

NIGERIAN LAW SCHOOL

BWARI - ABUJA

BAR EXAMINATION-PART II FINAL

CIVIL LITIGATION

THURSDAY, 16TH JANUARY, 2020

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

THIS PAPER IS DIVIDED INTO TWO SECTIONS. TWO ANSWER BOOKLETS ARE PROVIDED. QUESTIONS FROM EACH SECTION SHOULD BE ANSWERED ON A SEPARATE ANSWER BOOKLET. QUESTIONS 1 AND 4 ARE COMPULSORY. ONE OTHER QUESTION FROM EACH SECTION SHOULD BE ATTEMPTED.

WRITE YOUR EXAMINATION NUMBER ON EACH ANSWER BOOKLET.

SECTION A

QUESTION 1 (COMPULSORY)

By an agreement dated 1st January, Mallam Alli leased out his 4 bedroom duplex situate at 6, Valley Street, Wuse, Abuja on a yearly tenancy to Mr. Freeman at the rate of N6,000,000.00(Six Million Naira) only per annum. One of the terms of the agreement is that the property must be used strictly for residential purpose.

Mr. Freeman paid his rent regularly for 2 years. Thereafter he stopped paying any rent on the property till date. He has also converted the house to a music studio where his clients who are mainly lousy young persons come for rehearsal and recording of their music. These clients make alot of noise, dancing, singing, smoking and taking some drugs to make them high for their recordings, to the annoyance of other neighbours on the street.

Mallam Alli wants to recover possession of his property from Mr. Freeman and he has instructed Miss Dudu Green as counsel to take all necessary steps to recover possession of his property.

Answer the following questions:

(a) State the condition precedent that Mallam Alli must fulfill before he can validly instruct Miss Dudu Green as a counsel to recover possession of the property.

(b) That the document embodying the condition precedent that you have identified in (a) above.

(c) Assuming Miss Dudu Green issued a notice to quit dated 4th April, 2019, which she served on Mr. Freeman on the same day requesting him to vacate possession of the premises on 31st October, 2019. Comment on the propriety of the Notice to Quit.

(d) After the expiration of the Notice to Quit, Miss Dudu Green as a matter of urgency instituted an action in court for the recovery of the possession of the premises by Originating Summons. Comment on the propriety of the action instituted, giving reasons for your answer.

(e) State three (3) grounds that the landlord can rely upon to recover possession of the premises.

(f) Assuming judgment was given in favour of Mallam Alli and he wants to execute the judgment against Mr. Freeman Toyota Corolla and his motorcycle, advise him on the proper procedure he should adopt to achieve his aim.

(g) Mr. Freeman is willing to pay the judgment sum in arrears of rent in the sum of N18,000,000 (Eighteen Million Naira) only for the period of 1st October, 2016 till date. However, he has no financial capacity to pay the entire judgment sum at once. Advise him on the possible application that he can make to court in the circumstances.

(h) Draft the application that you have stated in (g) above together with the affidavit in support.

QUESTION 2

Sheba Janju contested the primary election conducted by his political party, Peoples' Party for the selection of the party's flag bearer in the forthcoming bye election to the Magama/Rijua Federal Constituency of Niger State. At the end of the election, his opponent, Kabiru Isa emerged victorious. Sheba Janju rejected the result on the ground that Kabiru Isa manipulated the process with party officials. Kabiru Isa as the party's flag bearer contested the bye election alongside two other candidates, namely: Tanko Jodan of People's United Congress Party; Murtlala Kaka of Democratic Peoples' Accord on 20th December, 2019.

Kabiru Isa was returned as the winner of the election with 35,600 votes, while his opponents scored 25,700 and 11,200 votes respectively. His closest opponent, Tanko Jordan of Peoples' Unity Congress rejected the election's results on the ground that the election was characterized by bribery, vote buying, intimidation of voters, snatching of ballot boxes etc. He has retained James Banda to challenge the result of the election in court.

Answer the following questions:

- (a) In which will you challenge the election results in court. Give reason(s) for your answer.
- (b) Draft the process you will file for the purpose of challenging the election result. (Without any supporting document)
- (c) Mention the documents that must accompany the process you identified in (b) above.
- (d) Assuming Shehu Janju wants to challenge the result of his party's primary election, in which court will he file the action and why?

(e) Assuming Tanko Joda wants to tender a photograph of an incident of ballot box snatching during the election which he used his camera to snap, state the requirements for its admissibility.

(f) Assuming Tanko Joda intends to file an action challenging the election's result, what is the period of time within which he must file the action, and also what is the period of time within which the court must decide the matter.

QUESTION 3

The Gogo State House of Assembly has been engulfed by leadership crisis which has seen the House divided under two factional Speakers, with one faction being loyal to the State Governor while the other faction is loyal to the National Chairman of the Ruling Party, Carry Go Party, (CGP).

