



NIGERIAN LAW SCHOOL

BWARI - ABUJA

BAR FINALS EXAMINATIONS

CIVIL LITIGATION

THURSDAY, AUGUST 16, 2018

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)

Mr. Tunde Babson is a businessman trading under the name and style of Tunde Babson & Sons at 7, Cowrie Road, Ikoyi, Lagos. He has instructed his lawyer, Mr. Silas to institute an action in Court against Sunrise Hotel Limited whose registered office is at 22, Oxlow Road, Victoria Island, Lagos to recover the sum of #15,000,000.00 (fifteen Million Naira) which is the sum due to be paid to him for supply and installation of fifty (50) units of Thermocool Air Conditioners in Sunrise Hotel as agreed by the parties in their agreement dated May 3, 2018.

Answer the following questions:

(a) Redraft the attached pleadings which is to be filed in Court on behalf of Mr. Tunde Babson.

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS (½ MK)

BETWEEN:

TUNDE BABSON & SONS

AND

MANAGING DIRECTOR, SUNRISE HOTEL LIMITED

(1) The Claimant is Mr. Tunde Babson and a Businessman

(2) The Defendant is Mr. Patel and Managing Director of Sunrise Hotel Limited.

(3) The Claimant avers that on May 3, 2018, the Claimant entered into a written contract with the defendant to supply and install fifty (50) units of Thermocool Air Conditioners in the total sum of #15,000,000.00 (Fifty Million Naira) into their Hotel Rooms.

(4) Mr. Tunde Babson states that the parties agreed that all the Air conditioners were to be delivered within twenty-one (21) days of execution of the contract agreement.

(5) The Claimant avers that the parties also agreed that the total payment for the goods delivered will be made within fourteen(14) days after delivery and installation Of the goods.

(6) Mr. Tunde Babson submits vehemently that he has since supplied and installed all the Air Conditioners within the time stipulated in the contract, Sunrise Hotel Limited has refused to pay the balance sum despite letters of demand that were written to it on 8th and 15th June, 2018 respectively. The 2(two) letters are attached herewith as Exhibits T2 and T3.

(7) The Claimant avers that on July 1, 2018, he received a letter dated the same date from Mr. Fatel, the Managing Director of Sunrise Hostel Limited, expressing

the defendant's dissatisfaction with the Air Conditioners which he claimed are of inferior quality to the one that was requested for. The Letter will be relied on at the trial of this case.

(8) The Claimant avers that he immediately sent a reply dated July 2, 2018 to the defendant wherein he disagreed with the statements in the defendant's letter and also demanded for the payment of the contract sum of #15,000,000.00 (Fifty Million Naira) to him immediately. The letter is attached herewith and marked as Exhibit T4.

(9) The Claimant is of the opinion and therefore submits that the defendant's letter dated July 1, 2018 is an excuse by the defendant not to pay him the money due to him for the goods supplied as agreed by the parties.

WHEREAS the Claimant is entitled as of right to the following:

- (i) The sum of #15,000,000.00 (Fifty Million Naira) for fifty (50) units.
- (ii) 21% interest on the contract sum until date of payment.
- (iii) N10,000,000.00 (Ten Million Naira) general damages

Legal Consultant & Co.,

Claimant's Counsel

Legal Consultant @yahoo.com

Tel: 08055442200

(b) After service of the originating process on the defendant, within what time should it enter an appearance in the matter and by what mode?

(c) Draft ONLY the general Traverse in the defendant's Statement of Defence.

(d) In the right sequence, as Counsel set out the questions you will put forward to the Claimant when leading him in his examination-in-chief in this matter.

(e) Assuming trial has been concluded in the matter, and only the Claimant gave evidence, who will address the Court first and within what time frame will the party be required to file the Written Address

(f) Without having to draft, state only the contents of Claimant's written address to be filed in the matter.

QUESTION 2

Chief Ajikawo leased his 4 Bedroom duplex at 5, Ajao Road, Wuse, Abuja to his wife's brother Tajuh Ahmed commencing from July 1, 2013 at a rental value of #8,000,000.00 (Eight Million Naira) per annum. Tajuh Ahmed paid 2 years rent in advance and has since refused to pay any rent thereafter. Chief Ajikawo has made several demands for him to pay up his outstanding rent but he has refused to pay. Chief Ajikawo has therefore orally instructed his lawyer, Mr. Johnson to take steps to recover possession of his property from Tajuh Ahmed.

Chief Ajikawo's wife, Ms. Rose is not happy that her husband wants to recover possession of the property from her only brother whom she is very fond of. This issue has created a rift between Chief Ajikawo and his wife.

