Refused

Amendment may be refused where:

- It would present a completely different case, or cause injustice to the other party or where application for amendment is brought mala fide;
- It would necessitate the hearing of further evidence especially on appeal;
- It would not cure the defects in the procedure sought to be cured or where it is inconsistent and useless;
- It would amount to over-reaching the other party or an abuse of court process.

PLEADINGS

Individual Tasks

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 Moshood Tantan 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 Tantan has approached you to commence an action immediately.

(a) As Counsel to DrTantan, 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 DrTantan expected to respond to the statement of defence (if any)?

(b) Assuming you were Counsel to MrAbroko, answer the following questions:

- (i) Assuming MrAbroko intends to defend this suit, state the time within which MrAbroko 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 MrAbroko if 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 MrAbroko has a counter-claim, how and within what time is he expected to file same in the court, and by what document is DrTantan 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.

The End

Best wishes

From

The Civil Litigation Department
Nigerian Law school, Yenagoa

WEEK 10
PRE-TRIAL ISSUES AND PRE-TRIAL PROCEEDINGS.
LESSON OUTCOMES

At the end of this lesson, the students will be able to:

1. Explain benefits of Pre-Trial Conference (PTC) / Case Mgt. Conference (CMC);
2. Explain the procedure for settlement of issues
3. Identify the Forms involved in PTC/CMC
4. List the Agenda for PTC/CMC;
5. Explain sanctions for default in PTC/CMC
6. Explain conditions for striking out of pleadings at pre-trial stage;
7. List the possible orders a Judge may make during the pre-trial proceedings;
8. Explain the procedure for Discovery, Production & Inspection of Documents
9. List the Grounds for objection to interrogatories& Production of Documents;
10. Explain the Effect of non-compliance with order for Interrogatories, Discovery & Inspection

At the close of pleadings, issues would have been joined, and so the next stage would be for the parties to proceed to trial. But the Rules of Courts provide for effective case management so that only the real issues in controversy between the parties will be dealt with at the trial.

Benefits of Case Management Conference

Benefits of PTC / CMC management includes the following:

1. It helps to eliminate issues that are not in contention between the parties, thereby helping the court to focus on the main issues;
 2. It helps the court to achieve speedy trial of the real issues;
- In general, the rules on pre-trial proceedings are similar across jurisdictions, but in this lesson there is need to highlight the specific provisions of the Abuja and Lagos Rules on pre-trial proceedings.

In Abuja:

1. Within **7 days** upon conclusion of pleadings, the parties shall submit to the Registrar in writing the materials issues in controversy between them;
2. The court shall note the issues and set them down for trial;
3. The pretrial Judge may settle any issue on which the parties differ:
Or. 27 rr. 1 and 3, Abuja, 2018
1. If any party fails to submit his /her own issues in controversy, the court may set down the matter for hearing based on the issues submitted by the other party. **See Or. 27 r. 2, Abuja, 2018**
2. If neither of the parties submitted their issues in controversy, the court shall give them notice to attend settlement of issues **See Or. 27 r. 4, Abuja, 2018**

Also in Abuja, within that same 7 days after close of pleadings the Claimant shall apply for the issuance of Pre-trial Conference Notice as in **Form 19**. The court shall then issue Form 19 together with Form 20 (Pre-trial Information Sheet). See **Or. 27 r. 10 (2) Abuja, 2018**

Q: In what form is the application made?

A: It is usually an oral application in court.

Upon Claimant's application the court shall cause **Form 19** to be issued **together** with **Form 20** (Pre-trial Information Sheet).

For Lagos, it is Form 17 together with Form 18 (Case Mgt. Information Sheet). At this time the Court shall also fix a date for the conference.

But if the Claimant fails to apply for the issuance of Pre-trial Conference Notice within the stipulated 7 days after close of pleadings, the Defendant may either apply for the issuance of Pre-trial Conference Notice or apply for the action to be dismissed. See Or. 27 r. 10 (3) Abuja, 2018; Or. 27 r. 1 (3) Lagos, 2019

In Lagos:

(a) Within 14 days after close of pleadings, the Claimant shall apply for issuance of Case Management Conference Notice and the Court shall issue same (Form 17) with Case Mgt Info. Sheet in Form 18; Or. 27 r. 1 (1) & (2), Lagos, 2019.

Within that same 14 days after close of pleadings, each party is required to draw up the issues in dispute and file same. – Or. 30 r. 1 Lagos

The issues drawn up by parties will then be ‘settled’ (i.e. the points of the dispute will be narrowed down) at the case Management Conference.

Settlement of issues is ‘the procedure in which the parties in conjunction with the Court ascertain what the material questions in controversy are; and settle them in form of issues for determination.’

In Lagos this is done at the Case Mgt Conference.

In other jurisdictions it is done at the PreTrial Conference

(b) If Claimant fails to apply, the Defendant may either do so or apply for dismissal of the action. Or. 27 r. 1 (3), Lagos, 2019

Agenda for PTC and CMC

Both in Abuja and Lagos, the PTC/CMC Agenda include the following:

- a. Formulation / settlement of issues
- b. Amendments, further/better particulars
- c. Admissions, etc
- d. Control / scheduling of discovery, inspection & production of documents;
- e. Settlements of documents to be admitted;
- f. Narrowing the field of dispute b/w expert witnesses by involving them in CMC
- g. Hearing motions/ objections on law
- h. Orders for separate trials of Claim, Counterclaim, Set-off, Third Party Claim
- i. Settlement of issues, inquiries, accounts,
- j. Case stated under Order 31
- k. Referrals to Lagos Multi-Door Court House or other ADR bodies
- l. Implementing any ADR orders
- m. Any other matters Or. 27 r. 13, Abuja 2018; Or. 27 r. 2, Lagos 2019

Please note the words used in the Rules on these matters:

***Abuja** - Or. 27 (2018) uses Pre-trial Conference

***Lagos** - Or. 27 (2019) uses Case Management Conference

(But PTC and CMC achieve same purpose in the different jurisdictions)

Generally, apart from the parties raising pre-trial issues, the court may also do so suo motu. At the pre-trial conference the court shall draw up a scheduling order.

Items for the scheduling order include the following:

Items for Scheduling Order

- a. Joinder of other parties
- b. Amendment of pleadings/ other processes
- c. Filing of motions
- d. Further pre-trial conference
- e. Any other matters

Or. 27 r. 12, Abuja 2018

Time table for Pre-trial/Case Mgt. Conference

(a) CMC shall be completed within 3 months of commencement unless extended by the judge

(b) Case management conference shall be held from day to day or adjourned only for purpose of complying with CMC order **Or. 27 r. 3 Lagos**

(c) PTC shall be completed within 30 days of commencement unless extended by the judge

(d) Case management conference shall be held from day to day or adjourned only for purpose of complying with CMC order **Or. 27 r. 14 Abuja**

Note the difference in durations respectively Sanctions for default in PTC or CMC. Parties and their Counsel shall co-operate with the court to work within the PTC/CMC timetable. If they default to attend the CMC in good faith the Judge shall:

(a) Dismiss the claim in the case of a Claimant

(b) Enter judgment in the case of a Defendant

See **Or. 27 r. 5 Lagos; Or. 27 rr. 16 & 18 Abuja**

Such judgment may be set aside on application within 7 days, or within time as may be allowed by the ADR Judge- **Or. 27 r. 6 Lagos; Or. 27 r. 16 Abuja**

Striking out of pleadings at pre-trial stage

Question: What may lead to the striking out of pleadings at the pre-trial stage?

1. If it is 'frivolous' or 'vexatious';
2. If it is scandalous;
3. If it is prejudicial, embarrassing, or merely intended to delay the trial;
4. If it discloses no reasonable cause of action
5. If it discloses no defence to the action
6. If it is an abuse of the court's process

See generally, **Or. 5, rr. 16 & 18; Or. 23 r. 3 Abuja; Or. 17 r. 15 Lagos**

Pre-trial & Trial Proceedings Pleadings may be struck out if:

(i) It is 'frivolous' or 'vexatious'; The Rules does not define the term "frivolous" or "vexatious." but in *Willis v. Earl Beauchamp* (1896) 11 PD 39 a 'frivolous' or 'vexatious' suit was held to be a suit not meant to serve any useful purpose other than to waste the time of the court. Under the Abuja and Lagos Rules if it is the whole claim that is frivolous and vexatious, the court may strike out the claim. Where it is only part of the claim that is frivolous, the Judge in Lagos or the court in Abuja may strike out or order for amendment. The court may also order costs against the defaulting party. See generally: **Or 15 r. 16 Abuja; Or 17 r. 15 Lagos**

- ii. If it is scandalous; This refers to situations where the allegations contained in the Pleadings are false and merely employed to harass the adverse party.
- iii. If it is prejudicial, embarrassing, or merely intended to delay the trial; This means when the Pleadings do not meet the case; or pleadings that is incoherent, illogical, diversionary or evasive. In such cases it is liable to be struck out.
- iv. If it discloses no reasonable cause of action: If a party's pleadings fail to disclose any reasonable cause of action or defence, the other party will apply to have the pleadings struck out. See **Or. 17 rr. 15 & 17 Lagos; Or. 15 rr. 16 & 18 Abuja.**
- v. If it discloses no defence to the action: See **IBRAHIM V. OSIM (1987) 4 NWLR (PT 67) 965.**
- vi. If it is an abuse of the court's process: "Abuse of court process" means that the process of court has not been used bona fide (i.e. the process of the court was used in bad faith. see **IKINE V. EDJERODE (2001) 8 NSCQR 374.** For example, filing of multiple actions between the same parties on the same subject matters.

Pre-trial & Trial Proceedings

Question: What are the possible orders a Judge may make during the pre-trial proceedings?

If a party so applies, a Judge may make order:

- (i) Striking out the pleadings
- (ii) Granting leave to amend such pleadings
- (iii) Entering judgment for either party
- (iv) Ordering that the action be stayed
- (v) Ordering that the action be dismissed; or
- (vi) Make such order as it thinks fit in the circumstances of the case
Or. 15, r. 18 (1) (Abuja, 2018);

Discovery of Facts & Documents Question:

What is:

- an interrogatory?
- inspection of documents?

(Note: They both occur at close of pleadings)

Interrogatories Interrogatory: Written questionnaire drawn up by an opposing party in a lawsuit and directed to the adverse party, requiring the adverse party to answer them in order to furnish information on the issues raised.

The party 'interrogating' i.e. the party asking the question will use the information obtained to prepare his own case. Such questions must relate to the fact in issue or relevant to the fact in issue. In Lagos, it is delivered within 7 of close of pleadings and shall form part of the agenda of the case management Conference. See **Or. 29 rr. 1 & 8 Lagos. ABUBAKAR V YAR ADUA [2008] 4 NWLR (Pt. 1078) 465.**

Interrogatories

1. Abuja: A party wishing to discover facts shall apply in writing to the Ct., and an Answer to Interrogatories shall be in the form of an oath. Such application shall form part of the pre-trial conference. See - **Or. 28 r. 8 Abuja 2018**
2. Lagos Rules provides that an application for inspection or discovery shall form part of the Case Management Conference. See - **Or. 29 r. 6(2) Lagos 2018**

Affidavit in Answer to Interrogatories

An interrogated party shall answer by affidavit within the period stipulated by the Rules– **Or. 28 rr. 5 & 6 Abuja 2018 See Or. 29 r. 6(1) Lagos 2018 also the Lagos Rules.**

If an in interrogatory question is mala fide, scandalous, irrelevant or beyond the scope of the subject matter of the litigation, etc, the interrogated party may raise objections to such questions in his affidavit in answer.

Such objection may be taken at the pre-trial Conference – **Or. 28 r. 4, Abuja 2018**

If a person served with interrogatories fails to answer thereto, or if he gives insufficient answer in response to the interrogatories, the interrogating party may apply to the court or Judge in Chambers for an order compelling the interrogated party to answer (or to answer further, as the case may be- **Or. 28 r. 7 (Abuja), 2018 Or. 29 r. 5 (Lagos), 2019**

Discovery, Production & Inspection of Documents:

If a party wishes to discover nature and contents of documents (or needs to make copies of them for use in the preparation of his claim or defence), he may serve a written request on the adverse party to make disclosures on oath about documents in the adverse party's possession **Or. 28 r. 8 (1) Abuja 2018; Or. 29 r. 6 (1) Lagos 2019.**

The court or Judge in Chambers can also order any party on oath during the action to produce any document in his power or possession regarding any matter in question as the Judge or court may deem appropriate.

In both Abuja and Lagos, a Judge also has power to order the production and verification (by affidavit) of any business book if a party so applies – **See Or. 28 r. 10 Abuja, 2018; Or. 29 r. 8 (Lagos), 2019**

If a party wishes to inspect documents referred to **in the adverse party's pleading or affidavit**, he may do so at any time by giving written notice to the adverse party requesting that the document be produced for inspection. If this is done, the party giving the notice may either conduct the inspection personally, or do so through his solicitor, or conduct a joint inspection with his solicitor; See generally, – **Or. 28 r. 8 (1), Abuja; Or. 29 r. 6 (1), Lagos**

Questions prohibited in Interrogatories

- a. Questions as to contents of documents. See section 128 Evidence Act.
- b. Scandalous questions (insulting questions)
- c. Questions in the form of cross examination
- d. Interrogatories as to evidence of the other party interrogated
- e. Fishing interrogatories (interrogatories which are completely outside the pleadings)
- f. Oppressive interrogatories (questions that are administered mala fide)

Grounds for objection to interrogatories & Production of Documents

• Grounds for objection to produce documents:

- a. Privilege related communication between lawyer and client
- b. Incriminating documents
- c. Document relating to national security;
- d. Document the production of which is against public interest;
- e. Documents marked without prejudice
- f. Documents of title

Effect of Non-Compliance with order for Interrogatories, Discovery, Inspection

- Non-compliance with order for interrogatories, discovery or inspection is contempt that would lead to his committal to prison - **Or. 29 r. 9 Lagos**
- If he is the Claimant, his action may be dismissed for default of prosecution;
- If he is the Defendant, his defence would be struck out on Claimant's application;
- The party in default cannot give evidence of the contents of such documents
- In Lagos, is counsel is negligent he may be committed to prison **Or. 29 r. 10 Lagos**
- The party in default may be ordered to pay costs - **Or. 28 r. 11 Abuja**
- If the fault is that of counsel, he may be made to bear the cost - **Or. 28 r. 12 Abuja**

Order for Interrogatories etc against Sheriff or Persons under Disability

In appropriate cases, the Sheriff may be directed to answer to interrogatories, or to disclose facts or allow inspection of documents which are in his possession by way of his official duties. Such orders may also be directed to infants and their guardians, and other persons under legal disability - See **Or. 28 r. 14 & 15 (Abuja); Or. 29 r. 12 & 13 (Lagos)**

Pre-class assignments for week 10: 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.

WEEK11
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 in line with this that some of the essential principles and rules of evidence are incorporated into civil 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. Ss 14 & 15 EA
- Character in civil cases not admissible subject to exceptions. See ss 78 & 79 EA
- Similar facts not admissible but exceptions can be found in ss 35 & 36 EA
- a. Hearsay not admissible subject to exceptions. See ss 37 & 38 EA
- b. Estoppel including res judicata See ss 169 - 174 EA

OPINION SEE 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)

CONDITIONS FOR ADMISSIBILITY OF EXPERT EVIDENCE

- 1) The expert witness must establish his qualification or experience
- 2) His evidence must be restricted to his area of specialisation, see **SEISMOGRAPH SERVICES LTD V. OGBENI (1976) 1 NMLR 290.**
- 3) Opinion must be based on proved facts.

OPINION AS TO HAND WRITING -WHEN ADMISSIBLE S.72.

The person must be acquainted with the writing of that person or his signature s.72(1). A person is said to be acquainted with writing or signature if:

- 1) He has seen that person write
- 2) Has received documents purported to have been written by him in reply to his own document
- 3) When in ordinary course of business, the document purported to have been made by that person are habitually submitted to him.

COMPETENCE AND COMPELLABILITY: competence is the legal ability to give evidence. While compellability is the legal obligation to give evidence. By **SECTION 175 (1) OF THE EVIDENCE ACT.** All persons are competent to testify in a judicial proceeding unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by reason of tender years, extreme old age, disease whether of body or mind or any other cause of the same kind.

Every compellable witness is a competent witness but it is not every competent witness that is compellable. When a competent witness is compellable, he becomes both competent and compellable to testify. A compellable witness who fails to appear to testify may, be penalised for contempt of court.

CHILDREN: under **S. 209 of the Evidence Act**, a child who is less than 14 years of age shall only be competent to testify in civil trials if the following conditions are met:

- a) if he is possessed of sufficient intelligence to justify the reception of his evidence
- b) if he understands the duty of speaking the truth

Such a child can only give unsworn evidence which requires corroboration. . Note that a child that has attained the age of 14 shall give sworn evidence.

Classes of persons who are competent but not compellable: (1) president, vice president, governors and their deputies. **SEE S. 308 OF THE CONSTITUTION AND TINUBU V. IMB SECURITIES (2001) 9-10 SC 49.**

Note:

1. the holders of these offices cannot be sued in their personal capacity while in office
2. They cannot be arrested or imprisoned while in office
3. They cannot be compelled to appear in court to give evidence, but in **ALLIANCE FOR DEMOCRACY V. FAYOSE, (2004) ALL FWLR (PT.214)** it was held they can be compelled by subpoena to testify in an election petition tribunal
4. They can also be sued in civil matters in their official capacity while in office

b. Diplomats **SEE S. 1(1) OF DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT, ISHOLA- NOAH V. THE BRITISH HIGH COMMISSIONER (1980) 8-11 SC 100.** Under this law diplomats enjoy diplomatic immunity from suit and legal process and cannot be compelled to testify.

Note that diplomatic immunity does not extend to a diplomat where the cause of action arose from professional or commercial activities **SEE ZABUSKY V. ISREAL AIRCRAFT INDUSTRIES (2007) ALL FWLR (352) 1759.**

Immunity vs privilege: immunity protects a person from being compelled to testify in court. Whereas privilege protects certain facts from being given in evidence. Thus, a person may be a compellable witness but may not be compellable to give evidence of some facts.

JUDGES AND MAGISTRATES

Judges enjoy judicial immunity as they cannot be sued in relation to their official conduct as judges.

Information coming to their knowledge in their capacity as judges are also privileged as they cannot be compelled to give evidence of such facts. This also applies to magistrates. **S 188 EA**

PARTIES TO SUIT AND THEIR SPOUSES

Parties and their spouses are compellable witnesses in civil cases. **S.178 EA** but communication between husband and wife during marriage is privileged. **S. 187 EA**

LEGAL PRACTITIONER AND HIS CLIENT:

Communication b/w a legal practitioner and his client is privileged. A legal practitioner shall not be compelled to disclose such communication. See exceptions in **s. 192 (1) (a) and (b) EA.**

AFFAIRS OF STATE: official communication relating to affairs of state are privileged. Note

that the court now has the right to examine the evidence in chambers to determine whether to allow the claim of privilege or not. **SEE SS 190, 191 & 243 EA**

COMMUNICATION MADE WITHOUT PREJUDICE SEE SS 26 & 196 EA

CORROBORATION: It is the independent confirmation or affirmation of a piece of evidence. In civil proceedings a claimant can succeed in his claim upon the testimony of only a credible witness which may be himself or another person. Thus, no corroboration is required in civil cases except in a case of breach of promise of marriage. **SEE S 197 EA; BESSELA V. STERN(1877) 2 CPD 265.**

COMPELLING ATTENDANCE OF A WITNESS IN COURT

The method of compelling witnesses to attend trial in the high court is by subpoena. This is an order from the court demanding the attendance of a witness. It may be for a witness to attend and testify – subpoena ad testificandum; or for the witness to produce document in his possession - subpoena duces tecum. A witness who fails to obey a subpoena may be cited for contempt. Note also: subpoena habeas corpus ad testificandum for a witness in custody.

NB: A WITNESS SUMMONS IS USED TO COMPEL THE ATTENDANCE OF A WITNESS IN THE MAGISTRATE COURT.

MEANS OF PROOF

A fact may be proved by

- Oral
- Real, or
- Documentary evidence
- For oral evidence, **see s 126 EA**
- For real evidence/visit to locus in quo, **SEE S127 EA; OBA IPINLAYE V OLUKOTUN**

DOCUMENTARY EVIDENCE: Documentary evidence is one of the principal means of proof in civil trial. **SECTION 85 OF THE EVIDENCE ACT** provides that the contents of documents may be proved either by primary or secondary evidence. **S. 86(1) OF THE ACT** defines primary evidence as the document itself produced for the court's inspection. Where the original document cannot be produced, resort should be had to **SS. 87,89 AND 90 OF THE ACT** which allow for the admissibility of a secondary evidence.

S. 103 OF THE ACT provides that "all documents other than public documents are private documents".

S. 105 provides that secondary evidence is permissible of public documents by producing a CTC in court. **ANATOGU V. IWEKA (1995) 9 SCNJ 1.**

COMPUTER GENERATED EVIDENCE: in any civil proceedings a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would have been admissible.

FOR SUCH DOCUMENT TO BE ADMISSIBLE IT MUST SATISFY THE FOLLOWING REQUIREMENTS:

- A) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information
- B) that over that period there was regularly supplied to the computer in the ordinary course

information of such nature

C) that over that period the computer was operating properly

D) that the information contained in the statement is derived from ordinary course of those activities. **S. 84(1 & 2) EA. SEE KUBOUR V. DICKSON (2013) ALL FWLR (PT. 676) AT 392.**

In any proceeding where such evidence is intended to be tendered in court, there shall be a certificate signed by a person occupying a responsible position in relation to the operation of the device identifying the statement or document so processed giving particulars of the device used in processing the information which shall be evidence of the matter stated in the certificate. **S. 84 (4) EA.**

BURDEN OF PROOF (SS.131-144 EA) this is the obligation to establish one's case. There are two types of burden of proof: 1) legal or general burden of proof (which does not shift) and evidential burden (which shifts). Generally, by **S.131** he who asserts must prove. This is the party that will fail if no evidence is adduced on either side. **S. 132 OF THE ACT**

STANDARD OF PROOF

This means 'level' or quantum of proof required to establish a fact before the court

balance of probability or preponderance of evidence in civil cases. **S. 134 EA**

beyond reasonable doubt where allegation of crime is involved whether in civil or criminal cases. **S135 EA**

EFFECT OF WRONGFUL ADMISSION OR EXCLUSION OF EVIDENCE

• **SEE S 251 EA**

PROCEDURE FOR PRESENTATION OF A PARTY'S CASE AT TRIAL

All civil trials must be public **S.36(3)** every party is required to be present in court on the day the suit is fixed for hearing.

Where a party does not physically appear but is represented by counsel he is deemed to have appeared. **SEE HARUNA V.LADEINDE(1987) 4 NWLR (PT.67) 941.**

However, he must be physically present to give his evidence

If on the day of hearing, the case is called for trial and neither party appears, the court shall strike out the suit. **O 32 R 2 ABUJA, O 33 R 2 LAGOS.**

Where a suit is struck out under such circumstance, such a suit may be relisted on an application by the claimant.

Where the claimant is absent

If the claimant is absent but the defendant is present, the defendant is entitled to have the case struck out. But if the defendant has a counter-claim, he will lead evidence to prove the counter-claim as the burden of proof lies on him.

Where the defendant is absent

Where the defendant is absent but the claimant is present, the claimant will proceed to prove his case.

ORDER OF PRESENTATION WHEN BOTH PARTIES ARE IN COURT.

Where both parties are in court, the party on whom the burden of proof lies shall begin the trial **O. 33 R. 3 LAGOS , O. 32 R.9 ABUJA S.131(1) S.136 EA.** This burden is on the claimant. Where the defendant decides not to call evidence, the claimant shall first address the court before the defendant replies

Where the defendant adduces evidence, the defendant will first address the court and the

claimant replies.

NO CASE SUBMISSION:

A no case submission may be made in the following circumstances: a) if no case has been established in law or the evidence is so unsatisfactory or unreliable.