The faction led by Hon. David Brown is loyal to the National Chairman of the CGP. During the party's rally held at Odumodu Lokoja Stadium on 25, November, 2019, Hon. David Brown went and occupied the space reserved for the State Assembly Speaker. On his arrival with his entourage, the State Governor ordered his security details comprising men and officers of State Security Service (SSS), the Police and the Nigerian Army to remove Hon. David Brown from his seat as Hon. David Brown was not the person recognized as the Speaker of the State Assembly.

In the scuffle that ensued, the Governor's security details broke Hon. David Brown's right arm, destroyed his cell phone and forcibly took him out of the venue of the rally into the boot of a Police car which drove him to the State Police Command Headquarters, located at 22, Giri Road, Lokoja. Hon. Brown was detained and is still in detention and has been denied access to his lawyers and doctors. The Deputy Speaker of Hon. David Brown has decided to seek redress on behalf of Hon. David Brown and has instructed you to file a suit in his own name (Hon. Ebi Bowei). The Deputy Speaker lives at 116, Downing Road, Benin City, while Hon. David Brown resides at 22, Oba Road, Benin City.

Answer the following questions:

(a) Describe the procedure you will adopt to seek redress for Hon. David Brown under the extant laws and state all the documents you need to file in court for this purpose.

(b) Draft the application (in a motion format) that you will file in court to commence the action(without any supporting document).

(c) Describe any additional step you will need to take and any additional document you will need to file in court in view of the fact that Hon. David Brown has been in detention incommunicado since 25/11/2019.

(d) State the court that has jurisdiction to hear this case. Give reason(s) for your answer.

(e) Assuming you were the lawyer for the applicant and you were unable to attend the court following which the case was struck out, state the step(s) you will take to have the case relisted. Draft the application you will file for this purpose(without supporting document)

(f) State any four (4) orders the court may make at the interim stage and any two(2) orders the court may make at the substantive stage in the case.

QUESTION 4 (COMPULSORY)

On December, Mrs Remi Yelwa drove her Mercedes Benz car (2019 model) along Apek Road, Ikeja. With her in the car was her son, Yomi (11 years old) who was on his way to school.

Suddenly Mrs Remi Yelwa's car was hit from the rear by an articulated vehicle (trailer), No. xx000377 driven by John Tajudeen, an employee of Goodsides Nig. Ltd of No. 10 Akemu Road, Ikeja, Lagos. The vehicle was at the time loaded with cement for delivery to the company's numerous costumers.

Mrs Remi Yelwa sustained serious injuries especially to her limbs. She was hospitalised at Illuna Hospital, Ikeja, Lagos for 3 months. She incurred the following expenses: surgical operation, #5 million;/drugs and medicals #4.5 million; in-patient bill #1.5 million; Transportation #50,000.

The incident was captured by a surveillance camera placed on the road by the Lagos State Government. The cameras are operated by the Rapid Response Squad (RRS) of the Police. The RRS has in its custody the footage of the accident. Mrs Remi Yelwa and son intends to bring an action for damage.

Answer the following questions

- (a) Identify the appropriate court with competent jurisdiction on this matter.
- (b) Draft the heading of the appropriate Originating process up to the parties.
- (c) In not more than ten (10) paragraphs, draft the statement of claim, taking into account the expenses enumerated above and general damages of #50 millions.
- (d) Assuming that the claim for the general damages was not endorsed on the Writ of Summons, but was included in the Statement of Claim, can the claim be entertained by the trial Court. Give reason(s).
- (e) Assuming Mrs Yelwa and her son will like to compel the appropriate police officer who has in his custody the footage or clip of the accident to testify in the case, what court process will be needed for that purpose
- (f) State the prerequisites for the admissibility of the video footage or clip.

QUESTION 5

During the trial for default in the payment for the supply of electricity generating sets by Rihama Nig. Ltd. to Redmore Nig. Ltd., the witness to the claimant who claimed the sum of Twenty Million Naira (N20,000,000) as the unpaid price for twenty units of electricity generating sets sold to the defendant, tendered a

certificate of incorporation certified by the court registrar. Eventually, judgment was entered in favour of the claimant.

With the aid of legal authorities answer the following questions:

- (a) Comment on the validity or otherwise of the court admitting the certified true copy of (without any supporting document) of the certificate of incorporation.
- (b) State the grounds of objection, if any that you have raised against the certified true copy (CTC)
- (c) State the criteria for the validity of the CTC of a document of the type in (a) above.
- (d) Assuming that at the point that the court admitted the certificate, it was decided to file an appeal against the decision, while having the proceedings at the trial suspended. What application will you make to the court and why?
- (e) Draft the application mentioned in (d) above (without any supporting court process)
- (f) State the steps/questions that you will take your witness through in order to have his statement on oath adopted.