Consequently, Ms. Rose has briefed her lawyer, Ms. Alero Obot to commence proceedings in Court for the dissolution of her marriage to Chief Ajikawo because he has behaved in such a way that she cannot reasonably be expected to live with him.

Answer the following questions:

(a) Comment on the propriety of the instruction given by Chief Ajikawo to his lawyer, Mr. Johnson to recover possession of the property.

- (b) Draft the first document that will be served on Mr. Taju Ahmed to recover possession of the property from him.
- (c) After expiration of the Notice to Quit, Mr. Johnson instituted an action at the High Court of the Federal Capital Territory, Abuja for recovery of possession by Originating Summons. Comment on the propriety of the action instituted, giving reasons for your answer.
- (d) Assuming after trial, judgment was given in favour of the landlord and the tenant is aggrieved and wants to appeal against the decision. Before which Court can he file the appeal and within how many days must he do so?
- (e) Assuming Mr. Taju Ahmed does not want Chief Ajikawo to enforce the judgment pending the determination of the appeal, draft the application by which he can achieve his aim, without supporting the documents.
- (f) On what ground(s) can Madam Rose apply for a decree of dissolution of the marriage to Chief Ajikawo?
- (g) Which Court will have jurisdiction to hear the matter for dissolution of the marriage and on what basis will the Court assume jurisdiction?

QUESTION 3

Mr. John Jatau has filed a petition, challenging the declaration of Honourable Joshua by Tika Joshua by INEC as the winner of the Governorship election of Ekiti State, held on 24th of July, 2017. The result of the election was declared on the 28th of July, 2017. He commenced a petition at the Governorship Election Tribunal on the 1st of August, 2017. The judgment of the Tribunal was delivered on the 20th January, 2018. The Tribunal dismissed the petition and entered judgment in favour of Honourable Tika Joshua, as the winner of the election. Being dissatisfied with the decision of the Tribunal, Mr. John Jatau appealed on the 31st January, 2018. The Court of Appeal dismissed the appeal, in its judgment delivered on the 18th of April, 2018. Mr. John Jatau is dissatisfied with the judgment of the Court of Appeal and intends to appeal to the Supreme Court.

Answer the following questions:

- (a) Comment on the regularity or otherwise of the judgment of the Petition Tribunal
- (b) Does the Court of Appeal have jurisdiction to hear the appeal? Give reasons for your answer
- (c) Comment on the jurisdiction of the Supreme Court to entertain the appeal.
- (d) List the documents that Mr. John Jatau is required to file at the time he is commencing his petition at the Tribunal.
- (e) State the grounds Mr. John Jatau may rely on in pursuing the petition.
- (f) Assuming Mr. John Jatau alleged some acts of rigging or ballot box snatching against Honourable Tika Joshua in his petition at the Tribunal, what will be the standard of proof required of him in such instance.

SECTION B

PLEASE USE ANOTHER BOOKLET FOR THIS SECTION

QUESTION 4 (COMPULSORY)

Chief Amede acquired a large piece of land situated at plot B72 Dutse Alhaji, Abuja from Mr. Osineye for the sum of #15 million in June, 2017. The land is covered by right of occupancy given by the Minister of the Federal Capital Territory in 2001. Recently Chief Amede commenced construction of a shopping plaza on the land. On 26th July, 2018, while work was in progress, Chief Dimgba, in company of two thugs, named Ogbu Agu and Akpu Obi, interrupted the workers on claiming that Chief Dimgba owns the land. A fight ensued and Chief

Dimgba and his thugs began destroying a pile of building materials (400 bags of cement) valued at #1,200,000.00. The site supervisor, Mr. Onyisi captured Chief Dimgba and his thugs on his camera as they wrecked havoc. Chief Amede has consulted the law firm of A.B. Orakwe (SAN) & Co to file an action against Chief Dimgba and his thugs, claiming declaration of title to land, #10 million general damages for trespass and also special damages for destruction of the bags of cement and injunction against further trespass. Chief Dimgba is resident in Garam, Niger State, although he makes frequent business trips to the FCT. The two thugs are resident in Garam, Niger State.

Answer the following questions:

(a) As Head of Chambers in A.B. Orakwe & Co, prepare the attached Writ of Summons for filing. Your name for the purpose is A.B. Smart, Esq. The Writ of Summons is on pages 6(a), 6(b) and 6(c)

(b) List the documents you need to accompany the Writ.

(c) What important steps will you take to ensure that the Writ is properly issued and served on the defendants? Support your answers with authorities.