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
TRIAL PREPARATION AND EVIDENCE II
LESSONS OUTCOMES

At the end of the lesson, students would be able to:

1. Prepare a trial plan, a case theory and identify the relevant evidence in a case;
2. Explain the principles regulating the evidence of special witnesses like children, expert and hostile witnesses;
3. Prepare written statements on oath obeying ethical rules;
4. Explain and discuss the procedure for refreshing a witness's memory;
5. The mode of compelling the attendance of a witness to court.

1. Case Analysis, Case Theory and Trial Plan

Case Analysis

This is a review/evaluation of the facts of a case in relation to relevancy with a view to identifying the strength and weakness of the case as well as the options available for achieving the best outcomes for the client.

It involves an examination or investigation of the facts and evidence so as to determine which fact is necessary and which is not given the state of the law in relation to the course of action.

It is the process of sifting what evidence is relevant or pertinent and determining how to present the facts in a coherent and persuasive manner within the context of the law governing the area of the course of action.

Case Theory

This is a succinct but compelling statement of the case, comprising the facts and the law showing why a party should win.

It is both factual and legal. It is factual because it embodies the most cogent facts. It is legal because it contains argument on why the case should succeed in law given the facts. It represents the gist of the case from the party's perspective. Also, it is called case hypothesis, appreciation of the case story.

Trial Plan

A trial plan is a graphic representation which sets out in detail how a lawyer intends to establish his case in line with theory of the case. It is the blue print for realising the theory of a case. Though it is a matter of style, a typical trial plan should contain the following elements graphically captured in a table:

- i. Cause of action
- ii. Elements of the cause of action
- iii. Witnesses / Evidence for the claimant
- iv. Witnesses /Evidence for defendant
- v. Possible legal defence(s)
- vii. Relevant law (statutory and judicial)
- viii. Remarks/ Notes and follow up action

The Importance of Case Analysis, Theory and Trial Plan

- i. They enable the lawyer to choose the most compelling focal point for a case.
- ii. They enable the lawyer to plan how to go about the case in terms of determining and selecting evidence.

iii. They help determine the relative strength and weakness of a case

iv. They give direction to other lawyers who may handle the case in the future.

Note that case analysis, theory and trial plan are merely part of the in-house preparation of a case by a lawyer/law firm. They do not involve the court or the adverse party.

3. **Opinion Evidence and Special Witnesses**

We shall consider opinion evidence and experts, child and hostile witnesses

Opinion Evidence: Generally, the opinion of a witness is not admissible as evidence. Section 67 of the Evidence Act. A witness testimony must relate to facts within his knowledge only and not inferences, conclusions or opinions. It is only the court that has the power to make conclusions or form opinion based on evidence of fact adduced before the court.

However, there are two broad exceptions

(a) Opinion of experts

(b) Opinion of non-experts

a. Opinion of Experts: Opinions of experts relate to opinions on technical subjects requiring special skills. Persons with such special skills may give their opinion before the court as evidence when such technical subjects are in issue. This includes questions of foreign law, customary law or custom, science or art and the identity of handwriting or finger impression. Section 68 of the Evidence Act

b. Opinion of non-experts: Opinion of non-expert consist of opinion as to hand writing based on familiarity, opinion on the existence of general custom or right when admissible and opinion as to usages and tenets when admissible and opinion on relationship. **Sections 72-75 of the Evidence Act.**

Expert as a Witness

An expert is a person with special skills in areas of foreign law, customary law or custom, science and art or in question as to the identity of handwriting or finger impressions. **Section 68 (1) & (2) of the Evidence Act.** In the examination of an expert, the qualification is very important. Therefore, during examination-in-chief, he must be led to give evidence of his qualification to justify the admissibility of his opinion, otherwise the evidence will be inadmissible.

- a. He should state the basis of his qualification, whether it is from formal education or experience.
- b. He should also state the basis of his opinion to demonstrate that it is supported by data and accords with common sense where necessary.
- c. On cross-examination, one major area to impeach the credit of an expert or test the veracity of his testimony is to challenge his qualification. For example, asking question to show insufficiency of skills.
- d. Apart from qualification, cross-examination could also test the logic or coherence of the expert's conclusion, by showing that the view of the expert has not been subjected to professional peer review and hence unreliable.
- e. Also an expert can be confronted with the contrary opinion of another expert.

Child Witness

Generally, a child can testify if he is competent in that his age has not deprived him of the capacity to understand questions put to him or to give rational answers to the questions. **Section 175 of the Evidence Act**

By implication, a written statement on oath of a child can be filed in case before the High Court of the Federal Capital Territory, Abuja and Lagos State

A child who has attained the age of 14 year is to give evidence on oath or affirmation. On the other hand, a child that has not attained 14 years can only give unsworn evidence where the court is satisfy that the child is possessed of sufficient intelligence to justify the reception of his evidence and understand the duty of speaking the truth. The child can give oral evidence or file an unsworn written statement.

Hostile Witness

A party who calls a witness is deemed to vouch for the credibility of the witness and wants the court to rely on the testimony of the witness by virtue of that credit. Consequently, a party that produces a witness is not allowed (during examination-in-chief for re-examination) to impeach his credit by general evidence of his bad character. Impeaching credit of one's witness will only be allowed where the witness has turned hostile to mitigate the damage that may be caused by the adverse testimony of the witness.

A hostile witness is defined as a witness who in the opinion of the court is giving adverse or unfavourable testimony against the party calling him and is unwilling to say the truth.

Procedure for declaring a Witness hostile

When a party examining a witness realised that the answers are unfavourable and the witness is unwilling to speak the truth, he may apply orally to court for LEAVE to declare the witness hostile.

If the court is satisfied that the two conditions of unfavourable testimony and being unwilling to speak the truth co-exist, it will declare the witness hostile.

After that, the party may proceed to impeach the credit of the witness by cross-examining him, in order to mitigate or obliterate the adverse effect of the unfavourable testimony on his case and the refusal to speak the truth.

Having lost credibility the evidence of such witness will not attract weight. See generally, **SECTION 230 AND 231 OF THE EVIDENCE ACT; IBEH V STATE (1997) 1 SCNJ 256; YUSUF V OBASANJO (2005) 18 NWLR (PT.956) 96.**

Preparation of Written Statement on Oath

One of the documents to be filed by the parties in an action commenced by writ of summons at the High Court is written statement on oath of witnesses to be called at the trial. **Order 2 r. 2 (2) and 5 r. 1 (2) Abuja and Lagos** respectively.

It is the document containing the testimony a witness wishes to give at the trial. It is similar in form and evidential value with an affidavit. Therefore some of the rules that apply to affidavit also apply to a written statement on oath of witnesses. However, unlike an affidavit which automatically becomes evidence upon being sworn, written statement on oath must be adopted by the witness before becoming evidence.

The following rules apply to a written statement on oath of witnesses.

- i. It should be headed in the court and in the cause/matter, i.e heading of the case
- ii. It should be titled Written Statement on Oath of Mr-----

- iii. It should state the full name, trade or profession, residence and nationality of the deponent
- iv. It should be in first person pronoun
- v. It may be divided in to convenient paragraphs numbered consecutively.
- vi. It should contain the oath clause
- vii. It should be dated and signed by the deponent
- viii. It should contain the stamp and signature of the commissioner for oaths
- viii. It shall not contain extraneous matter by way of objection, prayer, legal argument or conclusion. **Section 117 and 115 (2) of the Evidence Act.**

Refreshing of Memory

The rule on oral testimony is that a witness gives direct testimony of facts which he perceived with any of his senses from his recollection. **Section 126 of the Evidence Act.**

A witness is not permitted to testify by reading from a document, otherwise it will constitute documentary hearsay. However, a witness may be allowed to refresh his memory by reference to a writing.

Refreshing of memory by a witness may become necessary on account of the length of time on which the testimony is based may have occurred or the difficult nature of the transaction, possibly involving too much detail.

A witness may be allowed to refresh his memory in any of the following ways:

- i. By reference to any writing made by the witness himself at the time of the transaction concerning which he is being questioned or soon afterwards when in the opinion of the court, the matter is still fresh in the memory of the witness;
- ii. The witness may refer to such writing made by another person but read by the witness at a time when the event or transaction was still fresh in his memory and when he read it, he knew it to be correct (for this purpose, the witness must have witnessed the event though someone else took the record of the event.
- iii. Expert witnesses may refresh their memory by reference to professional treatises/books.

A witness may refresh his memory at any stage of examination. Leave of court is required by way of oral application in order for a witness to refresh his memory. **Section 239 of the Evidence Act; Jimoh Amoo v R (1959) 4 FSC 113**

5. Compelling the Attendance of a Witness to Court

Subpoena and Witness Summons

Subpoena and witness summons are means of securing the attendance of a witness to court. Where the testimony of a person is relevant in a case, the party in whose favour the testimony is required simply invites the person to file a written statement on oath (though he may also give oral evidence).

However, there could be situations where a witness may be unwilling to honour an invitation to come and testify due to fear of accusation of taking sides, interest in the subject matter, inability to secure permission from his employer, or person under whose custody he is.

Also, a person may be required to present at the trial some documents in an official capacity and needs some form of formal request from the court.

In all of these circumstances, the witness can be compelled to give evidence in court via a subpoena or witness summons.

Meaning of a Subpoena

A subpoena is a writ or order issued by a court commanding the addressee to attend court on a particular day to testify or produce a document in his custody.

Types of Subpoenas

There are three types of subpoenas as follows:

i. Subpoena ad testificandum: This subpoena is used to compel a witness to come to court and testify or give oral evidence. In such a case, the witness is open to be cross-examined after he testifies.

ii. Subpoena duce tecum: This subpoena is used to compel a witness to come and tender a document in his possession or custody as listed in the subpoena. Such a witness is not liable to give oral testimony or to be cross-examine. Where a subpoena duce tecum is issued, the witness need not appear in person, in as much as the document is produced through a proxy. **Section 219 of the Evidence Act**

iii. Subpoena ad testificandum et deuces tecum: This type of subpoena is not provided under the rules of court, but by practice of court. It is used where a party desires that a witness come to court and testify and also produce documents.

Generally, see **Order 34 and 36 of Abuja and Lagos Rules respectively; Famakinwa v University of Ibadan (1992) 7 NWLR (Pt.255) 608; Olaniyan v Oyewole (2008) 5 NWLR (Pt.1079) 114; Lasun v Awoyemi (2009) 16 NWLR (Pt.1168)520.**

Application for Subpoena

The application for a subpoena shall be as in Forms 28 and 26 under Abuja and Lagos Rules respectively, and attach to them the subpoena, depending on the purpose for which it is taken whether to testify or to produce documents. The Forms for subpoena are as in Forms 29 and 31 for ad testificandum and duce tecum respectively under the Abuja Rules and Forms 27 and 29 for ad testificandum and duce tecum respectively under the Lagos Rules. **Order 34 r. 20 & 21 and 36 r. 20 & 21 Abuja and Lagos respectively.**

Service of Subpoena

Service of a subpoena is required to be by personal service. Where personal service cannot be effected, service can be effected through substituted means. The rules relating to service generally applies to service of subpoena. **Order 34 r. 24 and 36 r. 24 Abuja and Lagos Rules respectively.**

Life Span of Subpoena

A subpoena shall be effective from the date of issue until the conclusion of the trial or the matter in which it is issued. **Order 34 r. 25 and 36 r.25 Abuja and Lagos Rules respectively.**

Disobedience to Subpoena

Disobedience to a subpoena amounts to a contempt of court because it is an obstruction or interference with the administration of justice which a court has jurisdiction to deal with by way of contempt proceedings. In *INEC v Oshiomole (2009)4 NWLR (Pt.1132) 607*, the court held that, failure to comply with a subpoena to produce documents was held to be punishable with committal for contempt.

Witness Summons

Witness summons is one of the means to compel the attendance of a witness to court. The content of a witness summons is substantially similar to a subpoena. Witness summons is usually used in Magistrates' Court and other inferior courts. *Order 14 r. 18 Lagos States Magistrates' Court (Civil Procedure) Rules 2009*.

Interestingly, the Abuja Rules in *Forms 155 and 156* provides for the use of witness summons termed 'Summons to Witness to give Oral Evidence' and 'Summons to Witness to Produce Documents' respectively.

It should be noted that there is no similar provision under the Lagos Rules. To this end, subpoena and witness summons can be used at the High Court of the Federal Capital Territory, Abuja.

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
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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
TRIAL: EXAMINATION OF WITNESSES

WHO COMMENCES/BEGINS CALLING EVIDENCE/WITNESSES?

The party that bears the legal or the general burden of proof- **See o. 32 r. 9 (FCT. Abuja); o.33 r. 8 Lagos.S. 131- 133 EvidenceAct; Esegine v Onobruhere.**

1. Witnesses in a case who are yet to give evidence may be ordered out of court & out of hearing to prevent them from being influenced by the testimonies of other witnesses in a case on trial.
2. Such order is at the application of either party or by the court suo motu. **S.212 EA.**
3. However, a party to an action and his legal adviser (even where such legal adviser will be called as a witness) are unaffected by such order. **See s. 212 EA.**
4. The court takes proper steps to prevent transmission of communication with witnesses awaiting examinations. **213 EA.** When present, does not affect reception but weight

EXAMINATION OF WITNESSES

Three stages-

- Examination -in- chief
- Cross-examination (optional)
- Re- examination (optional)

Generally, oral evidence is given upon oath or affirmation. **S 205 EA**

THE DIFFERENCES:

(I) witness on oath swears with his religion's holy book.

(ii) the oath ends with "so help me God" absent in an affirmation.

See also s 208 EA-

All witnesses are to be cautioned against telling lies on oath-**see s 206 EA.**

EXAMINATION IN CHIEF

1. Examination of a witness by the party who calls him. **S 214 (1) & s. 215 (1) Evid. Act**
2. Main purpose: elicit evidence in support of the case for the party who called the witness.
3. It must relate to relevant facts.
4. In all the high court rules – as a general rule - it is by identification & confirmation/adoption of the statements on oath of witnesses.
O. 34, rr. 1 & 3 FCT, Abuja o. 36, rules 1 & 4 (LAGOS)

CONFIRMATION/ADOPTION OF WRITTEN STATEMENT ON OATH

- a. Counsel: Did you make any statement on oath in this case?
- b. Witness: yes i did
- c. Counsel: If you see the written statement on oath, will you be able to identify it?
- d. Witness: yes,
- e. Counsel: How would you be able to identify it? Witness: I appended my signature thereunto
- f. Counsel: Is this the said statement made by you? (a copy of the statement is shown to the witness)
- g. Witness: yes, it is.
- h. Counsel: what would you like the court to do with the statement?
- i. Witness: I adopt the statement as my evidence in chief in this action or I want the court to treat it as my evidence in chief in this action.

5. Documents that parties agreed upon at the case management or pre trial conference (CMC/PTC) may be tendered from the bar or by the parties/witnesses -o. 34, rr. 1 (2)FCT, Abuja o. 36, rules 1(2)(LAGOS)
6. However, the relevant/appropriate witness should be led to tender any document not agreed upon/admitted by consent- as well as any exhibit/ real evidence - o. 34, rr. 1 & 3 FCT, Abuja o. 36, r. 1 (4) (Lagos)
7. The requisite foundation for admissibility of the particular document must be laid, through witness before such document is tendered / applied to be admitted in evidence- s. 87. 88.89 & 90 Evidence Act
8. Objection may be formally taken to admissibility and a ruling given thereupon.

GENERAL RULE AGAINST LEADING QUESTIONS

1. General rule- no leading questions may be asked of a party's own witness, during examination-in-chief and/or reexamination
2. A leading question is that which suggests the answer sought from the witness. See s. 221 E.A.

Illustration: you are Dr. Joel redhouse of the General Hospital, Ketu, am i correct?
However leading questions may be permitted/ allowed, even in exam-in-chief and re-examination, on:

- i. Introductory matters
- ii. Undisputed matters
- iii. Matters that have been sufficiently proved – s. 224 EA
- iv. Where leave has been obtained by a party calling a witness to treat such witness as a hostile witness- s.230 EA

Leading questions are generally allowed in cross-examination. S. 221 (4) EA. In fact, as a general rule proper cross-examination is conducted by way of arranged leading or close questions to which the cross-examiner seeks the assent of the witness.

TENDERING DOCUMENTS NOT AGREED UPON IN EXAMINATION IN CHIEF

COUNSEL: in par. 6 Of your witness statement on oath you referred to a letter dated 15th JAN 2019

Witness: yes

Counsel: if you see the letter would you be able to identify it?

Witness: yes

Counsel: how would you be able to identify it?

Witness: I signed the letter

Counsel: please, take a look at this document (document is taken from the counsel to the witness – by the court clerk)

Counsel: Is this the letter referred to by you in the statement on oath?

Witness: yes.

Counsel: Now what do you want the court to do with the document

Witness: I would like the court to admit it in evidence

Counsel to the court: my lord we seek/ apply to tender the letter of dated 15th January 2019 in evidence.

(Shown to counsel to the opposite side)

Court: any objection

Counsel: we object to its admissibility. The letter was written in anticipation of the present proceedings. S. 83 Evidence Act.

Judge (to counsel who tendered the document): how do you respond?

...

Judge: This is my ruling...

ADMITTED AND REJECTED DOCUMENTS/REAL EVIDENCE

1. Any document/ real evidence that is admitted marked as an exhibit, & numbered.
2. Tendered & rejected document/real evidence marked “tendered and rejected” or simply “rejected”
3. In either case it is retained in the court, until an appeal or the period for appeal expires-; **O.30 r 12 & 17 LAGOS; O. 32 r 19 FCT**
4. Where there is an appeal, admitted & the rejected exhibits shall be transmitted to the court of appeal. **O. 32 r 19 FCT ABUJA**

CROSS EXAMINATION

Examination by a party other than the party who called a witness

Purposes- s.223 EA-228 EA

- Elicit evidence favourable to the cross examining party
- Destroy the case of the party calling the witness
- Challenge the credibility of the witness
- To show unreliability of the testimony

TECHNIQUES OF CROSS EXAMINATION

Generally, 3 techniques may be employed in cross examination

- Confrontation
- Probing
- Insinuation

1. Confrontation Technique

- Use of avalanche of undeniable facts inconsistent with testimony of witness.
- Requires availability of materials

2. Probing Technique

- Probing the narrative/testimony in detail for errors/inconsistency.
 - Probing surrounding facts & circumstances/ results of the facts testified on, etc.
- Does not require any material other than the testimony

3. Insinuation Technique

- Questioning to reveal alternative facts other than those testified to.
- Incremental infusion of new facts which if admitted would render the testimony favourable to the cross examiner.

SOME GUIDELINES FOR EFFECTIVE CROSS EXAM- S.223- 229 EA

1. Preparation and knowledge of the case

- i. General knowledge about the area/ discipline involved in the cross-examination.
- ii. Specific knowledge of the particular case, the witness and his testimony.
- iii. Prepare your case theory, case trial plan and analysis.
- iv. Be conversant with every fact/ shades of the case.
- v. Sketch the address ahead of the trial.

2. Counsel may choose not to cross-examine where the testimony of witness has not occasioned harm to his client's case:

L: Listen

A: Analyse

E: Evaluate

R: Respond

3. However, cross-examine to challenge adverse piece of evidence otherwise you are deemed to have admitted same.

4. In your cross-examination, put your version of the case to the witness for his admission or denial.

5. Ask leading/close questions: Generally, refrain from asking "why?"

"How?" "Narrate" "explain", except where you are sure the answer would help your case.

These are open questions which may give the party opportunity to explain

6. No one question too many:

7. Test the credibility: ask questions to reveal:

- Prejudice/bias/discrimination

- Motive

- Incentive/interest

8. Use insinuation, probing, confrontation.

Incremental questions, covering/probing details

9. Test as appropriate the accuracy/integrity of the story:

1. Observation: opportunity- debilitating factors.

2. Perception

3. Memory

10. Discredit/impeach witness by

- Inconsistent statement made in the past
- Inconsistent/omission in pleading
- Any prior conviction – to attack his character
- any statement by other witnesses that is inconsistent

11. Don't argue with the witness

12. Don't abuse the witness

13. Don't ask questions suitable for the address.

14. Control the witness

ANY LIMIT TO CROSS EXAMINATION?

Wide latitude in questions in a cross-examination. Sky the limit?

Questions in cross-examination should be relevant, but may not be confined to the facts elicited in the exam in chief – s.215 EA

QUESTIONS THAT SHOULD NOT BE ASKED IN A C/EXAM.

Whichever form it takes the cross examination should not contain questions which are:

1. Asked without reasonable ground (225/226 EA)
2. Indecent/scandalous (227 EA)
3. Insulting/annoying/offensive (228 EA)

See RPC rules 25, 32, and 33. For other ethical issues during trial. RPC r.33 forbids trial publicity

RE-EXAMINATIONS s.214, 215 EA

1. At the option of the party who called the witness

No leading questions.

Not repeat examination-in- chief

2. Purpose: Explanation of the matters referred to in the cross examination.
3. Adverse party may cross examine on any new matter introduced with the permission of court in a re examination

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/FINAL ADDRESS AND JUDGEMENT
ADDRESS
INTRODUCTION

Final addresses are addresses that can lead to a final judgment and a final judgment has been defined as a judgment obtained in an action by which a previous existing liability of the defendant to the plaintiff is ascertained and established, or where the question whether there was a pre-existing right of the plaintiff against the defendant is finally determined in favour of either the plaintiff or the defendant.”

SODIPO V. LEMMINKAINEN (1985) NWLR (PT.8) 547

Therefore Closing Address is the summing up by parties to a case, after the close of evidence: wherein parties and the court are presented with a logical effect of the facts and law from the evidence before the court from the perspective of the party who is presenting it. It serves to assist the court in making its findings especially where facts are not straightforward. **See Obodo v Olomu & Anor. , Niger Construction Limited v Okugbeni.**

FEATURES - CLOSING ADDRESS

1. Has constitutional basis **section 294 CFRN**, respecting the period when judgment must be delivered begins to run.
2. Determines when time for delivering judgement begins to run.
3. It is provided for by the rules of court.
4. Though a constitutional right, may be waived & that fact must be recorded. **Ayisa v akanji.**
5. Failure to afford a party may be fatal. See **obodo v. Olomu.**
6. In writing and be exchanged by parties. [it is oral in lower courts].
7. Directed at both the court and parties.

FUNCTION OF CLOSING ADDRESS

1. Accentuates the principle of fair hearing. The address serves as notice to parties and the court on their points of final summation of facts and law based on evidence before the court. ‘In hearing a case in our judicial adversary system every party must not only be heard but must also be allowed the opportunity of being heard. Address forms part of a party's case and failure to take a party's address will influence the tilt of the scale of justice.’ **ABOSHI V.MANASE**
2. **ASSISTS THE COURT IN ARRIVING AT A DECISION.** "Its beneficial effect and impact on the mind of the Judge is enormous but unquantifiable. The value is immense and its assistance to the Judge in arriving at a just and proper decision, though dependent on the quality of address, cannot be denied. The absence of an address can tilt the balance of the learned Judge's judgment just as much as the delivery of an address after conclusion of evidence can" **OBODO VOLOMU**
‘No amount of brilliant address or playing to the gallery by Counsel can make up for lack of evidence to prove or defend a case in court. The main purpose of an address is to assist the court, and is never a substitute for compelling evidence.’ **SEE - NIGER CONSTRUCTION LTD v. OKUGBENI (1989) 4 NWLR (pt 67) 738 at 792." Per OSEJI, J.C.A. (P. 33, paras. A-D)**

3. Gives parties opportunity to sum up their case.

ORDER OF ADDRESSES

[Or.32.r14-17 abj, Or.30r.13-16 lag]

- a) The Party beginning on conclusion of evidence files address if other party does not call or read evidence. The other party has 21 days to file his address after service on him.
- b) Where the other party calls or reads evidence, he starts by filing his address within 21 days of conclusion of evidence. The party beginning has 21 days to file his address after service on him.
- c) The party who files the first address shall have a right of reply on points of law within 7 days. [OBODO V OLOMU]

NB. SEVERAL DEFENDANTS

TIME LIMIT FOR FILING

ADDRESSES

- a. Address by the party beginning – 21 days after close of evidence. [what is close of case? See **or.30 r.11**. Conclusion of evidence.
How closed. Oral application or court may suomotu do so if parties do not within reasonable time.
- b. By the other party – 21 days after service of the address by the party beginning.
- c. Reply on point of law by the party beginning – 7 days after service of address

STRUCTURE/FORMAT OF CLOSING ADDRESS.