QUESTION 6

Babatunde Oyemo sued your client, Dodo Osadunde at the FCT High Court for the liquidated sum of Four Hundred Million Naira only (N400,000,000) representing his share of the profit from a joint venture allegedly entered by your client and Mr. Babatunde. Unfortunately, your client was in New York when substituted service was effected on him.

He came back to Nigeria two(2) months later to discover that he had been sued. Two days after he was served with an application for default judgment which is

slated for hearing on the 21st of January, 2020. He immediately briefed Tanko Esq to represent him.

Answer the following questions

(a) What are the steps you will take to ensure that the case is heard on the merit and not default?

(b) Draft the application (without any supporting documents) you will file in court to enable your client to be heard in the matter.

(c) List the documents you will annex to your application.

(d) Your application in (b) is slated to be heard on January 20, 2020. With the aid of relevant statutory authority, comment on the order of hearing the two applications.

(e) Counsel to the Claimant has brought an ex parte motion seeking an interim order restraining your client (the Defendant) from selling his assets within the court jurisdiction pending the determination of the substantive suit. Set out the conditions that must be met by the application.

COUNCIL OF LEGAL EDUCATION

NIGERIAN LAW SCHOOL

CIVIL LITIGATION MARKING SCHEME

BAR PART 11 JANUARY 2020

SECTION A

QUESTION 1---COMPULSORY (25 MKS)

(a) The condition precedent Mallam Ali must fulfill to validly instruct Miss Dudu Green as counsel to recover possession of the property is to give her a written authority or instruction to recover the premises; **Coker v Adetayo, Balogun v LEDB.**

(b) Draft the letter of instruction:

**Mallam Ali,
No. 6 Valley Street,
Wuse, Abuja.
April 1, 2019.**

**Miss Gudu Green,
God is Good Law Firm,
No. 22 James Close,
Wuse 2, Abuja.**

Dear Madam,

**LETTER OF INSTRUCTION TO RECOVER MY PREMISES AT NO 6 VALLEY STREET,
WUSE, ABUJA**

I, Mallam Ali, owner of 4 Bedroom Duplex situate at No. 6 Valley Street, Wuse, Abuja, do hereby give you instructions as my solicitor to take all necessary steps to recover possession of the said premises and arrears of rent on the said

premises currently in occupation by one Mr. Freeman who is occupying the said premises as a yearly tenant with whom I wish to terminate the tenancy in existence.

I shall of course pay the necessary fees. Thank you.

Yours faithfully,

.....

Mallam Ali

ENCL: Copy of Tenancy Agreement10

(c) The position of the common law (which is applicable in the Federal Capital Territory, Abuja) is that a notice to quit when issued must expire on the eve of the anniversary of the tenancy sought to be terminated; **Owoade v Texaco Africa Limited, African Petroleum v Owodunni**. In the instant case, since the tenancy commenced on the 1st of October, the notice to quit ought to expire on the 30th of September of any given year which the tenancy was sought to be terminated. Therefore, the notice to quit issued by Miss Dudu Greed is invalid.

(d) One of the condition precedents in relation to recovery of premises is that at the expiration of the Notice to Quit, the tenant must/shall be issued 7 (seven) days" Notice of owners intention to recover premises before an action can be commenced in court to recover the premises, **Ezeama v Ejidike; Chiwete v Amissah**.

Therefore, in the instant case, the action commenced by Miss Dudu Green without first given the tenant 7 days" notice of owner"s intention was wrong/not proper. Secondly, the mode she adopted in instituting the action was wrong

because the action ought to be commenced by writ of summons since its likely to be contentious; **Doherty v Doherty**.

(e) The three grounds the Landlord can rely upon to recover the premises includes:

- i. Breach of the covenant on use of the premises
- ii. Arrears of rent
- iii. Use of the premises for immoral and illegal purposes (taking of drugs).

(f) If judgment was given in favour of Mallam Ali and he intends to enforce same on the moveable properties of Mr. Freeman (his Toyota Corolla and Motorcycle), he should apply for Writ of fieri facias (fi.fa) which will enable the sheriff to seize the Car and Motorcycle and sell it after 5 days.

(g) If Mr. Freeman has no capacity to pay the judgment sum at once, he can bring an application for payment by installment by motion on notice supported with an affidavit stating cogent reasons why the judgment sum should not be paid once.

(h) Draft the application for payment by installment:11

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO.....