(d) Upon being served, the defendant briefed the law firm of Komolafe to file their defence. Having done so and joined issues, A.T. Komolafe is keen to ask certain questions of the plaintiff with a view to obtaining some information which he considers relevant to the case. Briefly state how he may achieve this before trial and how the plaintiff is expected to respond to this.

(e)(i) In his defence, Chief Dimgba alleged that he purchased the same piece of land in February 2018 from one Caleb Dangoro, a well known land speculator. However, it has dawned on Chief Dimgba that Mr. Caleb Dangoro sold him defective title and Chief Dimgba thinks Mr. Caleb Dangoro should bear eventual liability in the event that the plaintiff's action succeeds. What necessary application should he make? Assuming you are A.T. Komolafe, Esq, draft the application without the accompanying documents.

(ii) Mention one important factor the Court will consider in granting the application.

(f) During the trial, as plaintiff's counsel, you led PW2, Mr. Onyisi, the site supervisor in examination-in-chief. What step will you take to ensure that the photographs he took with his digital camera are tendered in evidence?

(g) Assuming that the court suo moto decided to visit the locus in quo in order to see things for itself, briefly state the procedure(s) it may adopt to accomplish this.

QUESTION 5

Honourable Justice O.O. Abiola of the High Court of Lagos gave a decision on 20th July, 2018 granting an injunction restraining the defendants from completing the renovation of the premises at 14 Simpson Street, Lagos Island pending the determination of the suit, based on the premises that the acquisition of the land in dispute is a matter of evidence and can only be determined after hearing the case on merit. The second defendant was an estate developer and had let the property out in accordance with the terms of contract between him and the 1st Defendant. The defendants are aggrieved with the decision of the court and you are briefed to represent them in the appeal.

Answer the following questions:

(A) Identify the type of decision the court delivered and within how many days will the defendants appeal same?

(B) Identify the process you will file in appealing the decision and state the date in which the period of appeal will expire.

(C) Draft the process identified in B above

(D) Assuming the lower court refused to stop the proceedings pending the appeal, what step will you take to stop the proceedings and by what process?

(E) Assuming the defendants are out of time to appeal the decision and their ground of appeal is a question of fact only, identify the appropriate application you can file on their behalf; before which Court and why?

- (F) Draft tgr application identified in E above without the affidavit
- (G) What are the documents that will accompany the application?
- (H) Assuming you have successfully filed the process required to appeal the decision, what is the period within which you will file the appellant's brief of argument?
- (I) With the aid of statutory authority identify the capacity in which the tenants put in the property by the second defendant will join the appeal if necessary.

QUESTION 6

Chex Nig. Ltd. is a leading importer of Computer systems in Nigeria and has its registered office at No. 7 Agudama Road, Ikeja, Lagos. It contracted Engr. John Abule to supply it with 10 pieces of office tables at the cost of #1,500,000 per unit. The contract was to be executed within three(3) weeks of signing the contract document. Five (5) weeks after signing the contract, Engr. John Abule was yet to perform his obligation under the contract and Chex Nig. Ltd. has caused a writ of summons to be issued against him claiming the following:

- (a) The sum of #15, 000,00 being the amount paid to Engr. John Abule for the supply of 10 pieces of office tables.
- (b) Interest at the rate of 20% per annum
- (c) General damages of #7,500,000.00.

When Engr. John Abule got wind that the company has engaged a lawyer to file a case against him before the High Court of Federal Capital Territory, Abuja, he quickly packed out of and abandoned his family, including his wife, in his family house at No. 2 Koko Drive, Wuse, Abuja.

Answer the following questions:

- (a) How will you effect the service of the Writ of summons already filed on Engr. John Abule
- (b) Draft thw necessary application in line with (a) above, (without the supporting documents).
- (c) If the Writ of summons in (a) above is not served within one year of issuing same, what is the implication and what will you do?
- (d) Assuming you obtained judgment against Engr. John Abule and he is yet to pay the judgment debt, buy you discovered he has an account with Zenith Bank Plc with sufficient funds to pay off the judgment debt:
- (i) Draft the first application (without any supporting document) you will file in order to enforce the judgment against tgr funds in the bank.
- (ii) Set out in numbered paragraphs the essential facts that must be contained in your affidavit in support of the application in (i) above.