[Or. 33r. Abj, Or. 31r.1-3 lag]

- a. To be on white A4 opaque paper set out in numbered paragraphs.
- b. Headed in the court.
- c. Parties and the capacity they are suing or being sued.
- d. Heading ‘CLAIMANT’S FINAL WRITTEN ADDRESS’.
- e. The body of the address incorporating the introduction to the arguments and conclusion.
- f. Date, names of counsel and addresses of parties or their counsel and list of authorities cited.

CONTENTS OF FINAL WRITTEN

ADDRESS

[OR.33 ABJ, OR.31 LAG.]

Note that the content of the final written address is similar to written addresses which should accompany interlocutory applications. See **O.31 R. 1 Lagos**.

Address should contain;

- a. The claim or application which address is based.
- b. Brief statement of facts with reference to exhibits attached or tendered.
- c. Issues arising from evidence.
- d. Succinct statement of argument incorporating authorities with full citation.
- e. All addresses should be concluded with numbered summary of points and prayer.

ADOPTING FINAL WRITTEN ADDRESSES.

Under the Abj. And Lag. Rules final written addresses are in writing and are adopted on the date fixed for final addresses.

TIME TO EXPATIATE 20mins **LAG. OR 30mins ABJ.**

NB. FINAL ADDRESS IS ORAL IN LOWER COURTS SUCH AS MAGISTRATE/DISTRICT COURTS.

Introduce the address, brief statement of facts, issues for determination from state of pleadings, evidence, arguments and conclusion.

ETHICS IN PRESENTING CLOSING ADDRESS

1. Duty to client to be diligent and represent client competently.
2. Demonstrate candor and disclose the existence of adverse authorities to the court as a minister in the temple of justice.
3. Duty to file address within the time limited by the rules/court.
4. Duty to ensure that addresses are served in good time.

JUDGEMENT

Meaning: **Saraki & Anor. v. Kotoye (1992) 9 NWLR (Pt. 264) 156**, “a binding, authentic, official and judicial determination of the court in respect of claims and in an action before it”.

It is defined as a reasoned decision of the court which is delivered at the end of a trial after hearing the parties to the suit. It is a binding decision which has decided the rights of parties **Obi v. Obi (2004) 5 NWLR (Pt. 867) 647**.

Ct can reserve its judgement – if allowed by the CFRN

JUDGEMENT, DECISION, RULING?

“...the law is well established and therefore held as trite that the use of the words judgment or ruling both connote a decision of a court. This should not therefore be a reason for controversy” **CONTRACT RESOURCES NIG LTD V STANDARD TRUST BANK LTD (2013) LPELR 19934 SC**

Any particular style?

A trial court is free to employ its own style in writing his judgment, so far as it is reflected in his judgment that his views are true reflections of the evaluation of evidence adduced before him by both parties – **Adepetu v. State (1996) 6 NWLR (Pt. 452) 90**.

“Judgment writing is an art and once the essential elements are present in the judgment, it will not matter what method was employed in writing the judgment”. PER N.S. NGWUTA, J.S.C; **CHUKWUEMEKA EZEUKO (ALIAS DR. REV. KING) V THE STATE 2016 Legalpedia SC 1AW7**

CHARACTERISTICS OF GOOD JUDGEMENT

1. MUST BE IN WRITING

All superior courts must deliver their judgments in writing ----section 294(1) CFRN; *Ifezue v. Mbadugha* (1984) 5 SC 79, the Supreme Court held that failure to deliver the judgment in writing within the time limit nullifies the judgment. See also *Adeyeye & An v Ajiboye*

JSC and CA – all of them must deliver their judgment in writing concurring or dissenting - even if one of the justices adopts one of the justices opinion, the adoption must be in writing.

Requirement under section 294(2) CFRN. NB – a justice absent may have his opinion read/pronounced.

If he died, dismissed, elevated – his opinion is to be pronounced, not read.

Where a justice retired – his opinion can be pronounced, not read – see *Okino v Obanabira & O* (1999) 12 SCNJ 27

Caution

When the opinion of an absent judge because of elevation, death or dismissal, is read not pronounced – such opinion is given without jurisdiction and therefore a nullity. *OKWO V OBANEHIRA* (1999) 13 NWLR Pt. 636 at 53

The option of the justice to be read – is that of a serving member of the court – else is to be pronounced.

If a judge in a panel of three dies, what is going to happen?

In *Adesokan v Adegorolu* (1997) 3 NWLR (PT 493) 267SC “Where one of the judges in a panel of three dies after the hearing of an appeal, but before judgement is delivered and the opinion of the two remaining did not agree, prudence dictates that in such a case the appeal should be re-entered for hearing. The opinion of the deceased (or retired) justice should not be allowed to sway the appeal either way since the parties would be deprived of his reasoning leading to his own conclusion”

Can a judgement of one high court judge be read by another high court judge?

By section 294(2) – generally, NO.

But where it is impracticable for the judge to deliver his judgement, another judge can do that for him:

- If the judgement was already written, signed and sealed
- If no miscarriage of justice to occasion

AG FED v ANPP & O (2003) 15 NWLR (Pt 844) 600 CA

2. MUST BE DELIVERED IN OPEN COURT

Under section 36(3) of the 1999 CFRN

If delivered in chambers – Null and void. In *Nigeria-Arab Bank v. Barri Engineering (Nig.) Ltd.* (1995) 7 SCNJ 147.

But where hearing was done in chambers, or incamera, judgment may also be delivered in chambers – **NBCI v. Kumbo Furniture Co. (Nig) Ltd (2004) 17 NWLR (Pt. 903) 572.**

Sec 36(4)(a) CFRN – can be in private – on grounds of public safety, public morality, public order, welfare of person under 18, defence etc.

3. EVIDENCE MUST BE PROPERLY EVALUATED

Must demonstrate dispassionate consideration/ understanding of all issues raised by the parties – evaluation of evidence.

How - **Mogaji v. Odofin (1978) 3 SC 91; Adeyeye v Ajiboye (1987) 2 NWLR Pt 61, 432**

- a) First set out the claims
- b) Then the pleadings
- c) Then issues out of the pleadings
- d) Then evidence in proof of the issues
- e) Then decide which evidence to believe (with reasons)
- f) Then record of logical and consequential finding of facts
- g) Then relate finding of facts with applicable law

See also **Holden International Ltd v. Petersville Nig Ltd (2013) LPELR 21474 (CA); Oyewole v. Akande (2009) 15 NWLR (pt.1163) 119 at 147**

4. MUST BE DELIVERED WITHIN 90 DAYS

Section 294(1) – not later than 90 days after conclusion of evidence and final address

Why?

See **Akpo & O Iguoriguo & O (1978) 2 SC 115** --- two years nine months ----- judgement was set aside.

The requirement applies to both trial and appellate courts

Judgement in piecemeal

Is this allowed?

This is not allowed. See **CBN v Beekiti Const. Ltd (1998) 6 NWLR (PT. 553) 242**

Courts frown at giving judgement in piecemeal, it is better to give one judgement to cover all the issues in controversy between the parties. It must be noted that a recall of parties for further address must be within the ninety days period and the recall must not be done merely to prolong the period of ninety days and save a judgment which would otherwise be null and void.

Effect of non compliance with sec 294(1)

Section 294(5) CFRN --- judgement not void unless there is miscarriage of justice.

Appellate court can send a report to Chairman NJC

5. MUST BE FOR WHAT IS CLAIMED

Cts are not charitable institutions.

But:

- can grant less but not more than what is claimed by the parties
- Can also make consequential orders
- No consequential order if the main relief is refused

Amechi v INEC [2008] 5 NWLR Pt 1080 227

Is an order made giving effect to a judgement not subsequent to a judgement?

“It follows from the principle that an appellate court, not also being a charitable institution, should never award what is neither claimed or pleaded. **Mr. Ibibiama F.G. Odom & 2 Ors vs. The Peoples Democratic Party & 2 Ors** (Supreme Court - February 20th, 2015) **Legalpedia Electronic Citation L:ER [2015]SC.395/2013**

“There is no doubt that a court of law is not a charitable institution or Father Christmas and this court has held time and again that a court of law has no jurisdiction to grant a relief not claimed” **GoyangKayili vs. EslyYilbuk & 2 Ors** (Supreme Court - February 13th, 2015) **Legalpedia Electronic Citation L:ER[2015]SC. 92/2005**

6. MUST GIVE REASONS – FOR THE JUDGEMENT

It is the duty of the trial court to consider the evidence of all sides in a case concerning every material issue. **See The Fed. Polytechnic Idah v Engineer AkohSamualOnaja** (2012) 2 NWLR Pt.1313, 72 @ 81

Judgement on Saturday

Is it allowed?

What about on Christmas day?

judgment may be delivered on any day. In **Anie v. Uzorka** (1993) 8 NWLR (Pt. 309) 1, the Supreme Court stated that while a Saturday is a work free day in Nigeria, it is not one of the days designated as a public day, therefore a judge has jurisdiction **to sit on Saturday or even Sunday which is dies non juridicus**, provided he does not compellitigants or counsel to attend. Thus, a judgment read on a Saturday in period not falling within the courts vacation is proper.

What is a good judgement?

"A judgment which is good is that one which:

- sets out the nature of the action before the court and the issue[s] in controversy;
- reviews the cases presented by the parties;
- considers the relevant laws raised and applicable to the case
- gives reasons for arriving at those conclusions"

PER MUHAMMAD JSC, DR. EMMANUEL EWETAN UDUAGHAN & ANOR V CHIEF GREAT OVEDJE OGBORU & ORS 2010 **Legalpedia CA 2HIN**

Types of judgement?

FINAL AND INTERLOCUTORY

"A final judgment is defined as "A Court's last action that settles the rights of the parties and disposes of all issues in controversy... whereas an "interlocutory Judgment is "An intermediate judgment that determines a preliminary or subordinate point or plea but does not finally decide the case." at Pg 9, para A-C,

CHIEF TONY NWANKWO V WEMA BANK PLC & O (2012) **LPELR 9798 (CA)** **Calabar**

- Interlocutory – appeal within 14 days, with leave of court

- Final – within 3 months
 - Decision on jurisdiction is a final decision
- Judgement must be clear

“A court should make a definite, clear and cogent order in a judgement or ruling to bind the parties to the action” See **ORHUE V EDO (1996) 9 NWLR Pt. 473, at 479**

SLIP RULE

Once judgment is given, the judge is functus officio: Except

1. For clerical errors
2. Accidental slips (of pen or tongue)
3. Entertaining applications for stay of execution, installment payment, other applications on execution of judgment
4. When it is obtained by fraud, lack of jurisdiction

CONSENT JUDGEMENT

AYILARA V FED MIN OF WORKS (2013) LPELR –20772 (CA) Jos, per Sankey JCA, pp 33-34, Paras G-B

"Consent judgments are not like the regular judgments of the court entered after a trial conducted by the court either summarily or upon a full trial. It is not dependent upon the exchange of pleadings or calling of evidence and /or address of counsel. It is simply based on the agreement between the parties to the litigation, which agreement they consider binding on themselves and those who claim through them. Amicable resolution of disputes by the parties is called settlement. When the terms of such settlements are reduced into writing, it is then called 'terms of settlement'.

When the terms of settlement are filed, they are recalled and made the judgment of the court. It then crystallises into 'consent judgment. When consent judgment is given, none of the parties has the right of appeal, except with the leave of the court. Hence, a consent judgment is a contract between the parties whereby rights are created between them in substitution for the order of consideration of the abandonment of the claim or claims pending before the court. This is intended to put a stop to litigation between the parties just as a judgment which results from the decision of a court."

STEPS IN GETTING CONSENT JUDGEMENT

- Informing The Court About It-
- Resolution Reached –
- Terms Of Settlement Written
- Parties Signed Them –
- Filed In Court –
- Court Gives Consent Judgement

SETTING ASIDE CONSENT JUDGEMENT

- Fraud
- Misrepresentation
- Mistake
- Illegality
- Lack of consensus ad idem

- Duress

See *Vulcan Gases Ltd. v. G. F. Industries A. G.* [2001] 9 NWLR (pt. 719) 610

How do you challenge consent judgement?

There are two ways:

1. By filing fresh action
2. By appealing against the decision of the court – with leave of High Court or the Court of Appeal

See *Basoy Ltd v Honey Legion (Nig) & O* (2010) 4 NWLR (PT 1184) 300

DEFAULT JUDGEMENT

Defined in *Mohammed v Husseini* [1998]; ‘Default judgement is a judgement rendered in consequences of the non-appearance of the defendant. It is a judgement entered upon failure of a party to appear or plead at the appointed time’ Blacks Law Dictionary.

Can be set aside by same court -No need of appeal?

No, a party instead of getting it set aside can appeal as well. See *Engnr. Shamsideen O. Yussuf V Afolabi Illori* [2000] 6 NWLR Pt. 1083, 330 at 339

What to establish to set aside default judgement

1. There are good grounds for his failure to appear
 2. There was no undue delay in making the application
 3. The other party will not be prejudiced
 4. The applicant’s case is not manifestly unsupportable
 5. The attitude of the applicant is such as to warrant the discretion being exercised in his favour.
- Din v AG Fed* (1998) 1 NWLR (PT. 17) 471

By motion on notice, affidavit and written address.

A default judgement irregularly obtained can be set aside ex debito justitiae Scenario

In a case the defendant due to his absence at the trial, has no evidence called, leaving a plaintiff’s evidence uncontroverted and uncontradicted.

Is the plaintiff entitled to default judgement?

No.

Because, the plaintiff already called evidence, the defendant too were to call evidence but for his absence.

This doesn’t entitle the plaintiff to default judgement.

The plaintiff evidence must still be evaluated and appraised.

See *Okoebor v Police Council* (1998) 9 NWLR Pt. 566, at 537

DECLARATORY JUDGMENT

It is a judgment which determines the rights of parties without ordering anything to be done or awarding damages. Thus, it is a judgment that merely declares or confirms the right of a party. It cannot be stayed – *Okoya v. Santili* (1990) 2 NWLR (Pt. 131) 172.

EXECUTORY JUDGEMENT

Judgement that –

- Declares the rights of the parties

- And goes on to order the defendant to act in particular way for example to pay damages or to refrain from interfering with the plaintiff's rights
See *Adedoyin v Sonuga* (1999) 13 NWLR (PT 635) 356

How to you enforce declaratory judgement?

By filing another action seeking its enforcement. See *Adedoyin v Sonuga* (1999) 13 NWLR (PT 635) 356

DISSENTING Judgement

"..the law is settled that a dissenting Judgment, however powerful, learned and articulate, is not the Judgment of the court and, therefore, not binding. The Judgment of the Court is the majority Judgment, which is the binding Judgment. see *Orugbo v. Una* (2002) 16 NWLR (pt. 792) 175, *Daggash v. Bulama* (2004) 14 NWLR (pt. 892) 144, *FGN v. Zebra Energy Ltd.* (2002) 18 NWLR (pt. 798) 162." Per AUGIE, J.C.A. (Pp.29-30, paras.G-B)

OPPOSING JUDGEMENT – of higher court

The court should elect the one to follow See *Ibitech v Obiki* (1992) 5 NWLR Pt 242,599 @ 605

CLASSWORK 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 judgement, 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 adduce 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 Beckiti 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 & APPLICATIONS PENDING APPEAL

LESSON CONTENT

Modes of enforcement of judgments

Limitations to enforcement of interstate and foreign judgments

APPLICABLE LAWS

- Rules of Court
- Judgment (Enforcement) Rules
- Sheriff & Civil Process Act
- Case Law
- Principles of Equity
- The Constitution
- Foreign Judgments (Reciprocal Enforcement) Act
- Bankruptcy Act
- Companies & Allied Matters Act
- Petition of Rights Act
- Petition of Rights Laws of the Various States

WHO ENFORCES JUDGMENTS?

- Sheriffs
- Deputy Sheriffs
- Bailiffs

MODE OF ENFORCEMENT

Depends on:

- (a) whether the judgment is Monetary judgment or judgment relating to land; or
- (b) Whether it is local or foreign judgment

MODES OF ENFORCING MONETARY JUDGMENTS

- (1) Writ of Fi fa (Fieri Facias)
- (2) Garnishee proceedings
- (3) Judgment Summons

(4)Writ of Sequestration

LAND JUDGMENTS

(1)Writ of Possession

(2)Warrant of Possession

TAKE NOTE ABOUT MONEY JUDGMENTS

Immediately enforceable unless the court orders otherwise: **S.20 SCPA ;Olatunji v Owena**

FieriFacias (fi.fa)

- An court order to Sherriff to seize and sell judgment debtor`s property for the purpose of satisfying the judgment debt
- Only moveable properties will be attached except the ones having value not more than N10 (**s. 25 SCPA**)
- Immoveable may be attached when moveable not sufficient or not found – **S. 44SCPA**

Fifa – PROCEDURE FOR ATTACHINGIMMOVEABLE PROPERTY

- Motion on Notice
- Affidavit
- Written Address

Note:

- Application is to the High Court, even if judgment is by Mag court
- where immoveable property is attached, no sale until after the expiration of 15 days – **Order 7 Rule 6(1), Judgment (Enforcement) Rules**. Where moveable: 5 days. **Or 7 Rule 1**
- Purchaser acquires good title which becomes absolute after 21 days if no one applies to set it aside – **s. 16**
- Purchaser is given Certificate of Title – **s. 50**

GARNISHEE PROCEEDINGS

- This is a proceeding commenced by the Judgment Creditor (Ganishor) against a person or organisation who is indebted to or in custody of money belonging to the Judgment Debtor (Garnishee).
- Purpose is to get the garnishee to pay to the garnishor, the judgment debt in satisfaction of the judgment**PPMC v Delphi Petroleum (2005)**

GARNISHEE PROCEEDINGS–PROCEDURE

- The garnishor files the following in court – Motion Ex Parte, Affidavit, Written Address. (Note the contents of the affidavit). If commenced in a different court, attach CTC of Judgment.

- Court makes a garnishee order nisi (see SCPA Form 26) directing the garnishee to show cause while money in his/ her/its custody should not be attached in satisfaction of judgment. Service of Form 26 automatically attaches the money (i.e., frozen).
- The garnishee has 8 days to file an affidavit to show cause.
- Where good cause is shown, the garnishee is discharged. Otherwise, the order is made absolute, and accordingly becomes enforceable – **CBN v. Interstella Communications**
- The judgment debtor not a necessary party to garnishee proceedings

JUDGMENT SUMMONS

Procedure is relevant where a judgment debtor who is found to have the means of satisfying the judgment debt, has deliberately refused to do so.

JUDGMENT SUMMONS v- PROCEDURE (ss. 55, 58, 63, 66, 72, 78, SCPA)

The judgment creditor files a praecipe as in SCPA Form 13. Court issues Judgment Summons as either SCPA Form 14 or SCPA Form 15

Orders the court may make:

- Committal/Imprisonment
- Attachment
- payment by instalments
- Release from prison

Note **section 66 SCPA**: Misconduct of Judgment Debtor. Judgment Summons may also issue in respect of judgments other than money judgment-- **72, 78 SCPA**

LAND JUDGMENTS **WRIT OF POSSESSION:**

- Used to recover possession of land
- Not applicable to landlord and tenant matters
- Judgment Creditor files praecipe as in Form 3, in the court where the judgment was given
- Writ of possession is issued directing the Sheriff to enter upon the land to recover and deliver possession to the judgment creditor
- Sheriff may use reasonable force to eject occupant
- Writ to not issue until the time specified in the judgment for the judgment debtor to give up possession or where no time specified after 14 days from date of delivery of judgment

Olatunji v Owena Bank (2008)

LAND JUDGMENTS (2) **WARRANT OF POSSESSION:**

This is similar to Writ of Possession but applies to only landlord and Tenant cases. **See section 41, Tenancy Law, 2011, Lagos; Section 25, Rent Control Recovery of Residential Premises Law, Lagos**

When issued, remains in force for 3 months **WRIT OF SEQUESTRATION (s. 82, SCPA)**

Is taken where the Judgment Debtor is already committed to prison pursuant to J Summons for failing to pay judgment debt where he is found to have the means of paying.

Writ of seq. permits commissioners (officers of court) to enter into immovable property of J. Debtor to collect and keep rents or other profits, or to seize and detain his goods until he purges himself of the contempt of court in refusing to pay the j. sum/debt.

Writ does not vest title on the commissioners. So, they cannot sell. Writ of Seq. is as in SCPA Form 69.

Other Modes of Enforcement

- (1) Writ of Delivery – Form 67
- (2) Execution of Deed or Negotiable Instruments by Registrar of Court (11/11, Judgment(Enforcement) Rules). Authorizes the Registrar to execute a Deed on behalf of the j. debtor who refuses to comply with an order for specific performance to execute a deed
- (3) Action under the Bankruptcy Proceedings – s. Bankruptcy Act Cap B2, LFN, 2004
- (4) Winding Up proceedings – s. 408(d) and s.409(b), , CAMA
- (5) Sheriff Interpleader-- Interpleader Summons

INTER-STATE ENFORCEMENT



Writ of execution is enforceable only within the state of issue.



May be enforced in another state under sections 104 to 110 SCPA

Procedure:

- a) Application for Certificate of Judgment by the Judgment Creditor
- b) Registration of Certificate in an equivalent Court in the State of Execution. Note : registration entails entering the particulars of the judgment into the “Nigerian Register of Judgments.”
- c) Upon registration, court in the State of Execution can then deal with the Judgment as if given by it
- d) Upon execution, Registrar of the court in the state would 7/28/2020 file a report of execution and notify the court that gave the judgment

ENFORCEMENT OF FOREIGN JUDGMENTS IN NIGERIA

There are two modes:

- By action at common law – this usually adopts any of the summary judgment procedures. It appears this procedure is subject to the provisions of s.8, Foreign Judgments (Reciprocal Enforcement) Act)
 - By Registration at the Supreme Court Registry, pursuant to Foreign Judgments (Reciprocal Enforcement) Act Cap F35, LFN, 2004. Conditions for enforcement by registration:
 - Existence of reciprocity;
 - Application for registration must be made within 6 years
 - Must be a final judgment
- See Peenok v. Hotel presidential Ltd (1982)

REGISTRATION (2)

Note the grounds upon which a Judgment debtor may apply to have registration set aside.
See IFC v DSNL Offshore Ltd (2008)

On the procedure for determining whether a foreign court (that gave the judgment sought to be enforced in Nigeria) had jurisdiction, see **section 6**,

NOTE: any judgment sought to be enforced in Nigeria must first be registered: **s. 8, Foreign Judgments (Reciprocal Enforcement) Act Cap F35, LFN, 2004**

ENFORCEMENT OF NIGERIAN JUDGMENTS ABROAD

(1) The Nigerian judgment must meet the same requirements as foreign judgments enforceable in Nigeria – **s. 6(5) SCPA**

(2) Procedure:

- i. J. Creditor in Nigeria applies to Nig Court for CTC of Judgment & Certificate of Judgment.
- ii. Application will not be granted where stay of execution has been granted in respect of the judgment.
- iii. Take these documents to the foreign country and apply in line with their own laws – **s. 13 SCPA**

ENFORCEMENT AGAINST GOVERNMENTS

- Under **section 6(6)(a) CFRN, 1999**, judicial powers are exercisable against both individuals, organization and governments
- However, under **section 7 of the Petition of Rights Act and the Petition of Rights Laws of the various States in Nigeria**, no execution can be levied against government.
- Where there is a judgment against government, the AG directs enforcement.
- The judgment Creditor is expected to apply for the AG's fiat to enforce same.
See CBN v Interstella Communications Ltd

APPLICATIONS PENDING APPEAL

LESSON CONTENT

- Types of Applications pending Appeal
- Procedure

APPLICABLE LAWS

Rules of Court
Case Law
Principles of Equity
The Constitution
Court of Appeal Act

OPTIONS BEFORE A JUDGMENT

DEBTOR

- Comply with judgment
- Appeal against the judgment and take steps to prevent enforcement of the judgment

NOTE: Where he chooses the second option, there are three alternative applications he may file pending appeal:

- (a) Stay of execution
- (b) Stay of Proceedings
- (c) Injunction Pending Appeal

STAY OF EXECUTION

Necessary where an executory judgment is given against a party. Merely filing an appeal does not act as a stay of execution of the judgment. See **OKU v State (1970)**; s. 17 **Court of Appeal Act**; **Vaswani v Savalakh**

An appeal must have been filed: **Mobil v Agadaigbo (1988)**

Application is made first to the High court that delivered the judgment appealed against. (**O. 6 Rule 4, CA Rules**).