BETWEEN:

MALLAM ALI CLAIMANT/RESPONDENT

AND

MR FREEMAN.....DEFENDANT/APPLICANT

MOTION ON NOTICE

**BROUGHT PURSUANT TO ORDER 43 RULE 1(3) OF THE HIGH COURT OF THE
FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2018 AND UNDER THE
INHERENT JURISDICTION OF THIS HONOURABLE COURT.**

TAKE NOTICE that this Honourable Court will be moved on the day of
..... 2019 at the Hour of 9 O" clock in the forenoon or so soon thereafter as
Counsel for the Defendants/Applicants will be heard praying this Court for:

1. **AN ORDER** for instalmental payment of the judgment sum of N18,000,000.00
(Eighteen Million Naira) delivered against the applicant by this Hon. Court on
the.....day of....2019

2. **AND FOR SUCH OTHER ORDERS** as this Court may deem fit to make in the
circumstances.

DATED THIS DAY OF 2019.

.....

Njoku Sly, Esq.

Counsel to the
Defendants/Applicant
No 15 Okon Street
Wuse Zone 5, Abuja

FOR SERVICE ON:

Counsel to the Claimant/Respondent

Miss Dudu Green,

God is Good Law Firm,

No.....13

- Affidavit isupport

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO.....

BETWEEN:

MALLAM ALI CLAIMANT/RESPONDENT

AND

MR FREEMAN.....DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF THE MOTION FOR PAYMENT BY INSTALLMENT

I, Mr. Freeman, Adult, Male, Christian, and a Nigerian Citizen residing at No. 6 Valley Street,

Wuse, FCT Abuja do hereby make oath and state as follows:

1. I am the Defendant/Applicant in the above suit and by virtue of which I am conversant with the facts of this case.
2. Onday of.....2019 the claimant/judgment debtor instituted an action against me for recovery of his premises and arrears of rent.
3. The court delivered its judgment in favour of the claimant and awarded the sum of N 18, 000, 000.00 (Eighteen Million Naira) as arrears of rent for the period of 1st October, 2016 till date..
4. I do not challenge the judgment of this Honourable court and I accept same wholly.
5. That due to the harsh economic system, I will not be able to pay up the judgment sum at once unless by installment.
6. I believe that the claimant will not in any way be prejudiced if this application is granted.
7. I make this statement in good faith believing its content to be true and correct in accordance with the Oaths Act.

.....

DEPONENT

Sworn to at the High Court of FCT Registry, Wuse, Abuja; this.....day of2019

BEFORE ME

COMMISSIONER FOR OATHS14

QUESTION 2

(a) I will challenge the election results before the National and State Houses of Assembly Election Tribunal. This is because all petitions challenging elections into the National Assembly (Senate or House of Representatives) are to be filed before the National and State Houses of Assembly Election Tribunal; section 285(1) &(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

(b) **Election petition:**

**IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNAL
HOLDEN AT NIGER STATE**

PETITION NO.....

**BYE-ELECTION TO THE OFFICE OF THE HOUSE OF REPRESENTATIVE OF
MAGAMA/RIJAU FEDERAL CONSTITUENCY OF THE FEDERAL REPUBLIC OF
NIGERIA HELD ON 20TH OF DECEMBER 2019**

BETWEEN

1. TANKO JODA PETITIONERS

2. PEOPLES UNITED CONGRESS

AND

1. KABIRU ISA

2. PEOPLE'S PARTY

3. INDEPENDENT NATIONAL RESPONDENTS

ELECTORAL COMMISSION (INEC)

PETITION

THE PETITION OF TANKO JODA OF NO.....WHOSE NAME IS SBBSCRIBED

1.0 Your 1st Petitioner Tanko Joda was a candidate at the above election and your petitioners state that the election was held on the 20th day of December, 2019, where the 1st Respondent was a candidate.

1.1 Your 1st Petitioner contested under the platform of the 2nd Petitioner (Peoples United Party). The 1st Respondent contested under the platform of the 2nd Respondent (Peoples Party).

1.2 The results as released by the 3rd Respondent were as follows (despite the fact that there were massive irregularities across the State)

CANDIDATE	PARTY	VOTES
KABIRU ISA.	PEOPLE"S PARTY	35,600 Votes
TANKO JODA	PEOPLES UNITED PARTY	25,700 Votes
MURTALA KAKA	DEMOCRATIC PEOPLES ACCORD	11,200 Votes16

1.3 Your 1st Petitioner states that the Respondent, Kabiru Isa, was then returned as the elected candidate and or winner of the election.

2.0 GROUNDS FOR THE PETITION:

Your petitioners state that the grounds on which they rely for the petition are as follows:

- a. The return of the 1st Respondent as winner of the election for the office of the House of Representative Magama/Rijau Federal Constituency of Niger State which was held on the 20th December, 2019 was invalid by reason of non-compliance with the provisions of the Electoral Act 2011 and was marred by irregularities and corrupt practices.
- b. The 1st Respondent was not duly elected as a majority of lawful votes cast at the election, as no lawful votes were cast in 500 polling stations making up 15 out

of the 21 local government areas in Niger State due to violence and ballot box snatching.