MARKING SCHEME

BAR FINAL EXAMINATIONS

CIVIL LITIGATION

THURSDAY, AUGUST 16, 2018

SECTION A

QUESTION 1 (COMPULSORY)

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS (½ MK)

SUIT NO: ----- (½ MK)

BETWEEN:

TUNDE BABSON & SONS

(Trading under the name and style of

Tunde Babson & Sons) (½ mrk)-----CLAIMANT (½ MRK)

AND

SUNRISE HOTEL LIMITED(½ mark) -----DEFENDANT (½ MRK)

STATEMENT OF CLAIM (½ MK)

(1) The Claimant is a Businessman trading under the name and style of

Tunde Babson & Sons

(2) The Defendant is a limited liability company incorporated under the Companies and Allied Matters Act with its registered office at 22, Olowo Road, Victoria Island, Lagos. (½ mark)

(3) The Claimant avers that on May 3, 2018, the Claimant entered into a written contract with the defendant to supply and install 50 (fifty) units of Thermocool Air Conditioners in the total sum of #15,000,000.00 (Fifteen Million Naira) into their Hotel Rooms. (½ mark)

(4) The claimant avers that the parties agreed that all the Air conditioners were to be delivered within 21 (twenty-one) days of execution of the contract agreement.

(Any student who adds that the contract agreement will be relied on at the trial or that the contract agreement is hereby pleaded should be marked right)(½ mark)

(5) The Claimant avers that the parties also agreed that the total payment for the goods delivered will be made within 14 (fourteen) days after delivery and installation Of the goods.(½ mark)

(6) The Claimant avers that he has since supplied and installed all the Air Conditioners within the time stipulated in the contract, but the Defendant has refused to pay the balance sum despite letters of demand that were written to it on 8th and 15th June, 2018 respectively.

(Any student who adds that the 2(two) letters will be relied on at the trial or that the 2(two) letters is hereby pleaded should not be penalized)(½ mark)

(7) The Claimant avers that on July 1, 2018, he received a letter dated the same date from Mr. Patel, the Managing Director of the Defendant, expressing the defendant's dissatisfaction with the Air Conditioners which he claimed are of inferior quality to the one that was requested for

(Any student who adds that the letters will be relied on at the trial or that the letter is hereby pleaded should not be penalized)(½ mark)

(8) The Claimant avers that he immediately sent a reply dated July 2, 2018 to the defendant wherein he disagreed with the statements in the defendant's letter and also demanded for the payment of the contract sum of #15,000,000.00 (Fifteen Million Naira) to him immediately.

. (Any student who adds that the letter will be relied on at the trial or that the letter is hereby pleaded should not be penalized)(½ mark)

(9) The Claimant shall contend at the trial that the Defendant's letter dated June 1, 2018 is merely calculated by the defendant to avoid payment for the goods supplied as agreed by the parties. (½ mark)

WHEREOF (or AND) the Claimant claims against the Defendant as follows: (½ mark)

(i) The sum of #15,000,000.00 (Fifteen Million Naira) for 50 (fifty) units Thermocool Air-conditioner.

(ii) 21% interest on the contract sum until date of payment.

(iii) N10,000,000.00 (Ten Million Naira) general damages for breach of contract.
(½ mark)

Dated thisDay of.....2018 (½ MK)

Anything Silas Esq

Claimant's Counsel

Legal Consultant & Co.,

12, Bushmeat Road,

Victoria Island,

Lagos. (1 MK)

Legal Consultant @yahoo.com

Tel: 08055442200

FOR SERVICE ON: (½ MK)

The Defendant,

Sunrise Hotel Limited

22, Oxlow Road,

Victoria Island,

Lagos. (½ MK)

(b) After service of the originating process on the defendant, it should enter an appearance in the matter within 42 days of the service of the writ on it. **See Form 1 of the Appendix to the Rules. (1½ marks)**

c) SAVE AND EXCEPT as hereinafter expressly and specifically 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. (2 marks)

(d)

- i. **Plese** tell this honourable court your name, address, and occupation
- ii. Do you remember making a written statement on oath before this court in respect of this matter?
- iii. If you see the written statement on oath, will you recognise it?
- iv. How will you recognise it?
- v. Is that the written statement on oath you made?
- vi. What do you want the court to do with your statement on oath? **(3 MKS)**

(e) After conclusion of trial, where only the claimant gave evidence in the matter, the claimant's counsel will address the Court first. (1 mark)

The Claimant's counsel will be required to file his written address within 21 days after close of evidence. **Order 30 rule 13 Lagos (2 marks)**

(f) The contents of the Claimant's written final address are:

1. Heading of the Court
2. Suit Number
3. Parties and their capacity¹⁴
4. Title of the document
5. Introduction
6. Brief statement of facts

7. Issues for determination
8. Legal arguments
9. Conclusion
10. List of authorities
11. Date
12. Signature, name and address of claimant's counsel
13. Address for service on Defendant's counsel.