Where application is refused by the HC, a second application may be made to the CA. But where CA refuses, the appellant must appeal to the SC.

Where the circumstances are such that it is impossible to apply to the HC or the CA is already seized of the appeal, application may be made to the CA first without an earlier application to the HC: **Ezeokafor v Ezeilo (1999)**

Procedure for stay of execution:

- (1) Motion on Notice
- (2) Affidavit
- (3) Written Address
- (4) Copy of the Notice of Appeal.
- (5) CTC of the judgment appealed against
- (6) CTC of the Ruling of the High Court refusing the first application to the high court

NOTE: the last two items are necessary only when a second application to the CA

PRINCIPLES GOVERNING GRANT OR REFUSAL OF STAY OF EXECUTION

Only exceptional circumstances will justify grant. **Lijadu v Lijadu (1991)**. Conditions for grant:

- Chances of success in the appeal;
- Nature of the subject matter
- Whether the appellant would be able to reap the benefits of the appeal if it succeeds
- If in respect of money judgment, will the appellant be able to recover the money if he succeeds on appeal
- Poverty is not a ground save where the effect will be to deprive the appellant of the means of prosecuting the appeal.
- Does the notice of Appeal disclose substantial grounds See **Martins v Nicanner Food (1988)**; **Igwe v Kalu (1993)**

STAY OF PROCEEDINGS

Is necessary where a trial court gives an interlocutory decision which the applicant has appealed against, and the appeal is most likely to be affected by a continuation of the proceedings or the appeal may adversely affect the proceedings before the court.

The procedure and documents to be filed are the same as in Stay of execution.

CONDITIONS FOR GRANT OR REFUSAL OF STAY OF PROCEEDINGS *see NNPC V ODIDERE ENT(2008);AFROCONTINENTAL V AYANTUYI (1991)*

- A pending appeal
- Arguable grounds on appeal;
- Will the appeal dispose of the proceedings before the lower court?
- Whether the res will not be destroyed before the determination of the appeal
- Where greater damage will be caused by grant/ refusal
- Will the continuation of proceeding at the court below render the order on appeal nugatory?
- Applicant must make an undertaking as to damages

INJUNCTION PENDING APPEAL

Is necessary where:

- (a) The Claimant`s claim is dismissed; or
- (b) Judgment is declaratory; or
- (c) Where an interlocutory injunction was earlier refused by the trial court

NB: Procedure and documents to be filed are the same as in Stay of execution.

CONDITIONS FOR GRANT OF INJUNCTION PENDING APPEAL

- Applicant must show special circumstances justifying grant
- Notice of Appeal must disclose substantial legal issues;
- Equitable to maintain status quo
- Refusal will foist on the court on appeal a state of helplessness
- Refusal may render nugatory, order on appeal. *See Oyelami v Mil Admin (Osun) State (1999);Shodeinde v RTAMI (1980)*

ASSIGNMENT

WEEK 15 - 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 2nd 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 60th 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 17th 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 1st 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 exparte 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 orderSee 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
RESPONDENT

CLAIMANT

/

AND

SAMUEL THOMPSON
APPLICANT

DEFENDANT

/

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
Opp. Conoil Filing Station
Gbagada, Lagos.

(Week 16)
APPEALS IN CIVIL MATTERS
OUTCOMES:

- Explain the scope of right to appeal and procedure for appeals;
- Distinguish between a respondent's notice and a cross appeal;
- Draft a notice of appeal and brief of arguments

What is appeal?

- It is an avenue for correction of error and elimination of mistakes, as judges like other human beings are not infallible.
- It is a place where the decision of a lower court is scrutinised by a higher court at the instance of an aggrieved party.
- Where a party to a suit is dissatisfied with the decision of a court, he/she will file appeal that the decision be set aside, reviewed or reversed.

Right of appeal

- There is no general right of appeal.
- Right of appeal is conferred by statute. A party cannot appeal against the decision of a court unless there is a statute creating such right of appeal.
- The court hearing the appeal must also have the jurisdiction to entertain the appeal.

Who can appeal?

- A party in a case who is dissatisfied with the decision of court may appeal against it.
- A person who is not a party in a case if able to show sufficient interest in the matter may also appeal against the decision of court. This must be with the leave of court. See generally **S. 243 Constitution**.
- Appeal is a continuation of the original case and not an introduction of a new case.
- Appeal is usually based on the ratio decidendi of a case and not on obiter dicta or mere expression of opinion of a judge.
- The appellate court will look at the law and facts of the case to determine whether the decision was made according to law.
- An appeal is not a retrial but a re-hearing of a case.
- The appellate court will only look at the materials, evidence and arguments before the lower court as contained in the records to see if proper decision has been arrived at.
- The appellate court will look at substantial errors, omissions or injustice that may be found in the judgment of the lower court with a view to correcting same.

What confer appellate jurisdiction?

- i. The Constitution of the Federal Republic of Nigeria, 1999 (as amended).
 - ii. Statutes creating the court
 - iii. Rules of court see. **s. 243 (a) & (b) Constitution**
- Supreme Court – **s. 233(1) & (2) Constitution**
 - Court of Appeal – **Ss. 239 - 248 Constitution**
 - Sharia Court of Appeal – **s. 277 Constitution**
 - Customary Court of Appeal – **s. 282(1) Const.**
 - Federal High Court (Tax matters) **s. 27 FHC Act.**
 - High Court – **s. 272 (1) & (2) Constitution.**

Hierarchy of Appeals

- Appeal from Customary Court (South) goes to Magistrate Court.
- Appeal from Area Court (North) goes to Upper Area Court and from Upper Area Court to High Court.
- Appeal from Magistrate Court (South), District Court (North) goes to High Court.
- Appeals from Customary Court on customary matters goes to the Customary Court of Appeal (s. 282 Const.)
- Appeals from Sharia Courts on Islamic personal law goes to the Sharia Court of Appeal (s. 277 Const.)
- Appeals from High Court, Federal High Court and National Industrial Court goes to the Court of Appeal (s. 272(2) Const.)
- Appeals from the Court of Appeal goes to Supreme Court.
- The Supreme Court is the final court.

Appeals from Magistrate/District Court to the High Court.

- Appeal from Magistrate/District Court to the High Court is commenced by filing a Notice of Appeal by the Appellant at the lower court within 30 days from the date of delivery of the decision complained of.
- If it is an interlocutory appeal, the notice of appeal must be filed within 15 days. Or 50 r 1 High Court FCT Civil Proc Rules, Or 3 r. 1 High Court Lagos (Appeal) Rules
- In the District Court in the North, oral notice of appeal may be given at the time of the delivery of judgment. The notice will later be reduced into writing. Or 27 r 2(1)(b) District Court Rules, Abuja.
- The Registrar of the Magistrate/District court prepares and certify copies of records of proceedings and forward same to the Registrar of the High Court.

Composition of High Court sitting as appellate court

Note that the High Court is duly constituted by one judge when sitting in its appellate jurisdiction. Ss. 273 & 258 Const.

In the High Court in the North, two or more judges may sit on appeal but they must be judges of the High Court. *Ishola v. Ajiboye* [1994] 6 NWLR (Pt.352) 506.

Arguments of Appeal before the High Court

In Abuja, arguments of appeals filed before High court is by brief of arguments Or 50 r10 Abuja. Appellant shall file his brief within 21 days of receiving records, Respondent shall file his brief within 14 days and Reply brief shall be filed by the Appellant within 7 days.

In Lagos, arguments of appeals filed before the High Court is by oral arguments based on the grounds in the Notice of Appeal.

Appeals from High Court to Court of Appeal

Appeal against a final decision of the High Court must be filed within three months of the delivery of judgment being appealed against. S. 24(2)(a) Court of Appeal Act. The Court of Appeal is duly constituted if it sits with not less than three justices of that court. S. 247 Constitution.

Nature of Appeals

Appeal may be as of right or with the leave of court. Appeals as of right arises where:

- i. It is a final decision of court of first instance. **s.241(1)(a) Constitution.**
- ii. Where the ground of appeal involves questions of law alone;
- iii. Any decision on the interpretation or application of the constitution;
- iv. Any decision as to whether any of the provisions relating to fundamental rights has been, is being or likely to be contravened in relation to any person;
- v. Decisions of the High Court or Federal High Court relating to:
 - Liberty of a person;
 - Custody of an infant;
 - Injunction;
 - Appointment of receivers;
 - Decree nisi in a matrimonial cause;
 - Admiralty actions; etc.

See s. 241(1) Constitution.

Appeals with Leave

Any case not falling within the ambit of s. 241 Constitution must be with leave. "Leave" means permission of court to do a certain thing. It is a condition precedent to filing some appeal. Where leave is required to file an appeal and no leave is obtained, such appeal is a nullity. **Alhaji Oloyede Ishola v. Memudu Ajiboye (1994) 6 NWLR (Pt.352) 506 at 601.**

Leave of court is required where appeal is made up of mixed law and facts. Where a decision is interlocutory (but not injunction) appeal on such ground must be with leave.

No right of appeal in the following cases:

1. Where there is an order of High Court or **s. 241(2) Constitution**, FHC granting unconditional leave to defend.
2. Where the High Court in a divorce proceedings has made an order absolute and the aggrieved party had time and opportunity to appeal from decree nisi but neglected to do so.
3. Where the court entered a consent judgment and there is no leave of court to appeal. Where leave is granted, such appeal can be heard.

Time within which to appeal

- Magistrates' Court to High Court – 30 days
- High Court to Court of Appeal (final decision) – three months- **s. 24 (2)(a) CAA**
- High Court to Court of Appeal (interlocutory)--14 days – **s. 24 (2) (a) CAA**
- Where leave to appeal is applied for in the court below and refused, another application for leave may be filed in the Court of Appeal within 15 days of the ruling. **S. 24 (3) CAA**
- Court of Appeal may extend time under **s. 24 court of Appeal Act**
 - Application for leave to appeal against final decision of the High Court must be brought within – 3 months of the judgment.

How to file appeal

- Notice of appeal as in form 3 shall be filed in the court below whose decision is being challenged.

- Note that the notice of appeal shall be headed “IN THE COURT OF APPEAL” not in the High Court.
- Where leave is required to file an appeal, the application for leave shall be filed in the court below (High Court). After leave is obtained, the appeal will be filed. Where leave is required, notice of appeal filed without first obtaining leave is a nullity. No appeal has been filed in such situation. If leave is refused, the same application can be filed before the Court of Appeal within 15 days of the refusal. **Or 6 r. 3 CAR.**

Appeal out of time

Where time to file appeal has elapsed, application for extension of time may be filed in the Court of Appeal. High Court cannot extend time to appeal. **See Owoniboye Tech Services Ltd Jv. ohn Holt Ltd . (1991) 7 SCNJ (Pt. 2) 287 at 289.**

Application is by motion on notice supported by an affidavit stating good cause of delay. The notice and grounds of appeal should be attached.

What court will consider in granting or refusing extension of time to appeal.

- Whether there is unreasonable delay in bringing the application;
- Whether failure was by negligence, inadvertence or carelessness;
- Whether the supporting affidavit discloses good reason;
- Whether the grounds of appeal shows Prima facie good cause.
- Where time to appeal has elapsed and from the nature of appeal, leave is required to file the appeal, trinity prayers must be sought. E.g where you are appealing on mixed law and facts, leave is required to file such appeal.
- What is trinity prayers?

Trinity prayers (Or 6 R 6) CAR

- a. An order extending the time within which to seek leave to appeal;
 - b. An order granting leave to appeal;
 - c. An order extending the time within which to file appeal.
- Where appeal is as of right and time to appeal has lapsed, appellant will only ask for prayer no. 3.
 - Where appeal is with leave and time to appeal has lapsed, trinity prayers are needed.
 - Trinity prayers can only be made to the Court of Appeal and not to the High Court.
 - An appellant who can appeal as of right will not require trinity prayers. All that he needs do is to apply for extension of time to appeal.

Notice of Appeal

- Should be as in form 3 attached to the 1st schedule to the rules (CAR);
- Shall be filed in the Registry of the High Court whose decision is being appealed against;

- Shall contain the grounds of appeal which shall be set forth concisely;
- Shall state whether the appellant is complaining of part or the whole decision;
- Shall state the reliefs sought;
- Shall contain the names and addresses of persons directly affected by the appeal;
- If a ground of appeal alleges misdirection or error in law, the nature and particulars of the misdirection or error must be stated - **Or 6r.2(2), Osawaru Ev. zeiruka [1978] 6-7 SC 135**
- Shall not contain any ground which is vague or general except the omnibus ground. “That the judgment is against the weight of evidence”.

Misdirection and error in law

- Misdirection occurs where a judge misconceives the issues or summarises the evidence inadequately or incorrectly or makes a mistake of law. **Chidiak v. Laguda(1964) 1 NMLR. 123**
- It is a failure to submit the issues either of fact or law correctly, fairly and adequately for the consideration of the court/tribunal.
- It is the findings of court that cannot be supported by evidence.

Purpose of ground of appeal

- To notify the respondent of the case pending against him at the appellate court.
- All grounds in the notice of appeal must arise from the decision being complained against.
- Where appellant wants to argue new grounds, he must seek the leave of court. Such grounds includes: jurisdiction, constitutional, substantial points of law, where the court below was bound by a decision not binding on the Supreme Court.

Categories of Grounds of Appeal

- Grounds of law – This ground is as of right;
- Ground of facts – This ground is with leave except it is a final decision of High Court sitting as a court of first instance,
- Ground of mixed law and facts -The ground of facts will require leave except if it is a final decision of High Court sitting as a court of first instance. This ground is complaining about evaluation of evidence and the application of the law to the facts.

Respondent’s Notice

- The respondent contends that even if the appellant’s grounds of appeal are well taken, the judgment on appeal ought not to be set aside.

- The respondent is contending that there are other principles of law or findings of fact not relied upon by the court below but which can sustain the judgment.
- The respondent wants the judgment to be affirmed on other grounds other than the ones on which the decision was based.
- The respondent is postulating that the judgment is correct but that the reasons given by the court below are based on wrong premise when there is enough evidence on the record which can sustain the judgment on other grounds than those relied upon by the trial court.
- The respondent's notice postulates the correctness of the judgment
- notwithstanding the grounds of appeal by the appellant to set the judgment aside.
- The respondent's notice is usually to vary or affirm judgment.
- The point contemplated by the respondent's notice must arise from the appeal. **Nabisco v. Allied Biscuits (1998) 7 SCNJ 235 at 243.**
- The respondent's notice can survive even if the appellant decide to withdraw his appeal.
- The respondent's notice must be filed within 14 days of service of the notice of appeal.

Notice to Vary Judgment (Form 10 A)

- The respondent wants to retain the judgment of the lower court but wants it varied;
- The respondent's notice for variation must be served on all the parties to the proceedings affected by the outcome of the decision.
- The notice shall specify the grounds for contention arising from the appeal and the order the respondent desire the court to make.

Notice to Affirm Judgment (Form 10 B)

- The respondent agree with the judgment but is urging the court to affirm the decision on grounds different from the ground on which the lower court relied on in arriving at its decision.
- The respondent must state the grounds for his contention.
- Respondent's notice either to vary or affirm can only be filed after the leave of court is obtained.

Cross Appeal

- A cross appeal is an independent appeal filed against the judgment by the respondent.
- The respondent is dissatisfied with the judgment of the lower court and wish to contend a distinct point either of law or facts not covered by the main appeal.
- Cross appeal is usually governed by the same rules as the main appeal (CAR).

Differences between Respondent's Notice and Cross Appeal

- Respondent's notice is dependent on the notice of appeal filed, while cross appeal is a separate appeal.
- Whereas respondent's notice is only seeking for an affirmation/variation of the decision of court on grounds different from the one contained in the judgment, cross appeal is contending a point of law or facts in the judgment not covered by the notice of appeal should be reviewed or reversed.

Procedure after notice of appeal is filed

- Notice of appeal must be filed in the lower court and the Registrar will cause the notice to be served on all the parties mentioned therein **Or 2 r.1 & 2 CAR**
- A respondent served with the notice of appeal shall within 30 days thereof file in the court below 20 copies his address for service. **Or 2 r 4(1)**. A respondent who fail to comply with this rule shall not be entitled to be served further processes in the appeal. **Or 2 r. 4(3) CAR**

Compilation of record of proceedings

- The Registrar of the High Court shall compile proceedings and transmit to the Registrar of the Court of Appeal the records of proceedings within 60 days of filing the Notice of Appeal. **Or 8 r. 1, CAR.**
- The Registrar of the High Court shall within 14 days invite parties to reconcile the documents to be included in the records. **Or 8 r. 2, CAR.**
- The appellant may by himself compile the records if the registrar fail to comply with the 60 days requirement. This must be done within 30 days. **Or 8 r. 5, CAR.**
- Additional records may be filed by parties within 15 days of service of records. **Or 8 r. 6, CAR.**

Record of Appeal shall contain:

- a. The index;
- b. A statement giving brief facts about the case including schedule of fees paid;
- c. Copies of the documents settled and compiled for inclusion in the records;
- d. A copy of the Notice of Appeal and other relevant documents filed in connection with the appeal. **Or. 8 r. 7, CAR.**

Other documents to be included in the records are:

- Certificate of service of the notice of appeal;
- Twenty copies of the record;
- The docket or case file in the High Court – **Or. 8 r. 10(1);**
- An official letter from the Registrar of the High Court to the Registrar of the Court of Appeal conveying all the documents listed above.

Entering an appeal

An appeal is said to have been entered when the Registrar of the lower court has transmitted the Records of Appeal to the Registrar of the Appellate court. **Ogunremi v. Dada (1962) 1 All NLR 633.**

From the moment the appeal is entered, the matter ceases to be within the jurisdiction of the lower court and the Court of Appeal is now vested with jurisdiction over the matter.

All subsequent applications in respect of the appeal shall be brought before the Court of Appeal. **Adeleke v. OSHA (2006) 10 NWLR (Pt.987) 50**

Briefs of Argument
Order 19 CAR, 2016

- Every party to an appeal must file brief of argument. It is a written argument in support of your position in the appeal.
- A brief of argument must contain the issues for determination, relevant facts in the appeal, submissions on points of law arising from the appeal.
- It informs the adversary what to expect at the appeal.

Contents of brief of argument

- It shall be headed in the name of the appropriate court;
- It shall contain the appeal number;
- It shall contain the names of parties and whether they are appellants or respondents
- It shall indicate the type of brief;
- It shall contain the table of contents;
- Introduction or preliminary statement;
- Background facts;
- Issues for determination;
- Arguments on the issues;
- Summary and conclusion;
- Orders or reliefs sought by the party;
- List of authorities;
- Date and signature; • Address for service.
- Shall not exceed 35 pages except the Court of Appeal directs otherwise. **Or 19 r 3(6) CAR;**
- Shall be contained in an A4 type paper.

Time for filing of briefs:

- Appellants brief – 45 days of receipt of records **or. 19 r. 2 CAR,**
- Respondents brief – 30 days of service of appellants brief. **Or. 19 r. 4 CAR,**
- Reply brief (if desired)– 14 days of service of respondents brief. Must deal with only new points arising from respondents brief. Must not exceed 15 pages. **Or 19 r. 5 CAR**
- Parties with identical interest in a matter may file joint briefs. **Or. 19 r. 6 CAR** 10 copies & 2 e-copies are to be filed. Or 19 r.8. Only 15 minutes allowed for arguments

Effects of failure to file briefs:

- Where appellant fails to file his brief in line with **Or. 19 r. 2 CAR,** or within the time extended by court, respondent may apply for dismissal of the appeal. **Or. 19 r. 10 CAR.**
- If respondent fails to file brief, he will not be heard in oral argument. **Or. 19 r. 10 CAR.**
- If the appellant fails to file reply brief, he shall be deemed to have conceded all the new points or issues arising from the respondents brief. The court may suo motu dismiss appeal where no appellants brief is filed.

Issues for determination

- a. They are questions of law arising from the grounds of appeal filed. **Aja v. Okoro (1991) 9-10 SCNJ 1; Atanda v. Ajani (1989) 2 NSCC511**
- b. The resolution of the issues determines the verdict in the appeal.
- c. Without ground of appeal, there cannot be issues for determination. **Onyia v. Onyia (1989) 2 SCNJ 120 at 128; AP v. Owodunni (1991) 8 NWLR (Pt 210) 391 at 410.**
- d. Issues for determination are distilled from grounds of appeal filed.
- e. Issues for determination should not be more than the grounds of appeal filed. There should be no polarisation of issues for determination.
- f. Any brief submitted without issues for determination is bad because appeals are argued based on issues for determination and not on grounds of appeal.

Amendment

Notice of Appeal (**Or 7 R 8 CAR**), Respondent's Notice (**Or 9 R 7 CAR**) and Briefs of argument may be amended by leave of court at any time before judgment.

Court has unfettered power to amend notice of appeal, Respondent's Notice and Briefs of argument provided the purpose of amendment will produce a just and fair result. **First Bank PLC v. May Medical Clinics and Diagnostic Centre Ltd (2001) 86 LRCN 1080 at 1104 – 1105**

The other party can always be compensated with cost. Note however that a defective Notice of Appeal which is bare without any ground or grounds of appeal is valueless and incompetent and it is incurably bad and the defect cannot be cured by an amendment. **See Ada v. Hashimu and Ors (2017) LPELR 42510 (CA).**

Preliminary objection (Or 10 R 1)

If a respondent intends to raise preliminary objection to the hearing of the appeal, he shall give the appellant three clear days notice before the date of hearing setting out his grounds of objection. Such notice shall be filed in the court's registry with 20 copies of the objection.

Withdrawal of Appeal

Before hearing of the appeal, appellant may withdraw his appeal. **Or 11 r. 1, CAR.**

It is only an appellant that can withdraw an appeal. **PDP v. Sherrif & Ors (2017) LPELR 42736 (SC)**

If appeal is withdrawn with the consent of all the parties, this shall be a bar to all other subsisting contentions between the parties in the matter. **Or 11 r. 3, CAR.**

Court of Appeal Mediation Programme

Civil appeals with respect to breach of contract, liquidated money demand, matrimonial causes, child custody, parental actions, inheritance, chieftancy or personal actions in torts are at anytime before an appeal is set for hearing eligible for CAMP. For the procedure to adopt see **Order 16 of the Court of Appeal Rules 2016.**

COURT OF APPEAL Practice Direction 2013

Applicability to civil matters: interlocutory appeals challenging the ruling of the court below or an interlocutory application heard in that court. **See Or 3 (a)(ii) Practice Direction 2013.**

Objective & guiding principle: To establish a specialised system of case management at the Court of Appeal; to eliminate unnecessary delays in the conduct of appeals; fast track the hearing and determination of interlocutory appeals; reduce time spent in hearing appeals; minimise delays or adjournment at the instance of counsel and the court; ensure that hearing is not delayed.

Brief of argument on cases covered by practice direction 2013

- a. Appellant's brief – 14 days on receipt of the records of appeal.
- b. Respondent's brief – 10 days of service of the appellant's brief.
- c. Reply brief – (if any) 5 days of service of the respondent's brief. Allowed only to cover new points arising from the respondent's brief.

See Or 9 (a) – (g).

Court of Appeal (Fast Track) Practice Directions 2014

Applicable to only fast-track appeals. Fast-track appeals (as it relates to civil appeals) means debt appeals, appeals by or against National Human Rights, intelligence, law enforcement, EFCC, ICPC, National Human Rights Commission, SSS, etc and interlocutory appeals.