3.0 FACTS IN SUPPORT OF THE PETITION:

1. Your petitioners state that elections did not take place in 500 polling centers making up 15 out of the 21 Local Government Areas in Niger State on the 20th of December, 2019.
2. Your petitioners state that the 1st Respondent deliberately used thugs to intimidate voters who were perceived to be in favour of the Petitioner.
3. Your petitioners state that the 1st Respondent through its party agents engaged in massive votebuying at the various polling units.
5. Your petitioners state that in the 6 Local Government Areas where elections held, the voters were compelled by force by the agents of the 1st Respondent to refrain from voting the 1st Petitioner and vote for the 1st respondent or be killed and some voters refrained from voting based on the threat.
6. Your petitioners state that the total number of votes cast as presented in the result sheet Form R1 is 100,000 (one hundred thousand) persons and this is untenable in keeping with the number of accredited voters for the election on the 20th of December, 2019.
8. Despite the gross irregularities and the fact that no results were collated by the 3rd Respondent, the 1st Respondent was declared winner of the election at the Secretariat of the 3rd Respondent on the same day of the election.
9. The 3rd Respondent is hereby given notice to produce at the hearing of the petition all the documents allegedly used during the election.

4.0 PRAYERS:

Wherefore, your petitioner prays the Tribunal for the following reliefs:

- 1. DECLARATION** that the 1st Respondent, KABIRU ISA was not duly elected and returned as winner of the rerun election to the office of the House of

Representative Magama/Rijau Federal Constituency of Niger State which was held on the 20th December, 2019.18

2. AN ORDER DECLARING the rerun election to the office of the House of Representative Magama/Rijau Federal Constituency of Niger State which was held on the 20th December, 2019 was null or void.

DATED DAY OF....2019

James Banda Esq.

(Petitioner"s Counsel)

J.O. Akanbi & Co.

No. 10 Nnamdi Azikiwe Road,

Niger State

SIGNED BEFORE ME

This Day of 20.....

SECRETARY

FOR SERVICE ON:

1ST RESPONDENT

Kabiru Isa

112 Ndubuisi Road, Niger State

2nd RESPONDENT:

People"s Party

State Headquarters

27 Ozumba Mbadiwe Street,

Niger State

3rd RESPONDENT:

Independent National Electoral Commission (INEC)

National Headquarters,

12 Aguiyi Ironsi Street,

Niger State

(c) The documents that will accompany the petition are:

- i. List of the witnesses to be called
- ii. Written statement on oath of the witnesses
- iii. Copies of all the documents to be relied on; **Para 4(5) 1st**

Schedule to the Electoral Act 2010

(d) If the Shehu Janju wants to challenge the party's primary election, he will file the action at the Federal High Court or at the High Court of Niger State. This is because preelection matters are to be instituted in either the Federal High Court or at the High Court of the state; **section 87(10) of the Electoral Act; Odedo v INEC & Anor. (2008) SC 20819**

(e) If Tanko Joda wants to tender a photograph of the snatching of the ballot box, he must fulfill the following requirements; He must give oral evidence or swear to an affidavit stating that:

- i. The Camera can be used to take the kind of photograph sought to be tendered;

- ii. The photograph was taken in the ordinary course of business;
- iii. That the camera is in good working condition and even if it was not, it did not affect the production of the photograph; **section 84 Evidence Act; Kurbor v Dickson; Silver v Dickson**

(f) Tanko Joda must file the action within 21 days after the declaration of the result; **section 134 of the Electoral Act; section 285(1) CFRN; Ngige v Obi**. The court or tribunal must determine the action within 180 days from the date it was filed; **section 285(5) CFRN, ANPP v Goni**.

QUESTION 3

(a) The procedure I will adopt to seek redress for Hon. David Brown is fundamental right enforcement procedure under the Fundamental Rights (Enforcement Procedure) Rules 2009. The documents I will file in court while commencing this action are

- i. Statement setting out the name and description of the applicant, the reliefs sought and the grounds for the reliefs
- ii. An affidavit deposed to by the applicant himself or by another person who must state the source of his information
- iii. A written Address/brief; Order 11 Rule 3 of the FREP Rules 2009

(b) Originating Motion for Fundamental rights enforcement:

IN THE HIGH COURT OF KOGI STATE
IN THE LOKOJA JUDICIAL DIVISION
HOLDEN AT LOKOJA

SUIT NO:

**IN THE MATTER OF AN APPLICATION BY HON. DAVID BROWN FOR AN ORDER OF
ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS**

BETWEEN

HON. DAVID BROWN.....APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

2. DIRECTOR STATE SECURITY SERVICE.....2ND RESPONDENT

3. THE NIGERIAN ARMY.....3RD RESPONDENT

4. THE ATTORNEY GENERAL OF GOGO STATE.....4TH RESPONDENT

ORIGINATING MOTION

BROUGHT PURSUANT TO SECTIONS 35 (3) & (4),34(1) (a) AND 36 (4), (5)& (6) (c)
OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS
AMENDED) AND ORDER II RULE 1 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT
PROCEDURE) RULES 2009 AND WITHIN THE INHERENT JURISDICTION OF THIS
COURT.