(3 Marks)

QUESTION 2

a. The oral instruction given by Mr. Ajikawo to his lawyer Mr Johnson is invalid. A written authority from the landlord is required for Mr. Johnson to validly serve the statutory notices. **Coker v. Adetayo; Ayiwoh v. Akorede 1½ MKS**

b. Solicitor's Letter Head or Address of Solicitor

To:

Mr Taju Ahmed

No. 5 Ajao Road,

Wuse, Abuja (½ MK)

Dear Sir,

NOTICE TO QUIT

I, Mr. Johnson, solicitor to Chief Ajikawo, your landlord, and on his behalf give you notice to deliver up possession of the 4-bedroom flat with the appurtenances

situate at No. 5 Ajao Road, Wuse- Abuja Street, which you hold of him as a yearly tenant on or before the 30th of June, 2019. (1½ MK)

Dated this..... day of 2019 (¼MK)

Johnson Esq
Principal Partner,
Johnson & Co.
(¼ MK)

c. The action was not properly instituted. Upon the expiration of the notice to quit, Chief Ajikawo ought to have served Notice of Owner's Intention to Apply to Court to Recover Possession (otherwise known as 7days' notice) before proceeding to Court (1 MK)

Also, the originating process used in instituting the action is wrong. It ought to be a Writ of Summons. (1 MK)

d. The appeal will lie to the Court of Appeal but Notice of Appeal will be filed at the lower court. See Section 240 CFRN and Order 6, Court of Appeal Rules. (1 MK)

It should be filed within 3 months from the date judgment was given. Section 24 Court of Appeal Act. (1 MK)

e.

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: (¼ MK)

BETWEEN

Chief Ajikawo..... Plaintiff/ Respondent (½ Mk)

AND

Taju Ahmed.....Defendant/ Applicant (½ Mk)

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 48 RULE 1 OF THE HIGH COURT OF FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2004 AND UNDER THE INHERENT JURISDICTION OF THIS COURT. (½ Mk)

TAKE NOTICE, That this Honourable court will be moved on the day of..... 2018 at the hour of 9 'O clock in the forenoon or so soon thereafter as the counsel for the Defendant/Applicant will be heard praying this court for the following orders:

1) AN ORDER for stay of execution of the judgement of this Honorable Court delivered on in this case by Hon. Justice..... pending tgr determination of the appeal filed by the Defendant/Applicant.

AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstance.

.

Dated this ____ day of _____ 2018 (½ Mk)

XYZ Esq

Counsel to the Defendant/ Applicant

Johnson & Co.

5, Tye and Dye Street,

Wuse, Abuja (¼ mk)

On Notice to :

The Plaintiff/Respondent

No. 4 Jim Street,

Wuse, Abuja (¼ mk)

(f) Mrs Ajikawo can apply for dissolution of her marriage on the ground that the marriage has broken down irretrievably. Section 15(1) MCA. (1 MK)

(g) Any of the State High Courts in Nigeria or the High Court of Federal Capital Territory will have jurisdiction to hear the matter. The basis for this is the domicile in Nigeria of the petitioner. Section 114 MCA (1 MK)

QUESTION 3

A)

The judgement of the Election Tribunal was regular having been delivered within 180 days as required by **S. 285 of the 1999 Constitution as amended by S. 9 of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010 (3 marks)**

B)

Yes, the Court of Appeal has jurisdiction to hear the appeal because appeals from Governorship Election Tribunal lies to the Court of Appeal. **Section 246 CFRN 1999 (2½ MARKS)**

C)

The Supreme Court can entertain the appeal because appeals from Court of Appeal in Governorship Election now lie to the Supreme Court as the final court.

See S. 233(2) (e) Constitution of Nigeria, 1999 as amended by S. 6 of the Second Alteration Act (2½ marks)

D)

1. The petition
2. List of witnesses
3. Written statement on oath of witnesses
4. Copies of list of documents to be relied on.

See paragraph 4(5) of the First Schedule to the Electoral Act, 2010 (2½ marks)

E)

The grounds are as follows:

1. That Hon. Tika Joshua was, at the time of the election, not qualified to contest the election
2. That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act
3. That Hon. Tika Joshua was not duly elected by majority of lawful votes cast at the election
4. That he, John Jatau was validly nominated but was unlawfully excluded from the election.

See Section 138 Electoral Act 2010. (2½ marks)

F).

The standard of proof in that respect must be beyond reasonable doubt. **See Omoboriowo v. Ajasin, Nwobodo v. Onoh (2 MKS)**

QUESTION 4 (COMPULSORY)

A.