A case management conference is established by the court of its own accord or at the request of parties to speed up appeals by:

- a. Encouraging parties to cooperate with each other in the conduct of the proceedings;
- b. Fixing timetables and otherwise controlling the progress of the case;
- c. Discouraging interlocutory appeals or requiring parties to subsume interlocutory matters under a final appeal or substantive suit at the trial court.
- d. Penalise delay tactics with heavy cost;
- e. Giving directions to ensure appeal proceeds expeditiously.

Judgment of Court of Appeal

- a. To be pronounced in open court. **Or 20 R 1 CAR**
- b. Where counsel is notified of date of judgment, it is an act of disrespect of court for counsel or his junior not to be in court. **Or 20 R 2 CAR**
- c. Once judgment is given, it cannot be varied except to correct clerical mistakes or errors. **Or 20 R 4**
- d. The Court of Appeal or court below seized of the matter may enforce judgment. **Or 20 R 5.**

APPEALS FROM COURT OF APPEAL TO SUPREME COURT

- a. Time to appeal: 14 days for interlocutory appeal and three months for final decision. **See s. 27(2)(a) SCA.**
- b. Appeal may be as of right or with leave. Depends on the nature of the appeal. **See s. 233(2) Constitution.**
- c. Notice of Appeal to be filed in the Registry of the court below.
- d. Respondent's Notice cannot be filed since 1991.

Brief of argument at the Supreme Court

- a. Appellant's brief – 10 weeks from the receipt of records of appeal from the Court of Appeal. **Or 6 r. 5(1) SCR, 1985**
- b. Respondent's brief – 8 weeks of service of Appellant's brief. **Or 6 r. 5(2) SCR**
- c. Reply brief – 4 weeks of service of Respondent's brief. **Or 6 r. 5(3) SCR**
- d. Reply brief shall not be filed less than 3 days from the date fixed for hearing of the appeal unless good and sufficient cause is shown for late filing.
- e. At the hearing, counsel can adopt their brief. Oral arguments are allowed for emphasis and clarification. It is disrespectful for counsel not to appear on the day judgment is to be delivered. **See Or 8 r. 14 SCR.**

IN THE COURT OF APPEAL
HOLDEN AT LAGOS
SUIT NO

APPEAL NO ...

BETWEEN:
CROWN KITCHEN LTD - CLAIMANT/ RESPONDENT
AND
K & T LTD - - DEFENDANT/APPELLANT

NOTICE OF APPEAL

TAKE NOTICE that the defendant/ appellant being dissatisfied with the decision of the High Court of Lagos State contained in the Judgment of Hon. Justice A.F. Afolayan dated 27th day of February, 2019 do 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 misdirected himself in law when he held that the contract between the parties is valid and subsisting.

Particulars:

1. No evidence before the court upon which this conclusion was based.
2. The purported agreement between the parties was not pleaded.

Ground two

The learned trial judge erred in law by assuming jurisdiction to hear this case

Particulars

- i) The case was not ripe for adjudication
- ii) The claimant did not submit to conciliation before resorting to court action.

Ground three

The judgment is against the weight of evidence.

Relief sought from the Court of Appeal

- An order setting aside the decision of the lower court.

PERSONS DIRECTLY AFFECTED BY THE APPEAL:

1. Crown Kitchen Ltd.
No. 17 Cameron Road
Ikoyi, Lagos

2. K & T Ltd.
No. 20 Alausa Road
Ikeja, Lagos

Dated this Day of.....2020

.....

Okolo Okolo, Esq Appellants' Counsel

No. Okolo Drive
Ikeja, Lagos

For Service on the Respondent
K & T Ltd
20, Alausa Road

Ikeja, Lagos
Assignment 1

Hearing in the libel suit between Dr. Yunusa Yohanna 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 KyahuwaBwari dated 10th 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

The 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:

11. 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;
12. 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.

OUTCOMES

At the end of this lesson Students would be able to:

- (1) Explain and discuss the general principles including the courts that exercise jurisdiction for the recovery of possession of premises;
- (2) State and discuss the material facts to be proved for recovery of possession of premises and the procedure for recovery;
- (3) Draft a notice to quit, notice to tenant of owner's intention to recover possession of premises, and a writ or plaint commencing an action for recovery of possession of premises.

Definition of Terms:

1. Landlord: The Person entitled to title and ownership right and immediate reversion of the premises. This includes:

- (a) The attorney, solicitor, agent or caretaker of landlord.
- (b) Any person receiving rent or who has a right to receive rent;
- (c) A former landlord where the context so requires. **S.2 Recovery of Premises Act 1990, Abuja; S. 47 Tenancy Law 2011, Lagos;**

2. Tenant: Any person who holds, uses or occupies another person's property temporarily for a term certain or fixed duration by an agreement, whether on payment of rent or otherwise or by operation of law.

It does not include any person occupying a premises under a bona fide claim to be the owner. **See S. 2 RPA, Abj; S. 47 Tenancy Law, Lag;**

The requirement to be a statutory tenant is

It includes a sub-tenant. **See S. 47 TL Lag; Okedare v Hanid (1955) 15 WACA p 17;**

It has been held by Supreme Court to include Service Tenants. **See Sule v Nig. Cotton Board (1985) 2 NWLR (pt 5) p 17. and Oduye v Nig. Airways (1987) 4 SCNJ p 40;**

3. Premises: includes a house, building, together with appurtenances and land without any building thereon. **S.2 RPA Abj;** In Lagos it includes premises used for business, residential and non-residential purposes. **S. 47 Tenancy Law Lag**

Applicable Laws

Laws governing Recovery of Premises: ABUJA:

1. Recovery of Premises Act (Cap 544) LFN (Abuja), 1990
2. District Courts (Increase in Jurisdiction of Judges) Order 2014
3. High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018

LAGOS:

1. Lagos State Tenancy Law (No 14) 2011

This is not applicable in some areas. i.e. Apapa, Ikeja GRA, Ikoyi, & Victoria Island. **See S. 1 (3) TL Lag.**

2. Recovery of Premises Law (Cap 118) Laws of Lagos State, 1973.
3. Magistrate Courts Law (No. 16) Lagos State 2009
4. High Court of Lagos State (Civil Procedure) Rules 2019

What law will apply to the exempted areas i.e. Apapa, Ikeja GRA, Ikoyi & Victoria Island?

- The Recovery of Premises Law (Cap 118) Laws of Lagos State, 1973 will apply

• Similarity in provisions of the statutes.

• Note: Rent Control & Recovery of Residential Premises Law, No 6 of Lagos State, 1997 is no longer applicable.

Types of Tenancies

1. Tenant at Sufferance. See *Sule v. Nigerian Cotton Board*; *A.P.Ltd v. Owodunni supra*.
2. A Tenant at Will. See *S.8 (1) (a) RPA Abj*; *S.13(1) (a) TL Lag*; *Duru v Kasumu (1975) 10 CCHCJ p 1625*.
3. Tenancy by Estoppel. See *Ude v Nwara & anor (1993) 2 SCNJ p 40*.
4. Licensee. See *Dr Ben Chukwuma v Shell Dev. Pet. Ltd (1993) 5 SCNJ p 1*; *Nwana v Fed. Cap. Dev. Authority (2004) 6-7 SC p. 136. C/FS. 14 TL Lag*.
5. Statutory Tenant See *A P V Owodunni supra*
6. Periodic Tenancy: e.g. Weekly, monthly, yearly. Carries with it an automatic renewal clause for the same period created commencing from the anniversary of the tenancy and so on until determination by a valid notice to quit.
7. The nature of a tenancy is based on the agreement of the parties and in the absence of any such agreement it can be
8. Tenancy for a fixed period. Otherwise known as tenancy for a term certain. It has definite commencement date and the duration is certain. See *Arbuckle Smith & Co Ltd v AG West (1952) 20 NLR p 68*. It does not have a renewal clause. Compare with Periodic tenancy. Determines automatically by effluxion of time. Does not require notice to quit to determine it except there is a provision in the agreement requiring that notice be given. *S 13 (5) & 26 TL Lag*. Also *Nweke v Ibe (1974) 4 ECSR*

Courts with Jurisdiction

Magistrate courts and High Courts have jurisdiction depending on the annual rental value of the premises. See *S. 2 (4) & 47 TL Lag*; *S.2 RPA, Abj*

Note: The limit of Magistrate Court's jurisdiction in Lagos is N10 million and District Courts in Abuja is N5 million. See *S. 28 (1) (b) Mag. Court Law, No 16, 2009, Lag*; See *S. 13 DCA Abj. 1990*; *Dist. Court (Increase of jurisdiction) Order 2004, Abj*.

The Claimant may in addition claim arrears of rent & mesne profits irrespective of the fact that the total claim exceeds N10 million. *S. 28(1)(b) MCL, Lag*.

Customary courts are specifically excluded from having jurisdiction. *S.2 RPA, Abj*; *S. 47 TL, Lag*

Procedure for Recovery of Premises

Procedure is the same in all the jurisdictions. There must be strict compliance or else the whole proceedings becomes null and void.

Landlord must issue 2 statutory notices to tenant to recover possession.

1. Notice to Quit. See *S. 7 RPA Abj*; *S. 16 TL Lag*; *S. 7 RPL Lag*. Not applicable where tenancy expires by effluxion of time.

Notice to quit is either in Form B, C, or D in Abuja. See Schedule of RPA Abuja; or Form TL2 & TL3 in the schedule to TL, Lagos; depending on the status of the person giving the notice.

2. “Notice to tenant of owner’s intention to apply to recover possession” otherwise known as “7 Days Notice.” It is in Form E in the Schedule of RPA Abuja; or Form TL4 in the schedule to TL, Lag; **S.7 RPA Abj; S. 16 TL Lag; S. 7 RPL Lag.**

Who may issue the Notice to Quit.

Generally, Landlord as the owner of property. He may delegate the function to his Agent or Legal Practitioner. Where he delegates the function to his agent or legal practitioner, a written authority of the landlord must be given to the agent or legal practitioner. **S.2 RPA, Abj; S. 47 TL Lag; See also Ayiwoh v Akorede (1951) 20 NLR p 4; WEMABOD Estates’ case.**

Compare **Olusi v. Solana (1956) LLR p. 18; Nianda v. Alake (1972) NNLR p.23.** – where the courts criticised decision in **Ayiwoh v Akorede** as too wide and held that written authority of landlord will only apply to “7 days” Notice of owner’s intention to apply to recover possession and not the notice to quit.

Note: It has now been held that the written authority applies to the 2 statutory notices.

See **Coker v Adetayo (1992) 2 NWLR**

Length of Notice to Quit:

How is length of Notice to Quit determined?

1. By Agreement between the parties.

2. Where there is no express stipulation between the parties as to length of notice to quit the provision of statute shall prevail:

a) Tenancy at will or a weekly tenant, 7 days notice.

b) Monthly tenancy, a month’s notice.

c) Quarterly tenancy, a quarter’s notice (3 months’ notice)

d) Half-yearly tenancy, 3 months notice (**See S. 13 (1)(d) TL, Lag**) - No provision for this in Abuja.

e) Yearly tenancy, half a year’s notice (i.e. 6 months’ notice). **S. 8 (1) RPA; S. 13(1) TL Lag;**

What determines Nature of the Tenancy?

In the absence of any evidence to the contrary it shall be determined by reference to the time when rent is paid or demanded. **See S. 8 (3) RPA; S. 13(6) TL**

Termination of Tenancy by Operation of Law.

Some tenancies are automatically determined by operation of law namely:

a. Monthly tenant who is in arrears of rent for 6 months. See **S. 13 (2) TL Lag.**

b. Quarterly or Half-yearly tenant who is in arrears of rent for 1 year. **S. 13 (3) of TL Lag.**

Service of Notice to Quit is not necessary in these instances. But it is advisable to serve 7 days notice of owner’s intention to recover premises

When is Notice to Quit Given?

Any time before the date of termination or expiration of current term of tenancy. **S. 9 RPA Abj.**

Length of notice to quit must not be less than the period stipulated by the statutes or else it will be a nullity. **A.P. v Owodunni (1991) 11 SCNJ 81.**

Length of notice to quit can be more than is required by statute? **See Universal Ins. Co. Ltd v T.A. Hammond Nig Ltd (1998) 9 NWLR (Pt 565) p 340; Ochie v Ajose (1968) 2 All NLR p 17.**

Computation of a Month's Notice:

The Gregorian calendar of counting one calendar month from a day of the month to a corresponding day in the next month less one day under **S 18 (1) Interpretation Act** is not applicable in cases of recovery of possession of premises.

A month in recovery of premises means one clear calendar month, i.e. 1st of any month to the last day of the month. **See Oyekoya v G.B. Ollivant (1969) All NLR p80.**

Computation of 3 month's notice.

When do you need to give 3 month's notice? **S.13 (1) (c) & (d) TL Lag; S.8 (1) (c) RPA Abj.** Abuja – 3 calendar months given at any time prior to date of termination of current term of tenancy to expire on eve of anniversary.

Lagos – 3 month's notice to quit need not terminate on the anniversary or eve of anniversary of tenancy

Computation of Half a year's Notice

A yearly tenancy will be given half a year's notice. How do you compute half a year's notice? - 6 calendar months.

In Abuja, 6 calendar months must expire on the eve of the anniversary of the tenancy, or else the notice to quit will be invalid. **See African Petroleum v Owodunni (1991) 11 SC pg 81; See also Owoade v Texaco Africa Ltd (1973) 4 NSCC p. 61.**

Note: This is not applicable under the Tenancy Law in Lagos.

In Lagos under the Tenancy Law, 6 months notice to quit for recovery of premises from a yearly tenant need not terminate on the anniversary or eve of anniversary of tenancy.

It may terminate on or after the date of expiration of the tenancy. **See S. 13(4) TL Lag.**

What is the position of the law when terminating properties in exempted areas i.e. Apapa, Ikeja GRA, Ikoyi & Victoria Island?

- Tenancy Law does not apply but Recovery of Premises Law (RPL), Lagos applies.
- In this case 6 months' notice will expire on the eve of anniversary of tenancy. **See African Petroleum v Owodunni (1991) 11 SC pg 81; Owoade v Texaco Africa Ltd (1973) 4 NSCC p. 61.**

Content of Notice to Quit

- a. Must be certain, definite and unambiguous.
- b. It must clearly state the following:-
 - I. That the tenant should quit and deliver up possession of the property, with all appurtenances to the landlord.
 - II. Clearly describe the property sought to be recovered and where it is situated.
 - III. The kind of tenancy.
 - IV. The date of the expiration of the tenancy.
 - V. The date the tenant should quit and deliver up possession.
 - VI. Must be dated and signed by the person giving the notice. **See Form TL2 & TL3 Lag; Form B,C,D Abj;**

Note: The significant date is the date of service of notice to quit and not date on the notice. Helps to determine whether the proper length of notice to quit has been given. See **Nnadozie v Oluoma (1963) 7 ENLR p.**

Form of Notice to Quit

Must Notice to Quit Conform strictly With the Form or Specimen in the Statutes?

Form B, C, D RPA, Abj& Form TL2 & TL3 TL, Lag.

A form used which differs from the prescribed forms shall not make the notice to be invalid, if the difference is not material, or calculated to mislead, and so long as it contains the essentials of a valid notice to quit. **S. 31 RPA, Abj; S. 23 TL Lag. See also Adejumo v Hughes (1989) 5 NWLR (pt 120) p**

Effect of service of Notice to Quit:

Once it is served on a tenant and it expires, it automatically terminates the tenancy.

See U.I.C. Ltd. v. Hammond Nig. Ltd supra

No more landlord and tenant relationship. Thereafter Landlord is referred to as 'owner.' **See Chiwete v. Amissah (1957) LLR p.1**

What happens where landlord collects rent from tenant after termination of tenancy? **Hamilton v. Holmes (1974) 11**

Notice to Tenant of Owner's Intention to Apply to Recover Possession.

When do you serve notice of owner's intention i.e. 7 days notice? See **S. 7 RPA Abj; S. 16 TL Lag; U.I.C. v T.A. Hammond Nig Ltd supra; Form E Abj; TL4 Lag; Form E RPL Lag; See your E-Handbook for specimen.**

Compliance with Form not mandatory. Indicates owner's intention to proceed to court within the jurisdiction where the property is situate on a date not less than

- Any action commenced in court before the expiration of 7 clear days after date of service will be invalid. See **Lasaki v Dabiam (1959) NRNLR p 12.**

- Where action is filed before the end of 7 clear days after service of notice but the matter is not heard by court until after 7 days the action will not be invalid. See **Iheanacho v Uzochukwu (1997) 2 NWLR(pt 487) p 257; Etchie v. Raji (1980) FNLR p.108**

Dispensing with service of Notice to Quit.

Can the landlord dispense with service of notice to quit and just go ahead to serve 7 days notice of owners intention to apply to recover possession?

- The answer is in the affirmative. In Lagos & Abuja a landlord can dispense with service of notice to quit and go ahead to issue a notice of owner's intention to apply to recover possession in any of the following cases:

1. where tenancy is for fixed term certain & expires by effluxion of time, notice of owner's intention to apply to recover possession in Form TL5 is to be served on tenant in Lagos & Form E is to be served on the tenant in Abuja. **See S 13(5) TL Lag; S. 26 TL Lag; Nweke v Ibe (1974) 4 ECSLR p. 54.**
2. Where landlord wants to take over possession from a licensee. **See S. 14 TL, Lag.**
3. In Lagos, where a monthly tenant is in arrears of rent for 6 months. **See S. 13 (2) TL Lag.**
4. In Lagos, where a quarterly or half-yearly tenant is in arrears of rent for 1 year. **S. 13(3) TL Lag.**
5. In Lagos, where the premises is deemed

Service of Statutory Notices

- Abuja - By personal service on tenant.
 - If he is evading service or cannot be found, there can be substituted service by pasting on some conspicuous part of the premises. **S. 28 RPA; See also Chiwete v Amissah (1957) LLR p. 1.**
- Lagos – By proper service i.e. any manner of service that will ensure that the person to be served will have knowledge of the notices to be served. **S. 17 TL Lag.**

— Proper service of notices on a tenant of Residential Premises shall be personal service and will include but not limited to all the manners stated in **S. 18 TL Lag** ie. personal service, delivery to an adult residing in the premises, by courier where tenant cannot be found, by affixing on a prominent part of the premises.

— Proper service of notices on a tenant of a Business Premises shall be as stated in **S. 19 TL Lag** i.e. delivery to a person at the Premises sought to be recovered or affixing the notice on a prominent part of the premises sought to be recovered and providing corroborative proof of service. Before substituted service can be valid, the server must establish that he made several efforts at personal service without any success. See **Chiwete v Amissah supra; Adubiaran v Etti (1962) LLR p. 104.**

Service can be effected by Landlord, his agent or legal practitioner.

Procedure for recovery of premises must be strictly complied with or else any step taken will be a nullity. **Awe v. Said (1961) 1 All NLR p. 477**

Grounds for Recovery of Possession of Premises:

- a. Arrears of Rent.
- b. Tenancy has been duly determined by notice to quit and landlord has taken irretrievable steps to sell the property.
- c. Tenant has committed a breach of an express term of the agreement.
- d. If premises is required for a purpose which is in public interest. See **Olaoye v Mandilas (1949) 19 NLR p 59.**
- e. Tenant is guilty of nuisance or conduct inimical to interest or annoyance of the landlord or other neighbours. e.g. Immoral or illegal purpose See **Idowu v Adekanmi (1975) 6 CCHCJ p 923; Omole v Taylor (1976) 4 CCHCJ p 1169; Osawaru v Ezeiruka (1978) 6/7 SC p 135; Coker v Adetayo supra.**
- f. Premises is overcrowded and dangerous to the health of occupants.
- g. Premises is subject to an abatement
- h. Premises requires substantial repairs.
- i. Premises is required by the landlord for his personal use, or that of his children over 18 years or his parents. See **Coker v Adetayo supra**
- j. The premises has been abandoned.
- k. Premises is unsafe & unsound & is dangerous to human life or property. See generally **S. 25 TL Lag;**

Instituting Proceedings to Recover Possession

After expiration of the 7 days Notice of owner's intention to recover possession, if the tenant fails to deliver up possession the owner/legal practitioner may:-

- a. In Abuja – Commence action by Writ of Summons (High Court) or Complaint in Form F (Magistrate Court). **S.10 (1) RPA Abj.**
- b. In Lagos – Commence action by Writ of Summons (High Court) or file a Claim by way of summons as in Form TL 6A & 6B for recovery of possession. **S. 24 TL Lag.**
Action will be filed in the Judicial Division or Magisterial District where property is situated.

Form F (Abuja) & Form TL 6B (Lagos) shall contain the following:-

- a. That the Claimant is entitled to the possession of the premises.
- b. A brief and accurate description of the premises.
- c. The period of the tenancy and rent payable on the property.
- d. The date of termination of the tenancy by notice to quit or effluxion of time.
- e. The fact that the Claimant also served a notice of his intention to apply to recover possession. A copy of this notice in Form E or Form TL4 or TL5 must be attached.
- f. A description of the mode of service of the 7 days notice.
- g. That in spite of the said notice, the defendant has refused &/or neglected to deliver up possession.

The reliefs to be claimed namely:-

- i. Possession of the property.
- ii. Arrears of rent or Mesne profit

Note the difference between Arrears of rent and Mesne profit.

- a. Arrears of rent – Sums owed during the subsistence of the tenancy.
- b. Mesne profit- Sums due for use & occupation of property after expiration or determination of tenancy and tenant is holding over till possession is given up. **DEBS v CENICO Ltd (1986) 3 NWLR (pt 32) p846; S. 12 RPA; S. 31 & 47 TL Lag**
Calculated at the current market value of the property. **Henderson v. Squire (1869) LR4QB 170**
- h. Must state the grounds for seeking recovery.
- i. State the present rental value of the premises.

Material facts to be proved in court

The Landlord must prove the following material facts at the trial:

- a. that the landlord has issued and served on the defendant the requisite notices
- b. that the defendant is neglecting or refusing to deliver up the premises despite the above
- c. the rental value of the premises
- d. the nature of the tenancy or holding
- e. the service of summons or writ if the defendant does not appear

Process of Ejection:

Court may order possession to be given to the Claimant either immediately or at the expiration of a time stipulated by the court. e.g. in Lagos, Court can give up to 6 months to the Tenant within which to give up possession. **See S. 27(4) TL Lag; S.19(1) RPA Abj.**

Where tenant fails to comply with judgment landlord can apply to court for a warrant of possession. **S. 20 & 21 RPA Abj; S. 39 TL Lag.**

Life span of warrant of possession

- a. Lagos, 3 months renewable every 3 months but shall not exceed 3 renewals. **S. 41 TL Lag.**
- b. Abuja, 3 months and no longer. **S. 23 Abj.**

Counter Claim:

Tenant can counterclaim in the following instances:

- a. Compensation for unexhausted improvement made on the property with the written consent of the landlord.
- b. Any expenses incurred on property with the written consent of landlord.
- c. Excess rent paid on the property. See **Akanbi v Adeyemi (1964) All NLR p. 503.**

Forceful/Unlawful Ejection

Can a landlord resort to forceful eviction of tenant or use of self-help?

No. See **Iheanacho v Uzochukwu** supra, held “where a landlord takes over his property forcefully from a tenant without an order of court, he will be deemed to have resorted to self help and renders himself liable in trespass”.

Tenant can claim the following (by instituting a separate action:

- i. Declaration that ejection was unlawful;
- ii. Order for restoration;
- iii. General damages for trespass
- iv. Special damages for any destruction done to defendants property.

Note: There’s penalty in Lagos for any person who attempts to, or forcibly ejects or molests a tenant or wilfully damages any premises.

Such person shall be guilty of an offence and liable to a fine not exceeding N250, 000 or a maximum of 6 months imprisonment and any other non-custodial disposition. See **S 44 TL, Lag;** See also **S.29 Abj** for Landlord’s liability to special damages although no amount of fine stipulated.