TAKE NOTICE that this honourable court will be moved on the ----- day of-----
2019 in the hour of 9 o'clock in the forenoon or so soon thereafter as counsel can
be heard on behalf of the Applicant praying for the following orders:

- 1. AN ORDER FOR** the enforcement of the fundamental rights of the applicant.22
- 2. AN ORDER** declaring that the torture and detention of the Applicant by the 1st
to 3rdRespondent on the instruction of the 4th Respondent amounts to the
Applicant"s fundamental rights.
- 3. AN ORDER** for the payment of the sum of N50, 000,000.00 (Fifty Million Naira)
to the Applicant by the Respondents jointly and severally as damages.
- 4. AN ORDER** restraining the Respondents from further infringing on the rights of
the Applicant.

AND FOR SUCH FURTHER ORDERS OR ORDERS which the court will deem fit to
make in the circumstance

DATED THIS.....DAY OF....2019

.....

JOHN OYENIYI

Counsel to the Applicant

Grace Chambers

Victoria Island, Lokoja

FOR SERVICE ON:

1ST RESPONDENT

No. 22 Giri Road, Lokoja

2ND RESPONDENT

(Any address)

3RD RESPONDENT

(Address)

4TH RESPONDENT

(Address)

(c) In view of Hon. David Brown"s continuous detention, the additional step I will take is to seek an interim relief by filing an ex-parte application supported with an affidavit which shall state sufficient grounds why delay in hearing the application will cause exceptional hardship on the applicant; **Order IV Rule 4(a) FREP Rules 2009.**

(d) The court that has jurisdiction to hear this case is the State High Court. This is because section 46 of the 1999 Constitution of Nigeria as amended vests jurisdiction on the High Court over fundamental right cases; **Grace Jack v University of Agriculture, Markudi.**

Also the subject matter leading to the breach is within the jurisdiction of a state High Court.

(e) If the case was struck because as counsel to the Applicant, I failed to attend the court, I will bring an application for the court to relist the suit by filing a motion on notice supported with an affidavit stating cogent reasons for my absence in court and a written address.

the application:

IN THE HIGH COURT OF KOGI STATE
IN THE LOKOJA JUDICIAL DIVISION
HOLDEN AT LOKOJA

SUIT NO:

**IN THE MATTER OF AN APPLICATION BY HON. DAVID BROWN FOR AN ORDER OF
ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS**

BETWEEN

HON. DAVID BROWN.....APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

2. DIRECTOR STATE SECURITY SERVICE.....2ND RESPONDENT

3. THE NIGERIAN ARMY.....3RD RESPONDENT

4. THE ATTORNEY GENERAL OF GOGO STATE.....4TH RESPONDENT

MOTION ON NOTICE

**BROUGHT PURSUANT TO ORDER.....RULE.....OF THE HIGH COURT CIVIL
PROCEDURE RULES OF KOGI STATE 20..... AND WITHIN THE INHERENT
JURISDICTION OF THIS COURT**

TAKE NOTICE that this honourable court will be moved on the ----- day of-----
2019 in the hour of 9 o'clock in the forenoon or so soon thereafter as counsel can
be heard on behalf of the Applicant praying for the following orders:

AN ORDER relisting the case with suit No.....struck out by this court onday
of.....20.....

AND FOR SUCH OTHER ORDERS which this court will deem fit to make in the circumstance

DATED THIS.....DAY OF....2019

.....

JOHN OYENIYI

Counsel to the Applicant

Grace Chambers

Victoria Island, Lokoja

FOR SERVICE ON:

1ST RESPONDENT

No. 22 Giri Road, Lokoja25

2ND RESPONDENT

(Any address)

3RD RESPONDENT

(Address)

4TH RESPONDENT

(Address)

(f) The orders the court can make on the interim includes:

- i. Grant bail or release the applicant from detention forthwith;
- ii. Order that the Respondent be put on Notice and abridge the time for hearing;
- iii. Order the production of the applicant on the date fixed for hearing if the applicant alleges wrongful detention.

iv. Grant injunction restraining the Respondent from taking further steps in connection with the matter or to maintain the status quo or to stay all actions pending the determination of the case.

The two orders the court may make at the substantive stage of this case are:

- i. Injunctive reliefs restraining the Respondents from further breaching the Applicant's fundamental rights.
- ii. Access to medical care and counsel to the Applicant.