FORM 1-

General Form of Writ of Summons

(0.4, r.1 and 8)

HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA(½ MK) JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO.....

BETWEEN :

CHIEF AMEDE20PLAINTIFF

AND

1. CHIEF DIMGBA

2. OGBU AGU

3. AKPU OBIDEFENDANT (½ MRK)

To

1. Chief Dimgba

2. Ogbu Agu

3. Akpu Obi

of.....Garam, Niger State

You are hereby commanded that within forty-two (42) days after the service of this Writ on you, inclusive of the day of such service you do cause an appearance to be entered for you ²¹in an action at the suit of Chief Amede/ the plaintiff and take notice that in default of your so doing the Claimant may proceed therein, and judgment may be given in your absence.

DATED this.....day of.....20.....

By order of the Court

.....

Registrar

Memorandum to be subscribed on the writ.

N.B: This Writ is to be served twelve calendar months ($\frac{1}{2}$ mk) from the date thereof, or, if renewed, within three (3) months from the date of the last renewal, including the days of such date, and not afterwards.

Forms of Writs of Summons, etc - continued

The Defendant may enter appearance personally or by Legal Practitioner ²¹either by handing in the appropriate forms, duly completed, at the Registry of the High Court of the Federal Capital Territory in which the action is brought or by sending them to the Registry by registered post.

Indorsements to be made on the Writ before issue thereof -

The Claimant's claim is for, etc.

(b).....

The Writ was issued by A.B Smart Esq (½ mark) of A.B Smart whose address for service (c) is at No. 6061, Ceddi Plaza, Drive, Maitama, Abuja, legal Practitioner for the said Claimant who resides at.....Garam, Niger Stat, Nigeria (½ mk)

This Writ was served by me on the Defendant accompanied by corporation are (here add name and address)".

(f) Indorsement of Service - See 0.7.r. 13. Before the Writ is issued the following certificate must be indorsed on it:

'The Registry, High Court of Federal Capital Territory In the.....Judicial Division.'

A sufficient affidavit in verification of the indorsement on this Writ to authorize the sealing

thereof has been produced to me this.....day of 20.....

.....

(Signature of Registrar)

22B. The documents are:

- 1) A statement of claim; (½ mark)
- 2) Copies of documents to be used in evidence; (½ mark)
- 3) Witness statement on oath; and (½ mark)

4) A certificate of pre-action counseling(½ mark)

Order 4 Rule 15 Abuja (½ mark)

C.

The steps I will take are:

1) Apply to court by way of motion ex parte for leave to issue writ for service outside jurisdiction. **Order 4 Rule 6 Abuja (½ mark)**

2) Endorse on the writ that it is for service outside of the Federal Capital Territory, Abuja and in Niger State of Nigeria. **S. 97 SCPA (½ MRK)**

3) I will endorse the writ for appearance within minimum of 30 days. **S. 99 SCPA (½ mrk)**

E.(i)

(a) Application for third party notice by motion ex parte and supported by affidavit and written address. **(1 mark)**

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: (¼ MK)

BETWEEN

CHIEF AMEDE23PLAINTIFF/ RESPONDENT

AND

1. CHIEF DIMGBA

2. OGBU AGU

3. AKPU OBIDEFENDANT/ APPLICANTS (½ MRK)

AND

CALEB DANGOROTHIRD PARTY/RESPONDENT

MOTION EX-PARTE

Brought pursuant to Order 10 Rule 8 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2004 and under the Inherent Jurisdiction of this Honourable Court

TAKE NOTICE that this Honourable Court will be movedthe.....day of2018 on at the hour of 9 o'clock or so soon thereafter as counsel may be heard on behalf of the defendant/applicant for:

1. An order granting leave to issue and serve third party notice on Mr. Caleb Dangoro of(½ mrk)
2. Such further or other orders as the Honourable Court deem fit to make in the circumstances of this case. (½ mrk)

Datedday of.....2018 (½ mrk)

A.T Komolafe Esq.

A.T Komolafe & Co

FCT Abuja

Absmart@yahoo.com

080905444 (½ mrk)

E. (ii)

The Court will consider anyone of the following factors:

That the defendant

1. is entitled to indemnity; or
2. is entitled to any relief connected with the original subject matter of the action and substantially the relief claimed by the plaintiff; or
3. that an issue relating to the subject matter is substantially the same arising between the plaintiff and the defendant and should properly be determined between the plaintiff, the defendant and the third party, or between any of them, the Court or a judge in chambers may give leave to the defendant to issue and serve a third party notice. (1 mark for any of the points)

Order 10 Rule 18 Abuja (½ mark)

F.