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WEEK 17 – RECOVERY OF POSSESSION OF PREMISES

Pre-Class Assignments

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 1st 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

- 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.
- We shall, therefore, consider the practice and procedure relating to settling of election disputes

APPLICABLE LAWS

- 1999 Constitution of the Federal Republic of Nigeria (as amended)
 - Electoral Act 2010 (as amended)
 - It governs all election petitions in Nigeria except local government elections in States.
 - Each State (excluding the FCT) has its own Electoral Law that regulates local govt elections
 - Rules and Regulations made there under
- S. 145 (1) & (2) Electoral Act 2010, Para 54 & 55 of 1st Schedule to the Act
- The Election Tribunal and Court Practice Direction 2011 made by the president of the CA pursuant to section 145(2) Of the Electoral Act 2010 as amended • FHC Civil Procedure Rule, 2019.
 - NOTE: FHC Rules only apply when there is no provision in the First Schedule to the Electoral Act.

COURTS WITH JURISDICTION

COURT OF APPEAL

- Has exclusive and original jurisdiction in respect of the following matters:
- Any question as to whether any person has been validly elected to the office of President or Vice – President
- Whether the term of office of such a person has ceased
- Whether the office has become vacant
- S. 239(1) 1999 Const; Atiku v AGF.

Composition

- 3 Justices of the Court of Appeal

APPEAL

Appeals from the Court of Appeal in respect of these matters goes to the Supreme Court as of Right

See S.233 (2) (e)

NATIONAL AND HOUSE OF ASSEMBLY ELECTION TRIBUNALS

- See S.285 (1) of the 1999 Const. (as amended)
 - They have original jurisdiction to hear and determine petitions as to whether
- Any person has been validly elected as a member of the National Assembly or
- Any person has been validly elected as a member of the House of Assembly of a State
- See S. 251 (4) 1999 Constitution as amended which confers jurisdiction on the Federal High Court
 - To determine any question as to whether the term of office or a seat of a member of the Senate or the House of Representatives has ceased or his seat has become vacant

- Also S. 272 (3) of the amended Constitution vests jurisdiction in the State High Court to hear and determine whether the term of office of a member of the House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant

COMPOSITION OF NATIONAL AND STATE HOUSE OF ASSEMBLY ELECTION TRIBUNAL

- Chairman who shall be a judge of a high court
- 2 members appointed from the judiciary and not below the rank of Chief Magistrate
- Appointment done by President of CA in consultation with the CJ of the State, Grand Kadi of the Sharia Court of Appeal of the State or President of the Customary Court of Appeal of the State
- See 6th Schedule to the Constitution(as amended)

Quorum

- Chairman and 1 other member
- S.285 (4) as amended

Appeal

Appeal from National and State House of Ass. Election Tribunal goes to the Court of Appeal
By virtue of S. 246 (3) Const. the Court of Appeal is final with respect to the above matters.

NOTE:

Appeals from Governorship Election Tribunal has been taken out from terminating at the Court of Appeal.

For Governorship – it goes upward to Supreme Court

THE GOVERNORSHIP ELECTION TRIBUNAL

- S. 285 (2) Const. as amended (2nd Alteration Act)
- Established in each State of the Federation and vested with jurisdiction to determine petitions as to whether:
 - Any person has been validly elected to the office of Governor or Deputy Governor of a State
- Composition
 - Chairman + 2 members
- Quorum
 - Chairman + 1 member • Appeal
 - To CA as of right
- S. 246 (1) (c)
- Further appeals goes to the Supreme Court
- S. 233 (2) (e)

AREA COUNCIL ELECTION TRIBUNAL FOR FCT

- The various States have their electoral laws to regulate local govt elections in their State but the one for the FCT is provided for in the Electoral Act 2010
 - For FCT, established by S. 135 (1) of the Act
 - Composition
 - Chairman + 2 members S. 135 (2)

- Qualification
 - Chairman – Chief Magistrate
 - Other mbrs – magistrates
- S. 135 (3) Act
- Appeal
 - Goes to Area Council Election Appeal Tribunal
- Decision is final –Chairman + 2 mbrs
- Quorum – chairman + 1 mbr
- s. 136 (4)

- NOTE
- An election tribunal is only given exclusive power to hear and determine election petitions and its power does not extend to the intra party dispute that takes place before elections e.g. pre-election matters such as conduct and outcome of primaries of a political party.
- See Duokpolagha v. George (1992) 4 NWLR (pt 236) 444
- The election tribunal must be constituted not later than 14 days before the election.
- S. 133 (3) Electoral Act

PRESENTATION OF ELECTION PETITION

- Who may present a petition?
- S. 137 (1) Electoral Act 2010 provides that the following persons may present a petition
- PETITIONER is the person who presents the petition or at whose instance it is presented and includes:
 - A candidate in an election
 - A political party which participated in the election
- Only the above can present election petitions
- Egolum v. Obasanjo(1999) 7 NWLR (pt 611) 355

- Note the following interpretation
- A person who was neither a candidate in an election nor a member of a political party nor sponsored by a political party to contest the election and who did not specify the nature of his right to present the petition was held incompetent to present a petition. Egolum v. Obasanjo
- A person who failed to secure the nomination of his party but claim to have been wrongly excluded is incompetent to present an election petition (i.e. intra party dispute) NEC v. NRC (1993) 1 NWLR (600) 549; Anazodo v. Audu (1999) 4 NWLR (pt 600) 549
 - A person who was properly nominated by his party but was unlawfully excluded by the electoral commission from contesting the election is competent to present a petition. Ojo v. Abogunrin (1989) 5 NWLR (pt 120) 162
 - A political party that failed to present a candidate for election is incompetent to present a petition. Egolum v. Obasanjo
 - But a candidate that contested and lost the election may bring a petition. Nnamani v. Nnaji (1999) 7 NWLR (pt 610) 313

- RESPONDENT is a person whose election is complained of, that is, the successful party at the election S. 137 (2)
- *a person who lost an election is the petitioner
- QUERY: *can a person who lost an election sue the person who won + another person who lost as a respondent?
 - ANSWER: No, a candidate who contested and lost cannot be made a respondent Buhari v. Yusuf (2003) 14NWLR (pt 841) 446
- S.137 (3) provides that INEC is also a respondent
- Where the petitioner complains about the conduct of an electoral (whether presiding or returning officer) it shall not be necessary to join such officers notwithstanding the nature of the complaint.
- INEC shall be made a respondent and will be deemed to be defending the petition for itself and on behalf of its officers

Time for Presenting Petition

- 21 days from the date of the declaration of the result of the election
- See s. 285 (5) of the Const. as amended
- (S.134 Electoral Act has been deleted from the Act)

Grounds for the petition

- See s. 138 of the Act
 - That a person whose election is questioned was at the time of the election not qualified to contest the election
 - For disqualification see SS. 66, 106, 107, 131, 137, 177 & 182 of the Const.
 - NOTE S. 66 (2)(h) has been deleted from the Constitution and is no longer a reason for disqualification
 - That the election was invalid by reason of corrupt practices or non- compliance with the provisions of the Electoral Act
 - NOTE if an election is challenged on the ground of non – compliance with the Electoral Act, it must be shown that such non – compliance is substantial and sufficiently affects the result of the election
 - That the respondent was not duly elected by majority of lawful votes cast at the election
 - That the petitioner or its candidate though validly nominated by a political party but was unlawfully excluded from the election
 - That the person whose election is questioned had submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the election. See S.138 (1)(e) Electoral Act 2010, inserted by the Electoral (Amendment Act) 2015.
 - NOTE: A petition containing grounds not known to law is incompetent
- Content of an election petition
- See generally Para. 4, 1st Schedule to the Electoral Act 2010
 - (1) Names of the parties
 - (2) The right of the petitioner to bring or present the petition e.g that the petitioner contested the election and the capacity and platform on which he contested

- (3)The holding of the election, the scores of the candidates and the person returned as the winner of the election
- (4)The fact of the election petition and the ground (s) on which the petition is based and the relief sought by the petition
- (5) Prayer or prayers sought by the petitioner
- (6) It can be in the alternative. You can either ask that the court nullifies the election or that the court declares you as winner
- (5) Signature of the petitioner or his Solicitor named at the foot of the petition
- (6) It shall contain address of petitioner for service
 - It should be accompanied by
 - List of Witnesses
 - Written statement on oath of the witnesses
 - Copies or list of every document the petitioner seeks to rely on during the hearing
 - The presentation of the election petition shall be made to the Secretary to the tribunal
 - The petitioner or his solicitor shall at the time of presenting the petition –pay the necessary filing fees
- Pay security for cost
- Furnish address for service on the respondent
 - Action by Secretary
 - After the petition has been filed and requisite fees paid
 - The Secretary will serve Form TF 003 – Presentation of Petition Form on the respondent
- (s)
 - Post CTC of the petition on the notice board
 - Serve CTC of the petition on the tribunal members
 - In the notice of presentation of the petition, the Secretary shall state a time, not less than 5 days but not more than 7 days after the date of service of the notice , within which each of the respondents should enter appearance
 - Note that the rule provides that even where he fails to do so within the time provided this will not bar him from defending the petition
- Service of the petition
 - Service of notice of petition must be by personal service or by substituted service with the order of court via an application
- By motion ex parte
- Affidavit and
- Written address

Appearance

- Respd is required to enter appearance after being served if he intends to oppose the petition.
- The resp. has 14 days after filing his memo of appearance to file his reply
- The reply too must comply with the frontloading system
- There is a new provision that is not present in the principal Act Para 12 (5)
- A respondent who has an objection to the hearing of the petition shall file his reply and state the objection therein, and the objection shall be heard along with the substantive petition
- Amendment

- Any amendment including complete substitution of the petition can be made before expiration of the 21 days from the declaration of result.

- No substantial amendment involving the content of a petition is allowed after the time allowed for filing a petition, that is 21 days. Note that typographical amendments may be allowed even after the 21 day period.

- The above rule also applies to amendment of reply which has to come within 14 days if they are substantial amendments.

Pre – trial conferencing and scheduling

- Petitioner is to apply for pre-hearing notice in Form TF 007 within 7 days of service of petitioner's reply or respondent's reply

- Tribunal to issue pre – hearing notice in Form TF 007 accompanied with pre – hearing information sheet in Form TF 008

- Where the time for applying for pre – trial conference lapses, the petition will be deemed abandoned and dismissed and that is final, the tribunal becomes functus officio and the matter can not be re – listed.

- The pre – hearing session must be completed within 14 days

- If the respondent fails to participate in the pre – hearing session judgment can be entered against him

- This judgment may be set aside within 7 days if he makes the necessary application

- He is also to pay N20, 000 cost

Time and place of hearing

- It is to be fixed by the tribunal and communicated by the Secretary at least 5 days before the date of hearing

Evidence during hearing

- Para 18 (8) (c) of the Act as amended says that the tribunal can allot time for the cross examination of witnesses having regard to the number of witnesses to be called

- Para 41 (10) of the amended Act says that the petitioner has 14 days to prove his case, each of the respondent has 10 days to prove case

Burden of proof

- Election petitions are civil matters generally, therefore it is the same balance of probability or preponderance of evidence that applies

- However allegation of crime requires proof beyond reasonable doubt See *Akeredolu v Mimiko*; *Nwobodo v Onoh*;

Omoboriowo v Ajasin

Judgment

- Para 28 of the 1st Schedule

- At the conclusion of hearing, the tribunal shall determine whether a person whose election is complained of or any other person was validly returned or elected, or whether the election was void

- If the tribunal or court determines that the election is invalid, subject to appeal, a new election shall be held by the commission not later than 3 months from the date of the determination

- S. 141

–An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election.

- *Rotimi Amaechi's case*.

- S.140 (2) Act

–Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, or that the election was marred by substantial irregularities or non-compliance with the provisions of this Act,

– the election tribunal shall not declare the person with the second highest votes as elected, but shall order a fresh election. Compare the case of *Uzodimma v Ihedioha*; *ACN v National Assembly* ; *Labour Party v INEC*.

- S. 143 (1) & (2)

–Where the person returned is declared not to be validly returned, then if notice of appeal against that decision is filed within 21 days of the giving of that decision, the candidate returned as elected shall remain in office pending the determination of the appeal, notwithstanding the contrary decision

–Even where notice of appeal is not filed, he shall remain in office pending the expiration of the period of 21 days within which an appeal may be brought,

- Judgment must be delivered within 180 days from the date of the filing of the petition

–S. 285 (6) Const. as amended

–Note the deletion of S. 134 Act

–Note S. 285 (7) to the effect that appeals shall be heard and disposed of within 60 days from the date of the delivery of the judgment of the tribunal

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Students Task 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 25th 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 MrSandaTanda 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
Week 18 Election Petition

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**

13. SANI LUKAS -----1ST PETITIONER
14. REDEMPTION PROGRESSIVE PARTY-----2ND PETITIONER
- AND
1. CHIEF DODO MOSES-----1ST RESPONDENT
2. PROGRESSIVE PEOPLE CONGRESS-----2ND RESPONDENT
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) -----
-----3RD RESPONDENT

PETITION

PETITION OF SANI LUKAS OF NO 56 WALI CLOSE JALINGO TARABA STATE,
whose name is herein subscribed.

1. Your 1st Petitioner, Sani Lukas was a candidate at the above election and your Petitioner states that the election was held 25 July 2020, where the 1st Respondent was also a candidate
2. Your 1st Petitioner contested under the platform of the 2nd Petitioner, Redemption Progressive Party, the 1st Respondent contested under the platform of the 2nd Respondent, the Progressive People Congress
3. The results as released by the 3rd Respondent were as follows:
Chief Dodo Moses----- 2500 votes
Sani Lukas-----1200 votes
Bello Usman-----1000 votes
4. Your 1st Petitioner states that the 1st Respondent, Chief Dodo Moses was returned as the elected candidate and winner of the election
5. Your 1st Petitioner shall found and rely on the results declared by the 3rd Respondent at the trial

GROUND OF THE PETITION

Your Petitioner states that the ground on which he relies for the petition is as follows:

- a. The return of the 1st 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 1st Petitioner states that the 1st Respondent with the collusion of the Resident Electoral Officer of the 3rd Respondent snatched the ballot boxes and voting materials at Dankalu polling unit in Jalingo North Local Government
- c. The agents of the 1st 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 1st Respondent, Chief Dada Moses was not duly elected or returned
- v. A declaration that the election and return of the 1st Respondent is void, the election having been marred by corrupted malpractices
- vi. An order that fresh election be conducted by the 3rd Respondent.

Dated this-----day-----2020

G H Bello

GH Bello & Co

(1st Petitioner's Counsel)

No 45 Jalo Road, Jalingo Taraba State.

ADDRESS FOR SERVICE

1. THE 1ST PETITIONER
OCCUPIER
 2. THE 2ND PETITIONER
OCCUPIER
 3. THE 1ST RESPONDENT
OCCUPIER
 4. THE 2ND RESPONDENT
OCCUPIER
 5. THE 3RD 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) 1st 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
APPLICABLE STATUTES

1. The Marriage Act (the MA)
2. Matrimonial Causes Act. (the MCA)
3. The matrimonial Causes Rules, 1983 – (theMCR)

TYPES OF MARRIAGES IN NIGERIA

Major types in Nigeria are

1. Marriage under the Marriage Act also known as the registry/court marriage
2. The Islamic marriage
3. The customary marriage

Only statutory marriage as regulated by the Marriage Act & the MCA/ MCR, is herein considered Marriage under the Act is:

“ The voluntary union for life of one man and the woman to the exclusion of all others”- Hyde v Hyde
(1886) LR1 P&D 130

Characteristics of the statutory marriage

1. Monogamous- exclusive to the parties-marriage of 2 parties to the exclusion of others.
2. Must be voluntary – based on the informed/freeconsent/agreement between the parties.
3. It is between a man and a woman
4. Lifetime relationship – note the exceptions e. g dissolution of marriage

STEPS LEADING TO CELEBRATION OF MARRIAGE

1. One of the intending couple signs and gives a notice of marriage to the registrar- (Form A of the 1st Schedule to the MA)s – See section 7 Marriage Act.
2. The registrar -
 - a. causes the notice to be entered in the MarriageNotice Book – S. 10 MA
- b. affixes a copy of the notice on the outer door of the registrar’s office – the notice remains so published until the registrar grants his certificate or until the lapse of 3 months after the publication- s. 10 MA
- 3 Caveat may be entered by anyone whose consent is required / any other person with a just cause to oppose the issuance of the registrar’s certificate – s.14 MA
- 3 Caveat may be entered by anyone whose consent is required / any other person with a just cause to oppose the issuance of the registrar’s certificate – s. 14 MA
- Caveat- s14 – s. 17 Marriage Act
4. Caveator/objector writes “Forbidden” opposite the entry of theproposed marriage in the marriage notice book, with the grounds for the caveat
5. Hearing- summarily- of caveat proceedings by a judge of a state highcourt.
6. Removal of caveat by the judge, if the objector cannot show causethe Judge crosses out/ cancels the word “Forbidden” and writes instead “Cancelled by order of the High Court” with signature of his name.
6. If the grounds are upheld- then the registrar withholds the issuanceof the registrar’s certificate.
7. The registrar issues the registrar’s certificate, (Form C, 1st Sch. MA) where there is no caveat, or where a caveat has been overruled. The registrar issues the registrar’s certificate anytime after the expiration of 21 days and before 3 months from the date of the notice of marriage. He issues the certificate only when he is satisfied by affidavit of the following requirements.

Requirements for issuance of the registrar's certificate- s. 11 MA

- a. Residence within the District where the marriage is intended to be celebrated by at least one of the parties for not less than 15 days prior to the grant of the registrar's certificate.
- b. Parties (not a widow/widower) being at least 21 years old. Otherwise, if either party is below 21 years of age, a written consent from a parent/other appropriate person will be required to be annexed to the affidavit-
- c. No impediment of kindred/ affinity, or any other lawful hindrance to the marriage.
- d. No previous/existing marriage under the customary law involving either party to anyone else than the other party to the proposed marriage.
8. Celebration of the marriage (within 3 months of the giving of the notice of marriage) - by the marriage registrar (Registry) (s. 27 MA) or by a recognized minister of the church, denomination, or body to which the place belongs in a licensed place of worship. (s. 21 MA)
9. Filling up in duplicate of a marriage certificate (Form E) for signing by the minister/registrar/ the parties/ and at least 2 witnesses. A copy goes to the parties- the other copy is filed by the registrar/or transmitted by the minister to the registrar within 7 days of the celebration- s 24 – s. 28 MA. - Filing of the marriage certificate and its registration in the marriage register book: s. 30 MA
10. Dispensing with notice of marriage and the registrar's certificate by the issuance of a minister's license - s. 13 Marriage Act (Form D, 1st Sch. MA). The appropriate minister of the Federal Republic of Nigeria should be satisfied by affidavit- no lawful impediment to the marriage & there is consent (if required). Celebration of marriage may take place in a place other than a licensed place of worship/ registry under a minister's license sections. 13 & 29 MA

Parties to matrimonial causes/proceedings- O.I, r 4 MCR

1. **The petitioner** – who institutes the proceedings by petition
2. **The respondent**- the spouse to the petitioner in the matrimonial proceedings discussed hereunder.
3. **Co-respondent**- a party alleged in a petition to be a person with whom the respondent has committed adultery.
4. **A party named** – a person specified in a petition or an answer, who has allegedly committed rape or sodomy on or with a party to a marriage, and who has (having been served with notice of the allegation) intervened in the matrimonial proceedings.
5. **A person named:** a person specified in a petition or an answer as a person with whom the respondent/petitioner has committed rape or sodomy
6. **An intervener**- under S. 62 & 63 part III of the MCA the Attorney Gen Federation in appropriate instances at the request of court, or suo motu may-(a) intervene to contest/argue some questions arising in matrimonial proceedings or (b) place before the court matters relevant to the proceedings which have not been made known to the court.

Matrimonial causes

1. Courts with jurisdiction over matrimonial causes :

i. the High Courts of the States and ii. the High Court of the Federal Capital Territory , Abuja.

2. Domicile as the basis for jurisdiction

An important criterion for the exercise of jurisdiction by a competent court is that a petitioner who seeks to institute proceedings in any matrimonial cause in Nigeria must be domiciled in Nigeria- S. 2 (2) MCA

3. “**Domicile**” – the domicile of any person is his “permanent residence and principal establishment to which whenever he is absent, he has the intention to returning” **Bhojwani v Bhojwani**

4. It suffices if the petitioner is domiciled in any State of the Federation. Such petitioner may institute a petition in the High Court of any State – whether or not he is domiciled in that particular state.- S. 2 (3) MCA

5. A married woman’s domicile during the continuance of her marriage is that of the husband- *Koku v Koku*

6. By S. 9(2) MCA, a court of competent jurisdiction may transfer a matrimonial proceeding instituted before it to another court with jurisdiction, in the interest of justice. “Forum convenience” is applicable under s. 9, to transfer of cases to forum that would be convenient for parties in any given case – *Adegoroye v Adegoroye* .

7. Also, a court may stay an action pending before it, if another matrimonial cause is pending in another court of competent jurisdiction. between same parties on same issue- s. 9 (1)MCA; *Harriman v Harriman*

Matrimonial proceedings under s. 114(a) &(b) MCA

1. Decree of dissolution of marriage
2. Decree of nullity of a voidable marriage
3. Decree of nullity of a void marriage
4. Decree of judicial separation
5. Decree of restitution of conjugal rights
6. Decree of jactitation of marriage

Decree of dissolution of marriage

1. **The ground:** The decree of dissolution of marriage can be made upon the solitary ground that: the marriage in issue has broken down irretrievably S.15(1) MCA. The petition is in Form 6 (1st Sch.)MCR

2. **Facts/ factual situations required to be proved in support of the ground:** The petitioner must prove at least one of the following facts to succeed: (see s.15(2)(a)-(h) MCA)

- a. persistent refusal to consummate the marriage
- b. adultery by the respondent, which makes it intolerable for the petitioner to live with the respondent
- c. respondent’s behavior during marriage, which the petitioner cannot reasonably be expected to live with.
- d. desertion of the petitioner for at least 1 year prior to the petition;
- e. continuous living apart for at least 2 years immediately before the petition & the respondent has no objection to the grant of the decree/petition.
- f. continuous living apart for at least 3 years immediately before the petition.
- g. failure of the respondent – for at least 1 year- to comply with a decree of restitution of conjugal rights.
- h. absence of the other party for such time & circumstances to justify the presumption of death. ;

A petitioner can only prove the fact in s. 15 (2) (c) MCA that is that the respondent has behaved in a way the petitioner cannot be reasonably be expected to live with the respondent, if he can satisfy the court on any of the facts enumerated in s. 16(1) (a)- (g) MCA.

Such facts include commission of rape, sodomy, bestiality by the petitioner; drunkenness, conviction of the respondent for attempted murder of the petitioner; conviction and imprisonment of the respondent for certain lengths of time, etc.

3. Claim of damages from co-respondent

- i. Joinder of the 3rd party who allegedly committed adultery with the respondent- as the “ co-respondent”- s. 32 MCA & O.I r. 4(1)MCR
- ii. Petitioner may claim damages from the correspondent for the adultery- s.31(1) MCA
- iii. No award of damages where:
 - a. there has been condonation- even if the adultery has been revived- s. 31(2) MCA
 - b. the act of adultery was committed more than 3years before the petition. S. 31(3) MCA

4. The bar to proceedings for dissolution of marriage within 2 years after marriage

- i. Under S. 30 (1) MCA, except with leave of court, no proceedings shall be instituted for dissolution of any marriage within 2 years after the date of the marriage.
- ii. However, proceedings for dissolution of marriage can be brought without leave of court:
 - (1) where the petition is based on matters in section 15 (2) (a) or (b) or 16 (a) MCA.
 - (2) where the petition is brought by way of cross proceedings See section 30 (2) MCA
- iii. Such leave of court shall not be granted except where refusal of the leave will work exceptional hardship on the applicant or that the case involves exceptional depravity on the part of the other party to the marriage – section 30(3) MCA
- iv. An application for leave under s. 30 MCA is made ex parte- O. IV, r. 1 MCR
- v. The affidavit in support of the application shall include: particulars of the exceptional hardship, grounds of the prospective petition and all other matters required under O. IV, r. 2 MCR.
- vi. A marriage certificate is required to be filed by the applicant – O. IV, r. 3 MCR

5. Defence to petition for dissolution of marriage

1. Generally, a petition for dissolution may be refused, even if anyone of the factual situations in s. 15(2) is met. However, such grant may be barred by condonation/connivance/collusion (the absolute bars under sections 26 & 27 MCA) or by the discretionary bars under s. 28 MCA.