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NIGERIAN LAW SCHOOL
CIVIL LITIGATION MARKING SCHEME
BAR PART 11 JANUARY 2020**

SECTION B

QUESTION 4 (COMPULSORY) 25 MARKS

(a) The appropriate court with jurisdiction to entertain this suit is the High Court of Lagos State. This is because the breach occurred in Lagos state; **Order 4 Rule 1 of the High Court of Lagos (Civil Procedure) Rules 2019**

(b) Heading of the Court:

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO.....

BETWEEN:

1. MRS REMI YELWA

2. YOMI YELWA (MINOR)CLAIMANTS

(Suing Through the Guardian Mrs. Remi Yelwa)

AND

1. GOODSIDE NIGERIA LIMITED

2. JOHN TAJUDEENDEFENDANTS

(c) statement of claim:

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO.....

BETWEEN:

1. MRS REMI YELWA

2. YOMI YELWA (MINOR)CLAIMANTS(Suing Through the Guardian Mrs. Remi Yelwa)AND

1. GOODSIDE NIGERIA LIMITED

2. JOHN TAJUDEENDEFENDANTS

STATEMENT OF CLAIM

1. The 1st Claimant is a Business woman who lives at No 215 Apek Road, Ikeja, Lagos State.
2. The 2nd Claimant is a minor and a son of the 1st claimant who lives at the same address as the 1st Claimant.
3. The 1st Defendant is an incorporated company involved in the business of sales and supply of cements with its registered office address at No 10 Akemu Road, Ikeja, Lagos
4. The 2nd Defendant is a driver and an employee of the 1st Defendant.
5. The 1st Claimant avers that on 1st December, 2019, she was driving in her Mercedes Benz car together with the 2nd Claimant who was on his way to school, along Apek Road, Ikeja, Lagos State.
6. The Claimants further avers that, the 2nd defendant suddenly hit their car from the rear with an articulated vehicle (also known popularly as trailer) with registration No xx000377 driven by the 2nd Defendant.
7. The 1st Claimant avers that as result of the accident she sustained a lot of severe injuries including a fractured limb.

8. The Claimant avers that she was hospitalized at Ilunla Hospital, Ikeja, Lagos for 3 months. Copies of the Hospital Bills and other receipts will be relied on during trial.

9. The claimant further avers that the incident was captured by a surveillance camera placed on the road which showed clearly that the 2nd defendant was negligent in driving the car. The Surveillance footage will be relied on during trial.

10. **WHEREFORE** the Claimants claims against the defendants jointly and severally as follows:

a. The sum of N11,050,000.00 (Eleven Million and Fifty Thousand Naira only), as special damages; particularized as follows:

i. Surgical Operation = N5,000,000.00

ii. Drugs and medicals =N4,500,000.00

iii. In-patient"s Bill = N1,500,000.00

iv. Transportation = N50,000.00

TOTAL = N11, 050,000.00

b. The sum of N50, 000,000.00 as general damages for negligence and for all the pains and loss suffered by the claimants.

Dated.....day of.....2019

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A.A. Yusuf Esq.

Counsel to the Claimants

Name and address of the firm

FOR SERVICE ON:

1ST & 2ND DEFENDANTS 30

No 10 Akemu Road,

Ikeja, Lagos

(d) The claim will be entertained by the trial court. This is because once a statement of claim is filed it supersedes the writ of summons, and only claims/remedies in the statement of claim will be granted by the court.

(e) If Mrs. Yelwa and her son want to compel the police officer who has the clip to come and testify, they will apply for subpoena ad testificandum.

(f) The pre-requisites for the admissibility of the video footage or clip is as follows:

1. The surveillance camera was regularly used to produce the type of evidence sought to be tendered.
2. The video footage must be recorded by the surveillance camera in the ordinary course of business.
3. The surveillance camera at all material time must be in good working condition so as not to affect the production of the video footage nor alter its accuracy.
4. The officer who operated the surveillance camera must give oral evidence or swear an affidavit verifying the above facts. **Section 84 Evidence Act; Silver v Dickson; Kubor v Dickson**³⁰

QUESTION 5

(a) The position of the law is that it is only the primary evidence (original) of a document that is admissible in evidence; **section 86 of the Evidence Act**. However, where the primary evidence is not available, the secondary evidence (any other copy other than the original) will be admissible if proper foundation is laid; **section 87 Evidence Act**.

In the instant case it was invalid and wrong for the court to have admitted the Certificate of Incorporation certified by the Court Registrar because it was not properly certified and proper foundation was not laid.

(b) The ground of objection that I would have raised against the CTC in this case is that the document was not certified by the appropriate authority authorized by law to issue Certificates of Incorporation; **section 104(3) Evidence Act**. It is the Registrar General of Corporate Affairs Commission that has the competence to certify a Certificate of Incorporation.