I will lay foundation by tendering a certificate, affidavit or giving oral evidence to the following effect:

- 1) The particulars of the computer.
- 2) The Camera can be used to take the kind of photograph sought to be tendered;
- 3) The photograph was taken in the ordinary course of business;
- 4). 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 2½ MRKS.**

25G. The Evidence Act provides for two methods, one of which could be adopted by the court as follows:

- 1) The court adjourns and continues sitting at the locus; or

2) The Court visits the locus and inspects same. After which, it returns to continue sitting at the court room where evidence of what transpired at the trial will be taken. **S. 127 Evidence Act, 2011. (1½ marks)**

QUESTION 5

(a) The decision of the Court is an interlocutory decision. The defendant can appeal the decision within 14 days from the date of the decision. **See S. 24 CA, Omonuwa v. Oshodin (1 mrk)**

(b) I will file a Notice of Appeal. The date the appeal will expire is 3rd of August, 2018. (1 mrk)

(c)

IN THE COURT OF APPEAL

HOLDEN AT LAGOS

Suit No:Ap/LA/12/18

BETWEEN:

1. AB

2. CD.....Appellants/Applicants

AND

EF.....Respondent (¼ mrk)

NOTICE OF APPEAL

TAKE NOTICE that the Appellant, being dissatisfied with the decision of the lower court dated 30th June 2016 delivered by HIS LORDSHIP Hon. Justice O.O Abiola, sitting in Lagos, in the Lagos judicial division, do hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

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. Parts of the decision of the lower court appealed against:

The whole decision (any student who says part of the decision is correct)

3. GROUNDS OF APPEAL :

GROUND ONE

The judgment is against the weight of evidence.

GROUND TWO

The learned trial judge erred in law when he held that " the acquisition of the land in dispute is a matter of evidence and can only be determined after hearing the case on the merit" when there are clear evidence of ownership before the court.

Particulars of Error:

The defendant were in possession which is evidence of ownership.

GROUND THREE

The learned trial judge erred in law when he granted the injunction when tgr renovation work was already completed.

Particulars of Error:

Injunctions are not granted when acts complained of are completed.

NB -- Any of the above grounds or more will be alright if it flows from the facts of the scenario. (½ mrk)

4. Reliefs sought from the Court of Appeal:

An order allowing the appeal and setting aside the judgment of the trial court. (½ mrk)

5. Persons directly affected by the appeal:

Name and addresses of Appellants

Name and addresses of the Respondents

Dated this day of2018 (¼ mrk)28

(d) I will apply for stay of proceedings pending appeal. I will do this by motion on notice. Order 6 Rule 3 Court of Appeal Rules. **(1 mrk)**

(e) I will file motion on notice for extension of time to seek leave to appeal, leave to appeal and for extension to appeal. The motion will be filed at the Court of Appeal because the trial Court lacks jurisdiction to extend the appeal. **(1 mrk)**

NB-- a student who indicates only extension of time will be marked correct because the appeal is against grant of injunction.

(f)

IN THE COURT OF APPEAL

HOLDEN AT LAGOS

Suit No:Ap/LA/12/18

BETWEEN:

1. AB

2. CD.....Appellants/Applicants

AND

EF.....Respondent (¼ mrk)

MOTION ON NOTICE

Brought pursuant to order 6 rule 9 Court of Appeal Rules, 2016 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 at the forenoon or so soon thereafter as Counsel may be heard on behalf of the Applicant/Applicant may be heard praying this Court for the following orders:

- 1) An order for extension of time within which to seek leave to appeal
- 2) An order for leave to appeal
- 3) An order for extension of time within which to seek leave to appeal

NB-- (Any student who indicates only extension of time will be marked correct)

AND for Such further or other orders as the Honourable Court may deem fit to make in the circumstances of this case.

Dated this.....day of.....2018 (¼ mrk)

XYZ Esq.

XYZ & Co.

Applicant's counsel ($\frac{1}{4}$ mrk)

For service on:

ABC Esq

XYZ & Co.

Respondent's counsel. ($\frac{1}{4}$ mrk)

(g) The documents that will accompany the application are:

1. Affidavit in support of the application
2. The CTC of the ruling appealed against
3. A copy of a proposed Notice of Appeal
4. If similar application was made at thowe court, a copy of the ruling refuse the application.