1. Condonation = knowledge+ forgiveness+ reinstatement. It is the forgiveness & reinstatement of spouse by the petitioner (against whom the matrimonial misconduct/offence was committed) who has knowledge of the misconduct- on the condition of no future matrimonial misconduct by the condoned spouse (as such misconduct may revive the condoned act)- see *Harrison-Obafemi v Harrison-Obafemi* ; *Fearn v Fearn* (1948) 1 All ER 459

2. Connivance- express/implied acquiescence/encouragement of the matrimonial misconduct. It presupposes the petitioner's consent has been freely given to the matrimonial misconduct. See *Godfrey v Godfrey* 1964 3 All ER 154;

Effect of condonation /connivance : S. 26 MCA : The court cannot make a decree of dissolution of marriage where the petitioner has- (a) condoned or (b) connived at the conduct constituting the facts upon which the petition is based. But see the exception to the above provisions in section 16 (1)(g) MCA, -where the spouse/respondent is of unsound mind.

3. Collusion- agreement between parties/their agents to procure, commence and prosecute proceedings for divorce, with an aim at perverting justice A decree of dissolution of marriage shall be refused where the petitioner in bringing or prosecuting the petition is guilty of collusion with intent to cause a perversion of justice- see section 27 MCA

A petitioner is required to state in the petition that he/she has not condoned or connived at the ground/facts relied on for the petition and is not guilty of collusion in presenting the petition- see Form 6 MCR

6. Discretionary bar

A court may exercise its discretion to grant or refuse a decree of dissolution of marriage under s. 28 MCA where:

- a. the petitioner has committed adultery that has not been condoned by the respondent or having been so condoned, has been revived;
- b. the petitioner has willfully deserted the respondent before the happening of the matters relied upon by the petitioner or where those matters involve other matters occurring during, or extending over, a period before the expiration of that period, or
- c. the habits of the petitioner have, or the conduct of the petitioner has, conduced or contributed to the existence of the matters relied on by the petitioner

Discretion statement

A petitioner or the respondent in matrimonial proceedings for dissolution of marriage or judicial separation, who has committed adultery is required to file a discretion statement- see O. XI r. 28 MCR. A discretion statement is in Form 30 1st Schedule MCR. It is a statement that seeks the exercise of the discretion of the court to grant the decree sought, despite the acts of adultery disclosed in the statement.

-it should disclose particulars & circumstances of the adultery, the grounds for the court to grant the decree, despite the adultery:

- it must be signed by the party making it.
- contents thereof must be verified by affidavit written on it.

-it is enclosed in a sealed envelope with the words “Discretion statement” with the number of the proceeding & a certificate.

- the envelope is signed by the legal practitioner or the party if unrepresented. Also see O. XI r. 29-32 MCR

- the court may, in proper circumstances require a discretion statement to be tendered in evidence. -discretion statement is not open to inspection by a person other than the Att. Gen

O. XI r. 32 MCR

See Enekebe v Enekebe (1964) NMLR 42 for the applicable principles in the exercise of the discretion of court to grant/refuse the decree of dissolution of marriage, where there is a discretionary bar.

7. Effect of dissolution of marriage

When a decree for dissolution of marriage becomes absolute, a party to the marriage may remarry as if the marriage has been dissolved by death- s. 33 MCA

Decree for nullity of marriage

A petition for a decree for nullity of marriage can be brought on either of the grounds (1) that the marriage is void or (b) that the marriage is voidable at the suit of the petitioner- s. 34 MCA

Differences between void and voidable marriages

1. A void marriage is a nullity from the beginning. Avoidable marriage is valid until it is voided.
2. Petition against a void marriage can be brought by anyone; a voidable marriage can be voided by either party only.
3. Petition for void marriage can be brought at anytime; petition for voidable marriage can only be brought by either party during the continuance of the voidable marriage/while the parties are alive.

Decree of nullity of a void marriage

A marriage is void in any of the following cases enumerated in s. 3(1) MCA

1. Either party is, at the time of marriage, lawfully married to someone else- No other monogamous/polygamous marriage should exist between either party to any marriage to someone else- other customary/Islamic/ marriage under the Act is prohibited. See Sections 33(1) & 35 Marriage Act; *Oshodi v Oshodi*

2. The parties are within the prohibited degrees of consanguinity/affinity Section 3(b) MCA. See 1st Schedule to the MCA for the prohibited degrees of consanguinity & affinity. consanguinity relationships refer to those founded on blood relationship ; and a relationship based on affinity refers to relationship between a party and his spouse's blood relations. Parties within degrees of affinity may with leave of court marry – S. 4 MCA

3. marriage is not a valid marriage under the law where the marriage took place – s. 3(c) MCA

A marriage is void for failure to comply with the requirements of the law as to the form of solemnization of marriages. Section 33(2) Marriage Act lists instances when a marriage shall become null and void. A marriage is void when both parties to the marriage knowingly and willfully acquiesce in the celebration thereof- in any place which is not a registrar's office or a licensed place of worship; under a false name; without a registrar's certificate/minister's license; by a person not being a recognized minister of some religious denomination or a registrar of marriages

4. The consent to marry is unreal – consent tainted with duress/fraud; mistake as to the identity of the other party; mental incapacity of a party

5. Either party is not of marriageable age

Voidable marriages- s.5 MCA

A marriage is voidable if at the time of marriage:

1. There is incapability of either party to consummate the marriage
2. Unsoundness of mind/mental defectiveness/recurrent insanity or epilepsy
3. either party suffers from a venereal disease incommunicable form
4. Impregnation of the wife by a third party Where the petition is brought by virtue of section 5(1)(b), (c) or (d) the petition should-

(i) state the date of the discovery of the existence of the facts constituting the ground (ii) the date on which marital intercourse last took place with the consent of the parties (iii) a statement that the petitioner was ignorant of the facts constituting the ground as at the time of the marriage. *O. V r, 21 MCR*

Parties that cannot obtain a decree of nullity of voidable marriage- s. 35 MCA

1. The party suffering from inability to consummate marriage- unless that party was not aware of the incapacity at the time of marriage
2. A party suffering from disability of the disease of unsound mind, etc in s.5(1)(b) MCA or venereal disease in s.5(1)(c) MCA
3. The wife impregnated by someone else- other than her husband

1. The petition is (in Form 6 in the 1st Schedule MCR) may be based on any one of the factual situations for dissolution of marriage in sections 15(2) & 16(1) MCA- S. 39 MCA

3. Consequences of a decree of judicial separation – s.41-43 MCA

Petition for a decree of judicial separation – S. 39 MCA

- i. The decree relieves the petitioner of the obligation to cohabit with the respondent. ii otherwise, the status, rights and obligations of the parties under the marriage subsist.

iii. A property of a party to the marriage who dies during the operation of the order/decreed, devolves as if the survivor had survived the deceased party to the marriage.

iv Where an order of maintenance is made against a husband who has failed to pay same, the husband shall be liable for necessities supplied to the wife

v. The wife is not prevented from joining the husband in exercise of power jointly given to the parties

However, parties may voluntarily resume cohabitation, and either party may apply for an order to discharge the decree-s. 45 MCA

Petition for a decree of restitution of conjugal rights – s. 47 MCA

1. **GROUND** :That the parties to the marriage are not cohabiting and that without just cause/excuse the respondent has refused to cohabit with, and render conjugal rights to the petitioner.

The court must be satisfied of the existence of:

1. A sincere desire of the petitioner for the respondent to render conjugal rights; and the reciprocal desire of the petitioner to render conjugal rights to the respondent.

2. A written request (in conciliatory language) for cohabitation made to the respondent, prior to the petition. Condition 2 may be bypassed where there are special circumstances to justify the issuance of the decree notwithstanding the absence of the request.- S.49 MCA

Special contents of a petition for restitution of conjugal rights – s. 49 MCA

The petition (Form 7) should state:

1. the date of last cohabitation
2. the manner of the written request for cohabitation
3. a statement that the respondent still refuses as at the time of filing of the petition to cohabit & render conjugal rights to the petitioner
4. that the petitioner sincerely desires conjugal rights to be rendered by the respondent & he is willing to reciprocate O. V, rr. 25 & 26 MCR

Decree of jactitation of marriage-S.52 MCA

1.-Ground for petition for a decree of jactitation of marriage

That the respondent has (a) falsely boasted and (b) persistently asserted that a marriage has taken place between her and the petitioner- s. 52 MCA

2. The petition (in Form 60 1st Schedule MCR) should disclose the following:

- i. the dates/times/places at which the respondent has allegedly boasted/asserted that a marriage has taken place between the petitioner & the respondent
- ii. particulars of the boasting/assertions
- iii. A statement that the petitioner is not married to the respondent and that the petitioner has not acquiesced in the alleged boastings/assertions.

O. XXII, rr. 2&3 MCR

Reconciliation in matrimonial causes- s.11- s.13 MCA

Reconciliation in matrimonial causes. 11- s.13 MCA

1. The court is enjoined to encourage reconciliation, even after a petition has been instituted.
2. the judge may adjourn proceedings to allow reconciliation.
3. the judge may interview parties in chambers- with/without counsel to reconcile them. The judge may also nominate an experienced person to reconcile the parties. At the request of either party made not less than 14 days after an adjournment for settlement, the court shall resume proceedings.

A judge who was involved in reconciliation may continue to hear the matter upon the consent of the parties. Evidence of anything said/ admitted during the reconciliation is inadmissible at the trial.

THE PROCEDURE IN MATRIMONIAL CAUSES

1. Preparing & Filing of the petition with the accompanying or frontloaded court processes/verification of facts by affidavit
2. Service of the notice of the petition and the petition on the respondent, co-respondent and any other party mentioned in the petition
3. Filing of the answer by the respondent/co-respondent- filing of reply/ rejoinder
4. Pre-trial proceedings- Holding of the compulsory conference, discovery of facts and documents, etc.
5. Trial
6. Decision of court- granting or refusing a decree nisi
7. The conversion of the decree nisi to an order absolute
8. Appeal to the Court of Appeal

Contents of petitions-O.V, r.1 MCR – Forms 6 & 7 1st Sch. MCR

1. The heading in a court with jurisdiction
2. Statement of the names/capacities of the parties- for instance the petitioner, the respondent, the co-respondent,
3. The heading or title of the petition: for example-petition for a decree of dissolution of marriage
4. The name , address, occupation of the petitioner and the respondent, and of any other party to the proceedings; the name of the wife immediately before the marriage
5. The particulars of the marriage:
 6. particulars of birth of the petitioner and the respondent
 7. the particulars of the domicile of the petitioner in Nigeria
 8. Particulars of the co-habitation of the parties to the marriage
 9. Particulars of the children of the parties to the marriage
 10. Particulars of previous proceedings between the parties to the marriage
11. The facts – not the evidence- that shall be proved to establish the ground upon which the petition is founded
12. A statement that the petitioner has not condoned, connived at the ground of appeal, and he is furthermore not guilty of collusion with intent to pervert justice.
13. Particulars of concerning arrangement for welfare of children
14. Maintenance and settlement of property
15. Exercise of court discretion to make the decree sought despite the facts and circumstances set out in the discretion statement filed with the petition
16. Other matters
- 17 Orders sought
18. Date of filing and the counsel that settled same
19. An affidavit of verification of facts by the petitioner as endorsed on the petition.

Filing of the petition & the accompanying court processes

The petitioner institutes a matrimonial cause by filing the following:

1. The petition – complete with the grounds, facts, relief(s)
- 2 A verifying affidavit – required to be written on the petition/sworn to by the petitioner before the petition is filed – to verify the facts in the petition & to depose to his belief in the truth of every other fact in the petition- O. V r.10 MCR
3. Notice of petition- O. V, r. 28 MCR/ Form 8. 8A 1st Sch. MCR. It is prepared by the petitioner, and signed by the registrar, with directives to the respondent on how to respond to the petition.

4. Marriage certificate – the original/etc. of the marriage certificate or records/ entry of the marriage in the register of marriage, will suffice- s.32 MA; O.V, r.27 MCR
5. Acknowledgment of service (by posting)- O. VI, r.3(1) MCR
6. Certificate relating to reconciliation- (Form 3 & 3A) O. II, r. 2-to be written by the party's legal practitioner- on every petition/answer instituting proceedings
7. Discretion statement- under S. 28 MCA & O. XI r. 28 MCR

Service of petition

1. The lifespan of a petition- 12 months from filing.
The court may however extend the span- O. V, r. 30 MCR
2. Service of the petition on other parties is personal or by post O VI, r. 1 MCR
3. substituted service may be permitted by an order made upon an ex parte application. Such service may be by advertisement- O VI, r. 7 MCR
4. service out of state where a petition is instituted will be made subject to the requirements of sections 96-99 Sheriff & Civil Process Act. Izeze v INEC

3. Filing /service of the answer by the respondent/co-respondent

1. The respondent/co respondent files an answer to a petition, containing denial of facts/state that the respondent/correspondent does not know/ cannot admit the facts alleged/ allege a fact/admit the truth of a fact- O. VII, r. 1 MCR
2. Where the intention is to object to the jurisdiction of court, an answer under protest is filed O. VII, r. 3(2) MCR.
3. An answer may include a cross petition- an independent cross action which may seek all reliefs that could be sought in the petition. O. VII r 2(1) MCR
4. Service of an answer to a petition is carried out by delivery to the address for service, or by posting same as a letter to the petitioner or his legal practitioner at the address for service,- O. VI rr.1 (c) & 9(2) MCR
5. it is important to give an address for service in the first document filed by a party or by a notice of address of service. Failure to give an address for service- Form 1- such party will not be entitled to be heard- O. 1, R. 12 MCR

Reply/Rejoinder

A petitioner may, where an answer contains any allegation of fact, file a reply (Form 17) within 14 days of service of an answer- (O. VII rr 4 (6)MCR). The purpose is to-
- deny facts/state that he does not know & cannot admit the truth of any fact alleged/ allege additional facts/admit the truth of a fact alleged- O. VII, r. 4 MCR

The pleadings namely the answer, reply or rejoinder shall contain a verifying affidavit written on it- O. VII, r.11 MCR

Pre-trial proceedings-compulsory conference, discovery of facts and documents,

1. Applications for particulars/ discovery and inspection may be made by virtue of O. XI MCR
2. Compulsory conference may be held in any defended suit (a) where a defended suit includes proceedings on maintenance of party to the proceedings/settlements/custody or guardianship of an infant/ the maintenance of a child of the marriage, or (b) if there are children of the marriage; and where parties are not in agreement as to the order that should be made by the court on the aforementioned proceedings or in respect of the arrangement for the welfare/advancement/education of children under 16 years- see O. XI r. 33 MCR

Trial

1. A matrimonial cause is set down for hearing, when pleadings are complete, in line with O.XI, r. 40-46 MCR
2. Trial is by calling oral evidence/tendering documents/real evidence– examination in chief/cross examination/reexamination.
3. Burden of proof is discharged on the standard of “reasonable satisfaction of the court” – s. 82 MCA ; Bibilari v Bibilari. However, this has generally been taken to be akin to the proof on the standard of preponderance of evidence in civil cases- Okala v Okala. Quare: what should be the standard of proof where an allegation of criminal conduct is directly in issue in a matrimonial cause?

Decision of court

1. A decree of dissolution of marriage or nullity of voidable marriage is made in the first instance as a decree nisi.
2. A decree nisi becomes absolute where section 57 MCA applies:
 - i. at the expiration of 3 months from the making of the decree nisi, or
 - ii. 28 days from the making of an order under section 57MCA on proper arrangement for the welfare, advancement and education of children of the marriage
3. Where section 57 MCA does not apply- a decree nisi becomes absolute at the expiration of 3 months from the making of the decree nisi

See section 58 MCA

Appeal

1. Appeal against a decision to grant a decree nisi goes to the Court of Appeal. The appeal shall lie to the Court of Appeal as of right and does not require leave of court- s.241(1)(f)(iv) Constitution.
2. By virtue of s. 241(2) Constitution there is no right of appeal against an order/decreed absolute for dissolution or nullity of marriage in favor of any party who, having had time and opportunity to appeal from the decree nisi, has not appealed against the decree nisi

WEEK 19: MATRIMONIAL CAUSES

Assignment-

Chief Mathew Lewisa and Sabina Lewisa got married at an impressive marriage ceremony held at a church in Lagos on 1st 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 MCR

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**

BETWEEN
MRS SABINA LEWISA...
AND
CHIEF MATHEW LEWISA...
MISS RUTH ADE...

Suit no ... **1 Mark**

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 1st Schedule MCR. Section 52 MCA

2 Marks

Total marks : 50 Marks

WEEK 20
ENFORCEMENT OF FUNDAMENTAL RIGHTS
BY IBRAHIM SULE

TOOLS OF TRADE

1. The CFRN 1999, especially Chapter IV
2. The African Charter on Human and People's Rights
3. Fundamental Rights (EP) Rules 2009
4. Other instruments in the African human rights system
5. The UDHR and other instruments in the UN human rights system
6. Municipal, regional and international bills of rights See the Preamble, para. 3 FR(EP)R 2009

What about the rules of court?

- Civil procedure rules of states
- Federal High Court Rules 2009
- The National Industrial Court Rules 2017
- The CA Rules 2016

ORDER XV R4 – TRANSITIONAL PROVISIONS

Where in the course of any Human Rights proceedings, any situation arises for which there is or appears to be no adequate provision in these Rules, the Civil Procedure Rules of the Court for the time being in force shall apply. In terms of substantive law and procedure, what are the fundamental differences between the 1979 and 2009 rules?

1. A distinction has not been made between fundamental rights and human rights
2. No requirement of standing?
3. No limitation period
4. No requirement for leave
6. No one mode of application
7. There is requirement for written address
8. No filing of affidavit of service
9. How service is to be effected – now stated
10. nonn – compliance is now irregularity
11. Amicus curiae now allowed to be heard
12. An ex parte application can first be made in cases of urgency relating to threat to life or liberty
13. Preliminary objection is taken together with the main application for enforcement – Order VIII
14. Substituted service can be applied for without attempt of service – Order V Rule 7
15. Fundamental rights application to be expeditiously entertained by court

What about pending cases filed under the 1979 Rules will continue under the new rules? See Order XV of the Fundamental Rights (Enforcement Procedure) Rules, 2009

- Cannot be struck out or dismissed
 - Will be treated as though they had been commenced under the 2009 Rule
- And in **MR. CHARLES OKECHUKWU & ANOR v. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) & ORS (2014) LPELR-24079(CA)** the Court of Appeal held thus: "It is trite and as rightly pointed out by the Appellant the law guiding procedure for the determination of rights and causes of action is the current law and rules of procedure. They

operate and are construed retrospectively. Order XV above made specific provision clarifying the position of the law on the issue”PIYIZOBA,J.C. Read the cases with care

SOME NEW INNOVATIONS IN 2009 RULES:

1. The preamble

1. Court shall seek to give effect to it
2. Places responsibility on parties and counsel to help court further the over-riding objectives
3. Introduces new over-riding objectives
 - a. The cons; esp. chapter iv, ACHPR be expansively, purposely interpreted
 - b. Court shall respect municipal, regional and international bills of rights cited to it Include ACHPR, other instruments in African human rights system, UDHR, other instruments in the UN human rights system
 - c. vulnerable persons are specifically provided for
 - d. public interest litigations are welcomed
 - e. standing is not an issue
 - f. NGOs /HRD can sue on behalf of others
 - g. courts shall pursue speedy and efficient enforcement of fundamental rights
 - h. Human rights cases be given priority; if liberty is involved be treated as an emergency

What is the legal status of the Preamble to the Rules?

•It can always be resorted to as an aid while giving effect to the Rules as decided by the Court of Appeal in *AIGBOJE AIG-IMO UKHUEDE v. DR PATRICK IFEANYI UBAH & ORS* (2014) LPELR-23965(CA) -“In construing the provisions of an enactment, such as the 2009 Rules, a subsidiary legislation, the preamble to the enactment, though not a part of the enactment, can be resorted to as an aid to the construction of the enactment where there is some difficulty in arriving at the meaning of the words used in the enactment” per *JOSEPH SHAGBAOR IKYEGH, J.C.A*

•What is the legal status of the Rules?

-The Rules are made pursuant to the Constitution – are deemed part of the Const-So the Rules are higher than other laws and other rules of court-See *Abia State University Uturu v Chima Anyebe* (1996) 1 NWLR (Pt. 439) 646 @ 660-661 -When there is any clash btw what the Rules say and what the rules of court say – the Rules prevail

Q- what if under a law a condition precedent must be fulfilled before an action is filed, must that be fulfilled before filing an action for enforcement of fundamental rights

• Under Section 26(1) of NAFDAC Act a pre-action notice has to be served before an action is filed against NAFDAC, must this be complied with in a case for enforcement?

• No. the FHCT decision in *Ulom v National Agency for Food and Drug Administration and Control* (2004) 1 FHCLR 1 was wrong Still on legal status of Rules

• The Court of Appeal held in *GEORGE ADUMU v. THE COMPTROLLER OF PRISONS, FEDERAL PRISONS, ABA & ORS* CITATION: (2013) LPELR-22069(CA) thus:

• "It is also pertinent to state that it is trite that Rules made pursuant to the Constitutional provisions also possess Constitutional flavor, that is why they are special provisions." Per *AJI, J.C.A.* (P. 34, paras. F-G)

Q- Must you enforce rights by using the rules?

No, any mode under the rules of court or common law are allowed This has always been the position of the courts in this country. See cases like *OGUGUA V THE STATE* (1998) HRLRA 167 AT 187 SC, *PER BELLO* –“the section does not exclude the application of the other means of their enforcement under the common law or statutes or rules of courts. These are contained in

several laws of our high courts like ...mandamus, prohibition, certiorari, injunction etc and action for damages”

CA – put the position clearer in ALH. MOHAMMAD SHAABALAFIAJI V MILITARY ADMINISTRATOR OF KWARA STATE(1995) FHRCLR 321 per Jega, relying on Tofi v Uba”“I therefore find that a citizen’s access to court to secure the enforcement of any alleged infringement of any of the fundamental rights provided for in the Constitution is not restricted only to the mode prescribed by the Fundamental Rights (EP) Rules”

CAUTION

- Once a mode is chosen it has to be strictly complied with. See EFFIONG V EBONG (2007) 28 WRN 71 at 83

- Once the action is brought under one mode it cannot be brought under another mode
Commencement of action NOTE- sui generis

1. In commencing and defending the action – the Rules must be complied with
The Supreme Court held in AGIP NIGERIA LTD VS. AGIP PETRO INTERNATIONAL & ORS (2010) 5 NWLR (PART 1187) 348 at 419 H to 420 thus: "More important is that where a statute or rule of Court provides for a procedure for the commencement of an action, failure to follow that procedure renders any suit commenced otherwise incompetent" Per ADEKEYE JSC

ORDER IX – EFFECT OF NON COMPLIANCE

1. Where at any stage in the course of or in connection with any proceedings there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to–

- i) Mode of commencement of the application;
- (ii) The subject matter is not within Chapter IV of the Constitution or the African Charter on Human and People’s Rights (Ratification and Enforcement) Act

What is the cause of action here?

Violation of what?

Breach of Chapter IV rights

•Breach of rights under the ACHPR

else the court lacks jurisdiction

Q - Can wrongful dismissal/termination of appointment commence under the rules? – right to work?

No. See WAEC v AKINKUNMI (2008) 9 NWLR pt. 1091, 151; SEA

TRUCKS NIG LTD v ANIGBORO (2001) SC (pt 1) 56

- A chieftaincy matter?

No. Cannot be brought under the rules. See GOVERNOR OF KOGI V COL. HASSAN YAKUBU (RTD) (2001) 6 NWLR (PT 710) 521 • TUKUR V GOVERNMENT OF TARABA STATE (1997) 6 NWLR (510) 549

The main claim/relief sought must be a breach of a right under Chapter IV or the ACHPR
Else the court lacks jurisdiction

Q- If the main claim is breach of Chapter IV or ACHPR, can other reliefs not on fundamental rights be sought under it?

