



NIGERIAN LAW SCHOOL
BWARI - ABUJA
BAR EXAMINATION-PART II FINAL
CIVIL LITIGATION

WEDNESDAY 21ST AUGUST, 2019

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)

Kunle and Tunde Komolafe are business partners carrying on their laptop repair business under the name and style of "Komolafe Bros". On January 20, 2019, the partners executed a computer repair service contract with the Council of Legal Education at the Nigerian Law School, Abuja.

The agreement provided for the repair of 150 computers belonging to the School in all the five(5) Campuses and at the Headquarters. The repair was to be effected within Six (6) months of the execution of the contract and the sum of #1,500,000.00 (One Million, Five Hundred Thousand Naira) being consideration for the service shall be paid upon completion of the services. The agreement also

provided for the resolution of dispute by mediation and then litigation if mediation fails.

Unfortunately, the brothers were only able to effect repair on 100 out of the 150 computers marked for repairs. They consulted the services of JJD Computer Technicians to assess the state of damage of the remaining 50 computers.

The Technicians upon completion of the assessment found that the said 50 computers were irreparably bad.

The partners by a letter dated June 1, 2019 forwarded the report of their repair work to the Council of Legal Education and demanded for the sum of ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) being the consideration for their service.

The Council of Legal Education responded the following day deny liability to the tune of ₦1,500,000.00 and admitting liability of only ₦1,000,00.00 representing the payment of the computers repaired. The Council equally effected the payment of the said ₦1,000,000.00 to the designated partnership account of the brothers. Aggrieved, the partners have briefed you to pursue a legal action.

(a) Identify any four (4) preliminary considerations to take before instituting the action on your client's behalf.

(b) Advise your clients on the first step to take before commencing the action in court.

(c) The partners have heeded your advice and taken the step in (b) above. They are now desirous of commencing the action. State the most expeditious originating process that will be used to commence the action.

(d) In the originating process, the claimants are represented as follows:

Kunle and Tunde Komolafe suing under the name and style of Komolafe Bro.....Claimant

(e) Prepare a final written address for the claimants.

(f) Assuming that defendants made a counter claim of N500,000.00 (Five Hundred Thousand Naira) which was granted while the main claim was dismissed. Upon levying execution, the only asset available to the Sheriff is a motor vehicle belonging to the partnership business. However, one Mr. Cole Ike alleged that the car belongs to him and was only leased to the partners for their business. The partners on the other hand, insist that it belong to them. The Sheriff is unable to ascertain who is really entitled to the vehicle. Advise the Sheriff on what action to take.

(g) Identify any four(4) facts he should aver to in his affidavit in support of the application he makes in this regard.

QUESTION 2

Ayeni Bassey has been a driver to Senator Dambaba for over nine (9) years. Within the said period, Senator Dambaba of No. 1 Broad Street, Lagos has always suspected that Bassey was stealing from him. Dambaba then set a trap for Bassey to go and repair his new Range Rover Sport 2018 Model. Unknown to Bassey, the vehicle was in good condition and actually needed no repairs at all having undergone a comprehensive service check by Coscharis the previous week while Bassey was not around. Bassey took the Range Rover to his usual mechanic, Iboza who helped him to remove and sell the auxiliary gear sensors worth #450,000.00 (four hundred and Fifty Thousand Naira). This made the gear selector system to start malfunctioning. Bassey then reported to Senator Dambaba that 800,000.00 (Eight Hundred Thousand Naira) was required to repair the gear system. Furious at Bassey's level of dishonesty, Dambaba unleashed his Rottweiler dogs on Bassey and they bit him mercilessly. Having been subdued by the dogs, Dambaba locked Bassey in his garage against the plea of neighbour and Bassey's wife, Mary, has approached you to enforce Bassey's fundamental rights.

Answer the following questions:

(a) In which Court would you file this action and why?

(b) Draft only the originating process by which you would commence the action.

(c) List all the supporting process you will require to enforce Bassey's fundamental rights.

(d) State the likely reliefs you will seek on Bassey's behalf.

(e) An objection has been raised that Mary is not an appropriate person to apply for the enforce of her husband's right. Comment on the likelihood of success or otherwise of this objection.

(f) The Respondent had also opposed the application on grounds that the Court lacks jurisdiction to entertain the action because:

(i) Leave of court to enforce fundamental rights was not first sought and obtained.

(ii) There was no verifying affidavit

(iii) That the application cannot be brought against an indic.

Comment on the propriety or otherwise of the reasons given by the respondent.

(g) If the only reliefs sought in the application was Mary's right to companionship and conjugal intercourse with her husband, would the Fundamental Right Enforcement Procedure Rules 2009 be applicable? Give reasons for your answer.