(c) The criteria for the validity of the CTC of a public document is as follows:

- i. It must be issued by a person duly authorized as having custody of the public document.
- ii. The proper fee paid for the certified copy must be subscribed therein.
- iii. It must be written on the foot of the document that it is a CTC
- iv. It must be dated and signed by the certifying officer with his name and official title subscribed; **section 104 Evidence Act**

(d) The application I will make to the court is application for stay of proceedings pending appeal by motion on notice supported with an affidavit and written address. This is because failure to do so, the substantive suit will be going on together with the appeal.

(e) **Motion On Notice For Stay Of Proceedings:**

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO.....

BETWEEN:

RIHAMA NIGERIA

LIMITED.....CLAIMANT/RESPONDENT 32

AND

REDMORE NIGERIA LIMITED.....DEFENDANT/APPLICANT

MOTION ON NOTICE

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

TAKE NOTICE that this Honourable Court will be moved on the ____ day of _____, 20__ at the hour of 9 O'clock in the forenoon or so soon thereafter as counsel for the Applicant may be heard praying this Honourable Court for the following:

- 1. AN ORDER** staying proceedings of this court in the matter pending the determination of the appeal filed against the decision/ruling of this Honourable Court delivered on theday of, 2019 at the Court of Appeal, Lagos Division.
- 2. AND FOR SUCH OTHER ORDERS** as this Honourable Court may deem fit to make in the circumstances.

DATED THIS.... DAY OF2019

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O.C Chukwu Esq.

Applicant"s Counsel

Grace Chambers

10 Gwarimpa Road

FCT Abuja

FOR SERVICE ON:

Kene ajaegbu, SAN

Counsel for Respondent

No. 6 Lekki Drive

Ikoyi, Lagos

(f) The steps/questions I would take to enable my witness adopt his statement on oath are:

- i. Tell this court your name address and occupation?
- ii. Did you make any statement on oath in relation to this suit?
- iii. If you see the statement will you recognise it?
- iv. How will you recognise it?
- v. Is this your statement on oath?
- vi. What do you want to do with the statement?33

QUESTION 6

(a) The step I will take to ensure that the case is heard on the merit is to bring an application for extension of time within which to enter appearance and file a defence. This is by motion on notice supported with an affidavit stating cogent reasons for the delay and a written address.

(b) (Motion on Notice)

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

HOLDEN AT ABUJA

SUIT NO.....

BETWEEN:

BABATUNDE OYEMOCLAIMANT/RESPONDENT

AND

DODO OSADUNDEDEFENDANT/APPLICANT

MOTION ON NOTICE

**BROUGHT PURSUANT TO ORDER 43 RULE 1 OF THE HIGH COURT OF THE
FCTABUJA (CIVIL PROCEDURE) RULES 2018 AND UNDER THE INHERENT
JURISDICTION OF THIS COURT**

TAKE NOTICE that this Honourable Court will be moved on theday of
..... 2019 at the Hour of 9 O'clock in the forenoon or so soon

thereafter as Counsel on behalf of the Plaintiff /Applicant can be heard praying for:

1. **AN ORDER** granting extension of time for the Defendant/Applicant to enter appearance and file his defence
2. **AN ORDER** deeming as duly filed the Defendant/Applicant"s statement of defence and all other processes.
3. **AND FOR SUCH OTHER ORDERS** this Court may deem fit to make in the circumstances.

DATED THEDAY OF2019

.....

TANKO Esq.

Applicant"s Counsel

Grace Chambers

10 Gwarimpa Road

FCT Abuja

FOR SERVICE ON:

The Claimant/Respondent

C/O Counsel

Ibori Sam, Esq.

No 10 Ogun Street Area 2,35

Garki Abuja.

(c) The documents that will be annexed to the application above include:

- i. Affidavit
- ii. Written Address
- iii. Memorandum of Appearance
- iv. Statement of defence
- v. List of witnesses
- vi. Witness statements of oath
- vii. Copies of documents to be relied on.

(d) The general rule is that motions/applications before the court are to be heard according to how it was filed. However, where two applications are before the court, one seeking to terminate the proceedings and the other seeking to regularize or correct an irregularity, then the court will hear the motion that will regularize and give life to the suit; **NALSA & Team Associates v NNPC, AIC Limited v AGF**. In the instant case, the court will hear the defendant's application for extension of time first since that will give life to the proceedings.

(e) The conditions that must be met by an ex parte motion for interim injunction includes:

- i. Existence of a legal right to be protected by the court
- ii. There must be an urgent need to protect the subject matter of the dispute
- iii. Substantial issue to be tried

iv. An irreparable damage will occur and which cannot be adequately compensated; **A.G Oyo State v Ayorinde**

v. Conduct of the parties to the suit.

vi. Undertaking to pay cost should the application turn out to be frivolous; **CBN v Kotoye**

vii. The applicant must also file along with the exparte motion, a motion on notice for interlocutory injunction.