Yes, provided the main claim is breach of Chapter IV or ACHFR.

See Gafar v Govt. of Kwara State & O (1997) 12 SCNJ 99 (2007) 1-2 SC 184

ALHAJI TSOHO DAN AMALE V SOKOTO LOCAL GOVERNMENT & ORS LER (2012) SC 290/300

• "A trial court will only have jurisdiction to proceed to enforce a fundamental right of an applicant guaranteed under Chapter IV of the Constitution if the main relief discloses a breach of the fundamental right of the applicant." Per J.A Fabiyi JSC

What about enforcement of the African Charter rights?

ABACHA V FAWEHINMI's earlier decision in OGUGU V THE STATE (1994) 9 NWLR (PT. 366) 1 PER BELLO CJN – "Since the Charter has become part of our domestic laws, the enforcement of its provisions, like all our other laws fall within the judicial powers of the courts as provided by the Constitution and all other laws relating thereto ... it is apparent... That the human and peoples' rights of the African Charter are enforceable by the several High Courts depending on the circumstances of each case... In OHAKOSIN V COP, IMO STATE the CA held "By virtue of Cap A9, LFN 2004, the African Charter constitutes part of the laws of Nigeria and must be upheld by all courts in the country.

BREACH OF FUNDAMENTAL HUMAN RIGHTS: CAUTION

SC INOSUN STATE INDEPENDENT ELECTORAL COMMISSION & ANOR. V. ACTION CONGRESS & 2 ORS LER (2010) SC 256/2009 "Courts, indeed this court, as a court of last resort, will not aid an indolent. It does not lie in their mouth to complain of breach of their fundamental human rights to fair hearing having by themselves stayed away from the court and allowed the appellants in the first appeal to fight their battle for them". Per MUNTAKA-COOMASSIE J.S.C

Mode of commencement of action

May be made by any originating process accepted by the court 1. Application to be supported by a 2. Statement:

☐ Name and description of applicant

☐ Relief sought

☐ Ground for seeking the reliefs

3. Affidavit setting out facts upon which the application is made

4. Accompanied by Written Address arguing the grounds See Order II Rule 3

CAUTION - 1

Issue of Statement in Support any application for enforcement of fundamental rights – - which is not supported by a Statement, - is materially defective should be struck out CUNSON NIG. LTD V INSPECTOR GENERAL OF POLICE (2008) 38 WRN 48

CAUTION - 2

Issue of Grounds/reliefs The grounds upon which the reliefs are sought must be expressly stated to disclose the breach being complained of by the applicant. See ECONOMIC AND FINANCIAL CRIMES COMMISSION V EKEOCHA (2008) 4 NWLR (PT. 1106) 161

CAUTION - 3

Affidavit to be deposed by applicant or by another person if applicant is in custody OII R4 It should be noted that where applicant is not in custody or indisposed he must depose to the affidavit himself. See UKEGBU V NBC (1997) 14 NWLR (PT. 1055) 551 AT 579

• On affidavit cont;

• Shall be :

• drawn in first person – I...

• Divided into paragraphs, numbered consecutively

- Restricted to information within personal knowledge of the deponent, else the source must be disclose I was thinking you're not coming again today

CAUTION - 4

- Applicant's written address

- See OIR5

- Issues for determination must arise from the reliefs sought --- else the court will discountenance them

- Pay the necessary filing fees

- Ensure to fix stamp and seal

- Make available copies for service

Processes be served on respondent by who, how?

is personal by Sheriff, Deputy Sheriff, Bailiff or other officer of the court. NB:

Service on respondent's agent is good service See OV generally

Substituted service

NOTE-

- With or without an attempt at personal service, if it appears to the court that personal service cannot be conveniently effected, the court may order substituted service. See Order V Rule 7

- Service outside the state in another state must comply with section 97 of the Sheriffs and Civil Process Act. See Ngige v Achike

Ways of substituted service

1. Delivery to an adult person at usual or last known place of abode or business of the party

2. Delivery of the process to some person being agent of the person to be served or to some other person, on it being proved that there is reasonable probability that the process come to the knowledge of the person to be served

3. By advisement In the federal government official gazette or in some news paper circulating within the jurisdiction

4. By notice put up at the principal court house of or some other place of public resort in the judicial division where the proceedings is instituted

The respondent opposing the application files counter affidavit + written address within 5 days – serve the the Applicant

Note -

Failure to file counter affidavit

Failure to file written address

Applicant Can File – Reply On Point Of Law And Further Affidavit

- REPLY ON POINT OF LAW – within 5 days of service of respondent's written address; on new issues raised there only

- FURTHER AFFIDAVIT – dealing with new matters/facts only raised in Respondent's counter affidavit

In MUOYO V FIDELITY BANK PLC – counsel shall not take advantage of filing reply on point of law to reargue his written address once again Hearing the Application Order IV generally.

- the application shall be fixed for hearing within 7 days from the day the application was filed.

- Adjournment is also allowed where it is extremely expedient

- Hearing is based on affidavits and written address of the parties.
- Oral argument of not more than twenty minutes shall be allowed on matters not contained in the parties' written address provided such matters came to the party's knowledge after filing his written address. See Order XII Rule 2.
- Note that a party who did not file written address shall not be allowed to make oral argument. See *MINI LODGE LTD V NGEI* (2007) 4 WRN54

EXPARTE APPLICATION

- Order IV Rule 3 provides for making an application ex parte for interim injunction or maintaining status quo, if the court is satisfied that exceptional hardship may be caused to the applicant before the service of the main application. especially in cases involving the applicant's life or liberty.

What to file in cases of urgency

1. Motion Exparte
2. Affidavit
3. Affidavit of urgency – OIVR4(a)
4. Written Address
5. Motion on notice
6. Affidavit
7. Statement in Support
8. Written Address

• Service on employee of government

- see Order V rule 8

• Duty of court to ensure that service is effected on all parties

• See Order V Rule 9

• Hours of service – between hours of 6 in the morning and 6 in the evening

INTERIM RELIEF EXPARTE

1. Grant bail of the applicant
 2. Order release of the applicant
 3. Interim injunction
 4. Any other order the court finds necessary
- – all pending determination of the main action

PRELIMINARY OBJECTION

• See Order VIII generally.

A person challenging the court's jurisdiction must in addition to filing his notice of preliminary objection file his counter affidavit and written address to the main application. On the hearing date, the preliminary objection and the main application are to be heard at the same time.

- If respondent raises issue of jurisdiction what processes will he file and what about the applicant?

Courts with jurisdiction

See section-46 of the 1999 Constitution- and Order II generally

-- *Zakari v IGP & Anor.* - CA

-*Omosowan v Chidozie* - CA

- *Tukur v. Government of Gongola State* (1989) LPELR – 3272
- *Grace Jack v. University of Agriculture, Makurdi* (2004) LPELR – 1587
- *Gafar v Governor of Kwara State* (2007) 20 WRN 170
- *Adetona v. Igele General Enterprises Ltd* (2011) 7 NWLR (Pt 1247) 53

•DG SSS v. OJUKWU (2006) 13 NWLR (Pt. 998) 575

Tukur v. Government of Gongola State (1989) LPELR – 3272 where the Supreme Court held: “The matters listed above and in the Constitution in respect of which jurisdiction has been expressly conferred on the Federal High Court lie within the competence of the Federal High Court with regard to the enforcement of Fundamental Rights provisions of the Constitution of the Federal Republic of Nigeria, 1979. Outside those specific matters, the Federal High Court is incompetent to exercise jurisdiction. ... per Obaseki JSC

Grace Jack v. University of Agriculture, Makurdi (2004) LPELR –1587 (SC) where 15 years after Tukur’s case the Supreme Court ‘held’ that in application for enforcement of fundamental rights “...both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may therefore be made either to the Judicial Division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur.” Per Katsina-Alu JSC

Gafar v Governor of Kwara State (2007) 20 WRN 170 decided after Grace Jack in which the Supreme Court reiterated Tukur and held that the Federal High Court doesn’t have jurisdiction on application for enforcement of fundamental rights involving findings of Commission of Inquiry established by Kwara State Government, as the matter doesn’t fall within its jurisdiction, but within the jurisdiction of state high court. Adetona v. Igele General Enterprises Ltd (2011) 7 NWLR (Pt 1247) 535 at 564

• in his concurring judgment I.T Muhammad JSC stated thus: “There are some areas where both the Federal High Court and the High Court of a state enjoy concurrent jurisdiction. Example of such is the enforcement of Fundamental Human Rights conferred in Chapter IV of the Constitution... Therefore it is my understanding that where a person’s fundamental right is breached, being breached or about to be breached, that person may apply under Section 46 (1) to the judicial division of the Federal High Court in the state or the High Court of the state or that of the Federal Capital Territory in which the...breach occurred or is occurring or about to occur. This is irrespective of whether the right involved comes within the legislative competence of the Federation or the State or the Federal Capital Territory. See the case of Minister of Internal Affairs v. Shugaba (1982) 3 NCLR 915...

Thus, fundamental rights arising from matters outside its jurisdiction cannot be enforced by the Federal High Court. See: Tukur v. Government of Gongola State (1989) 3 NSCC 225. Equally, a High Court of a State shall lack jurisdiction to entertain matters of fundamental rights, although brought pursuant to section 46(2) of the Constitution where the alleged breach of such matters arose from a transaction or subject matter which fall within the exclusive jurisdiction of the Federal High Court as provided by Section 251 of the Constitution.

It has to be noted that the exercise of this jurisdiction by the Federal High Court is where the fundamental right threatened or breached falls within the enumerated matters on which the court has jurisdiction. Thus, fundamental rights arising from matters outside its jurisdiction cannot be enforced by the Federal High Court. See Tukur v. Government of Gongola State (1989) 3 NSCC 225. Equally, a High Court of a State shall lack jurisdiction to entertain matters of fundamental rights,

although brought pursuant to section 46(2) of the Constitution where the alleged breach of such matters arose from a transaction or subject matter which fall within the exclusive jurisdiction of the Federal High Court as provided by Section 251 of the Constitution.”

REJECTING GRACE

That is why in *DG SSS v. OJUKWU* (2006) 13 NWLR (Pt. 998) 575 the Court of Appeal expressly departed from the Supreme Court's decision in *Grace Jack*. It held that: "The pronouncement by the Supreme Court in *Grace Jack v. University of Agriculture Makurdi* (supra) that both the Federal High Court and a High Court of a State have concurrent jurisdiction when a person's fundamental human rights is breached cannot be relied upon because it was an *Obiter*" Rejecting *Grace*, cont; *LORD AMEN OSUNDE & ANOR v. NASIRU SHAIBU BABA* CITATION: (2014) LPELR-23217(CA)

"It seems to be the settled legal portion that both the Federal High Court and the High Court of a State have concurrent jurisdiction in actions for enforcement of fundamental rights: *JACK vs. UNIVERSITY OF AGRICULTURE* (2004) 5 NWLR (PT 865) 208. But there is an important caveat which I hasten to add and it is this; in the case of the Federal High Court, the subject matter of the alleged infringement of the fundamental right must fall within the enumerated jurisdiction of the Federal High Court under Section 251 (1) of the 1999 Constitution in order for the action to be validly within the jurisdictional competence of the Federal High Court. See *TUKUR vs. GOVERNMENT OF GONGOLA STATE* (1939) LPELR (3272) 1.

The same applies with equal force to the High Court of a State; where the subject matter of an action for the enforcement of fundamental rights falls within the enumerated items in which exclusive jurisdiction has been vested in the Federal High Court by Section 251 (1) of the 1999 Constitution, then the High Court of a State will not have jurisdiction. See *ADETONA vs. IGELE GENERAL ENTERPRISES LTD* (2011) 7 NWLR (PT 1247) 535 at 564."

Per *OGAKWU, J.C.A.* (Pp. 36-37, paras. G-E) -RECENT SC'S DECISION *FUTMINA & ORS v. OLUTAYO* CITATION: (2017) LPELR-43827(SC)

"In the resolution of

this issue, I would like to point out that Section 42(1) of the Constitution of the Federal Republic of Nigeria, which I reproduced above, has provided the Court for the enforcement of the fundamental rights as enshrined in Chapter IV. A person whose fundamental right is breached, being breached or about to be breached may therefore apply to a High Court in that State for redress. Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 - defines "a Court" as meaning "the

Federal High Court" or the High Court of a State". What this means is this, both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may, therefore, be made either to the judicial division of the Federal High Court in the

State or the High Court of the State in which the breach occurred, is occurring or about

On this issue, I have no hesitation agreeing with the respondent's counsel that the settled position of the law that the jurisdiction to entertain actions for the enforcement of any of the fundamental rights guaranteed by the Constitution in Chapter IV thereof is concurrently vested in the Federal High Court and the State High Court. This is without prejudice to whether any of the parties is either the Federal Government or an agent or agency of the Federal Government. *NEPA v. EDEGBERO* (supra) is accordingly inapplicable as it does not deal with enforcement of fundamental rights. On the other hand, *GARBA v. UNIVERSITY OF MAIDUGURI* (supra); *JACK v. UNIVERSITY OF*

AGRICULTURE (supra) as well as *GAFAR v. GOVERNMENT OF KWARA STATE* (supra) are very apposite." Per *EKO, J.S.C.* (Pp. 8-13, Paras. C-A...

Most important

It is quite evident that Section 46(1) above refers to "a High Court in that State" without any restriction. The violation of a citizen's fundamental rights is viewed so seriously that the framers

of the Constitution sought to ensure that no fetters are placed in the path of a citizen seeking to enforce his rights. In other words, the provision ensures that he has access to any High Court as long as it is within the State in which the alleged infraction has occurred. Indeed, it would negate the principle behind the guarantee of fundamental rights if a citizen were to have any obstacle placed in the path of enforcing those rights.

The Fundamental Rights (Enforcement Procedure) Rules 1979 (applicable at the time the suit was filed at the trial Court) were made pursuant to Section 42(3) of the 1979 Constitution (now Section 46(3) of the 1999 Constitution) and therefore have constitutional flavour. Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules defines "Court" as the Federal High Court or the State High Court.

There is no ambiguity in the provisions of the Constitution or of the Fundamental Rights (Enforcement Procedure) Rules referred to above regarding which Court has jurisdiction to entertain an application for the enforcement of fundamental rights. The decision of this Court in the case of *Jack Vs University of Agriculture' Makurdi* (2004) ALI FWLR (Pt.200) 1506 @ 1518 B-D has put the matter to rest in the following dictum of Katsina-Alu, JSC (as he then was) to wit:

FILING THE ACTION IN ANOTHER STATE

OII R1 – where the infringement occurs in a state which has no division of the Federal High Court – the division administratively responsible for the state shall have jurisdiction

Interpretation of section 46 – "a high court in that state" interpreted to mean a high court where the breach occurred and no other. See *Tukur v Government of Gongola State*

- Does FHCT have power to transfer cases to SHCT?
- Yes it does, see section 22 of FHCT Act
- *OKOI V INAH & O* (2002) 23 WRN 78
- Respondents filed action in FHCT Calabar, objection was raised to jurisdiction but dismissed. Appellants appealed to CA, the CA held that the FHCT had no jurisdiction, the CA instead of striking out the matter exercised its powers under section 16 CA and directly transferred the matter to HCT
- What about splitting infringement?
- Some infringement occurred in Abuja, some in Lagos ---- the court where major portion of infringement occurred will have jurisdiction.
- See *Lawal v Governor of Kwara State*
- Can a FHC transfer a matter to SHC?
- Yes – see section 22 of FHC Act
- In *Okoi v Inah&Ors* (2002) 23 WLR 78

Respondents filed the action in FHC Calabar

, there was objection that the FHC doesn't have jurisdiction

- But the FHC held that it had jurisdiction. On appeal, the CA held that the FHC had no jurisdiction, and exercised its powers under section 16 CAA and transferred the matter to the SHC
- Must a person seek to enforce his rights under the FREPR 2009 or he can as well use other common law methods?
- No. A person can use other methods of enforcement of rights like injunction, prohibition or action for damages. See *National Union of teachers v Conference of Secondary School Tutors of Nigeria* (2007) 28 WRN 71 @ 83

Under S. 254(C)(1)(d) of the 1999 Constitution as amended

- the National Industrial Court has exclusive jurisdiction notwithstanding SS. 251, 257 and 272 and any other provision in the Constitution, to determine fundamental rights matters bordering on or arising from labour and labour-related issues.

Cost and Sanctions

- Purpose
- The purpose of costs is mainly to compensate one of the parties, especially the successful party for the expenses he incurred in the action
- the cost of legal representation
- the travel and other expense of parties and witnesses
- when costs are ordered to be paid, the judge shall, if practicable summarily determine the amount to be paid at the time of delivering his judgment or making the order

- Where costs are ordered to be paid, they become payable forthwith and shall be paid within 7 days of the order otherwise defaulting party or his Legal Practitioner may be denied further audience in the proceedings.

- **COST IS AT COURT'S DISCRETION**

- **N.N.P.C. v. KLIFCO NIGERIA Ltd. (2011) 10 NWLR (PART 1255)209** the Supreme Court held thus

- "The award of costs is entirely at the discretion of the court, costs follow the event in litigation. It follows that a successful party is entitled to costs unless there are special reasons why he should be deprived of his entitlement. In making an award of costs, the court must act judiciously and judicially. That is to say with correct and convincing reasons"

- at page 234 H to 235 A-B per Rhodes-Vivour, JSC

What to consider while awarding cost

- Supreme Court in **Adelakun v. Oruku (2006) 11 NWLR Pt. 992 p. 625 at 650,**
- They are:
 - (a) the summons fees paid
 - (b) the duration of the case
 - (c) the number of witnesses called by the successful party
 - (d) the nature of the case of the parties, the plaintiff's case or the defence of the defendant, whether frivolous or vexations
 - (e) cost of legal representation
 - (f) monetary value at the time of incurring the expenses; and
 - (g) the value and purchasing power of the currency of award at the time of the award

Types of Cost

TYPES OF ORDERS ON COSTS

1. Order as to cost of action – generally made at the end of an action against one party to pay the other costs to indemnify him for his expenses on the basis of party to party costs
2. No order as to costs – this means none of the parties should pay the other any costs. Each party is to bear his own costs
3. Costs in the course – is made in interlocutory proceedings whereby the party who at the end of the proceedings is ordered to pay cost shall as well pay the costs of the interlocutory proceedings to the other party. See **Dike U v nionBank (1987) 4 NMLR 958**

- Cost in any event

- – is made in interlocutory proceedings whereby a party as a result of his failure to comply with the rules brings an application to regularize his failure. Upon entertaining the application the court may order such party to pay cost in any event, whether or not he succeeds at the end of the substantive matter. If he succeeds at the end of the action, he pays the other party the cost of the interlocutory application and the other party pays him the cost of the substantive action.

Sanction

- sanctions are penalties prescribed by the rules of court to be paid by litigants to court for their non-compliance with the rules. Sanctions are prescribed in a number of provisions of the rules in both Lagos and Abuja and rules of courts in many states

Judicial Review

- Is a process by which superior courts exercise supervisory jurisdiction over inferior courts, over the executive and legislature to checkmate and curtail their constitutional breaches and exegesis.
- Professor Nwabueze "judicial review is the power of the court in appropriate proceedings before it to declare a governmental measure either contrary or in accordance with the Constitution or other governing law, with the effect of rendering the measure invalid or void or vindicating its validity"

Principles

- SC in *Military Governor of Imo State v. Nwauwa* (1995) 8 NWLR (Pt. 413)
- a) Judicial review is not an appeal
- b) The court must not substitute its judgment for that of the public body whose decision is being reviewed;
- c) The correct focus is not upon the decision but on the manner in which it was reached
- d) What matters is legality and not correctness of the decision
- e) The reviewing court is not concerned with the merits of a target activity ;
- F) In a judicial review, the court must not stray into the realms of appellate jurisdiction for that would involve the court in a wrongful usurpation of power;
- g) What the court is concerned with is the manner by which the decision being impugned was reached. see also *Governor of Oyo State v. Folayan*

Under 2009 Rules

- **ORDER X – APPLICATION TO QUASH ANY PROCEEDINGS**
- 1. In the case of any application for an order to remove any proceedings for the purpose of their being quashed, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the application he has served a certified copy thereof together with a copy of the application on the Attorney-General of the Federation or of the State in which the application is being heard as the case may be, or accounts for his failure to do so to the satisfaction of the Court hearing the application.
- 2. Where an order to remove any proceedings for the purpose of their being quashed is made, in any such case, the order shall direct that the proceedings shall be quashed forthwith upon their removal into the Court which heard the application

Mode of application

- Note that the 2009 rules contains no provisions on this. The practice is to make use of the conventional High Court Rules in bringing the application

- The application is first for leave, is by motion *ex parte* supported by an affidavit and written address. And then accompanied by motion on notice, affidavit, statement in support and written address to the main application
 - Upon been served the Respondent will file his counter affidavit and written address
 - If no reply on point of law is filed by the Applicant, the case proceeds to hearing
 - As in fundamental rights action, the case is to be heard on affidavits only
 - Prerogative orders writs to apply for Certiorari –
 - It is simply a writ or order by which a higher court reviews a case tried in a lower court.
 - Circumstances under which an order of certiorari will be awarded
 - See Head of Federal Military Government V. The Public Service Commission of Mid-West State & Anor CITATION: (1974) LPELR-SC.85/73S C-
"where it is established before the High Court that a statutory body (or maybe an inferior court) with limited powers has abused that power and that such abuse does and continues to affect prejudicially the rights of a citizen, certiorari will be issued at the instance of that citizen. Such abuse may take the form of noncompliance with rule or rules of procedure prescribed for that body; it may be exemplified in the denial of the right to be heard in one's defence; it may consist of irregularities which are tantamount to a denial or breach of the rules of natural justice; indeed, it may take the form of an assumption of jurisdiction to perform an act unauthorized by law or a refusal of jurisdiction where it should be exercised. The list is not exhaustive but those are the cases in which certiorari has always been issued by the Courts of King's Bench. Thus, certiorari has been issued to quash arrest warrants, witness summonses or even official medical certificates which were irregularly issued. See R. v. Thompson (1909) 2 K.B. 614; R. v. Lewes Justices *ex parte* Home Secretary (1972) 3 W.L.R 279." Per Coker, J.S.C. (P.52, paras. A-F)
 - See also ADEBIYI v. ADEBIYI & ANOR CITATION: (2018) LPELR-45964(CA)
 - Habeas Corpus
 - Is simply a writ issued by a court directing one who holds another in custody to produce that person before the court for some specified purpose.
 - Nature of the writ
- Ademola, J. C. A. in *Agbaje v Commissioner of Police* (Unreported) Suit No. CAW/81/69 of 27/8/1969.
- "The writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention whether in prison or in private custody. The purpose is to inquire into the cause for which a subject has been deprived of his liberty... if there be no legal justification for the detention, the party is ordered to be released."
 - Prohibition -
 - is a prerogative order seeking to restrain an inferior tribunal or body of persons from exceeding its jurisdiction or powers. It is aimed at preventing the continuance of an unlawful judicial or quasi-judicial act.
 - Order of mandamus –
 - a prerogative writ directed to some person, or public body or agency body compelling the performance of a public duty.
 - See In R v Western Urhobo Rating Authority, *Ex parte* Chief Odje and Ors (1961) All NLR. 796.

Assignment on Enforcement of Fundamental Rights

Scenario:

Mr. Rabiū Bello, graduated from the Nigerian Law School in 2012 and started practice in Kano under Rabo and Rabo Chambers. With interests in politics, Mr. Rabiū. 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 12th of July, 2019 Mr. Rabiū 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. Rabiū Bello after been 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. Rabiū's childhood friend came to the rescue of Mr. Rabiū's family by engaging the services of Ms. Queen Ajayi. a renowned lawyer and human rights defender to defend Mr. Rabiū. 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. Rabiū for terrorism. She forcefully withdrew from the case the next morning.

Mr. Rabiū 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. Rabiū is everyday deteriorating

1. Enumerate the rights violated in respect of Mr. Rabiū, Ms. Queen and Mr. Musa
2. Draft separate applications for the enforcement of fundamental rights of:
 - a. Mr. Rabiū 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 is 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 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