Order 4 CA Rules. (1 mrk)

(h) I will file Appellant's brief within 45 days from the date of receipt of the Record of Appeal. **Order 19 CA Rules, 2016 (1mrk)**

(l) The tenants will join the appeal as interested parties. **Section 243 CA Act; Hassan Yakubu v. Governor of Kofi State & Ors. (1 $\frac{1}{2}$ mrk)**

QUESTION 6

(a) Service will be effected on the Defendant Engr. John Abule by substituted means since he has packed out of the house at No. 2 Koko Drive, Wuse, Abuja to avoid service. (1 MK)

The procedure is as follows:

i. File an application by way of motion ex parte supported by affidavit and a written address. See Order 11(5) Abuja Rules, 2004 (½ MK)

ii. Rge substituted service may be done in the following ways:

1. By delivery of the document to some adult inmate at the usual or last known address or place of abode or business of the Defendant.

2. By delivery of the document to some person, being agent of the Defendant.

3. By advertisement in a Federal Gazette, or in some newspaper circulating within the jurisdiction.

4. By notice put on the principal Court house or in a place of public resort in the judicial division.

5. By email or any other scientific device known. (½ mrk)

(N.B -Any one mode suggested should attract full mark)

(b.)

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: (¼ MK)

BETWEEN

CHEX NIGERIA LIMITED..... PLAINTIFF/APPLICANT (½ MK)

AND

JOHN ABULE.....DEFENDANT/RESPONDENT(½ MK)

MOTION EXPARTE

**BROUGHT PURSUANT TO ORDER 11(5) OF THE HIGH COURT OF FEDERAL
CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2004 AND UNDER THE INHERENT
JURISDICTION OF THIS HONORABLE COURT (½ MK)**

TAKE NOTICE that this honorable court will be moved on the day of.....2018
at the hour of 9 O'Clock in the forenoon or so soon thereafter as counsel on
behalf of the Plaintiff/Applicant will be heard praying this Honourable Court for
the following Orders:

1. An Order granting leave to the Plaintiff/Applicant to effect service on the
Defendant by substituted means, to wit by delivering the Writ of Summons and
other originating process in this suit to his wife at No. 2 Koko Drive, Wuse, Abuja.

NB-- (Any mode of substituted service contemplated by the Rules should be
marked correct)

And for such further or other orders as this honorable court may deem fit to make
in the circumstances of this case. (1 MK)

DATED THIS _____ DAY OF _____ 2018

.....

A.B. Smart, Esq

Applicant counsel

Shelter chambers,

No. 4, Wise Road, Abuja

(½ MK)

(c) Where the Writ is not served within one year of issuing same, it expires and the Writ cannot be validly served unless it is renewed. See Order 4 Rule 16 Abuja Rules, 2004. (1 MK)

The step I will take upon the expiration of the Writ is to bring an application by way of motion exparte to be supported by an affidavit and a Written address for the renewal of the Writ. See Order 4 Rule 16(2) Abuja Rules, 2004 (1 MK)

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: (¼ MK)

BETWEEN

CHEX NIGERIA LIMITED...JUDGMENT CREDITOR/GARNISHOR/APPLICANT

AND

JOHN ABULE.....JUDGMENT DEBTOR/RESPONDENT

AND

ZENITH BANK PLC GARNISHEE/RESPONDENT

MOTION EXPARTE

BROUGHT PURSUANT TO SECTION 83(1) OF THE SHERIFF AND CIVIL PROCESS ACT, ORDER 8(2) OF THE JUDGMENT (ENFORCEMENT) RULES AND UNDER THE INHERENT JURISDICTION OF THIS HONORABLE COURT (½ MK)

TAKE NOTICE that this honorable court will be moved on the day of.....2018 at the hour of 9 O'Clock in the forenoon or so soon thereafter as counsel for the judgment Applicant will be heard praying this Honourable Court for the following:

1. An Order Nisi attaching the sum of..... in Account No. operated by the Judgment Debtor/Respondent with the Garnishee/ Respondent in satisfaction of the judgment against the Judgment Debtor/Respondent in Suit No..... which judgment was delivered by this Honourable Court on
2. An Order directing the Garnishee to show cause why the said sum should not be attached to satisfy the judgment debt in the said suit as well as the cost of the garnishee proceedings.
3. And for such further or other orders as this honorable court may deem fit to make in the circumstances of this case. (1 MK)

DATED THIS _____ DAY OF _____ 2018

.....

A.B. Smart, Esq

Applicant counsel

Shelter chambers,

No. 4, Wise Road, Abuja

(¼ MK)

d. (ii)

The essential facts are:

- a) Names, address and occupation of the judgment creditor, the judgment debtor and the garnishee.
- b) That the judgment has been given and on what date
- c) The judgment is still unsatisfied
- d) The amount of the judgment debt that remains unsatisfied
- e) That any other person is indebted to the judgment debtor and is within jurisdiction. (2½ MK)