(h) Dambaba's gateman who witnessed the whole incident has refused to attend court to give testimony for fear of losing his job. By what means would you ensure that the gateman comes to give evidence in the action?

(i) Dambaba's cook who was called as a witness has ignored the call for witnesses in the case to be "out of Court and out of hearing". The Respondent's counsel has raised an objection to yhr competence of the cook to give evidence on grounds of having heard the testimonies of other witnesses. Would this objection succeed? Give reasons for your answer.

QUESTION 3

Chief Benson OLU was 60 years in 2019 and he celebrated it in grand style. He planned an elaborate party to be attended by distinguished guests strictly by

invitation. Unknown to him, his son Julius OLU had other ideas of his own. Julius collected two of the invitation cards and invited his friends Samuel Landan and Chu Yung to the party. The attendance of his friends to the party led to events that has now made his father, Chief Benson Olu to file an action at the Federal High Court, ABUJA. Below is the statement of claim filed by the claimant.

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO. FHC/ABJ/201/19

BETWEEN:

CHIEF BENSONN OLU CLAIMANT

AND

SAMUEL LANDAN)

CHU YUNG) DEFENDANTS

STATEMENT OF CLAIM

(1) The Claimant is a Consultant Cardiologist with the National Hospital, Abuja and resides at No. 5 Aso Drive, Asokoro, Abuja.

(2) The 1st Defendant is an undergraduate of the University of Abuja and resides at No. ,5 Adetokunbo Crescent, Wise II, Abuja.

(3) The 2nd Defendant is the son of the Chinese Ambassador to Nigeria and resides at the Chinese Consulate, Maitama, Abuja.

(4) The Claimant avers that on April 15, 2019, he hosted a birthday party to celebrate his birthday.

(5) The Claimant avers further that attendance at the party was strictly by invitation.

(6) The Defendants entered the property of the Claimant to attend the party without invitation.

(7) The Claimant States that when the defendant were asked to leave the property, they refused and this led to a brawl.

(8) The Claimant avers that in the course of the altercation, the defendants smashed the windscreen of the claimant's G-Wagon Mercedes Benz and broke the head lamps

(9) The Claimant States further that it took the intervention of the law enforcement agents to get the defendant off the claimant's property on the said day.

(10) Whereof the Claimant claims against the defendant jointly and severally as follows:

(a) N50,000,000.00 damages for trespass

(b) N10,000,000.00 special damages for the damage to the claimant's G-Wagon .

(c) N10,000,000.00 for cost of action.

Dated the 5th day of May, 2019.

Taylor Luka & Co.

Solicitors and Advocates

Plot 15, Adetokunbo Crescent,

Wuse II, Abuja.

Tel: 080000

Email: Taylor. L@yahoo.com

For service on:

1st Defendant

No. 5, Adetokunbo Crescent,

Wuse II, Abuja.

2nd Defendant

Chinese Consulate,

Maitama, Abuja.

Study the Statement of Claim and answer the following questions:

(a) Comment on the jurisdiction of the Court to entertain the suit. Give reasons for your answer.

(b) As counsel to the Defendants, what possible objection can you have to the court entertaining the suit against the second Defendant.

(c) Assuming the second Defendant wants his name removed from the suit, what application would you as his counsel make? Draft only the application without the supporting document.

(d) Comment on the propriety or otherwise of the person who settled the pleading.

(e) Assuming you are the counsel to the defendants, draft your response to paragraphs 6 & 8 of the statement of claim to properly traverse it.

- (f) Comment on the claim for special damages and attempt a re-draft of it.
- (g) Assuming the defendant's counsel is married to Chief Benson's younger sister, what ethical implication does this throw?
- (h) What documents will accompany the originating process filed by the claimant apart from the statement of claim.

SECTION B

PLEASE USE ANOTHER BOOKLET FOR THIS SECTION

QUESTION 4 (COMPULSORY)

On 15th November, 2017, Mr. Koko rented his property known as House 24, Gwarinpa Crescent, Ikeja, Lagos, to Mr. Odunsi at an annual rent of N11 million. By the tenancy agreement executed between the parties, it was agreed that the tenant shall use the property for residential purpose only, that the tenant shall not make any structural repair or effect any alteration on the property without the written consent of the landlord and also that in the event of any breach of these covenants, the tenancy shall be determined by a one month notice to the tenant. Mr. Odunsi paid two years rent at the beginning of the tenancy and thereafter promptly carried out some alteration on the interior of the house, converting it into a brothel. On discovering these acts of Mr. Odunsi, Mr. Koko issued at one month quit notice and posted same at the door of Mr. Odunsi's house. At the expiration of the notice, Mr. Koko orally instructed his lawyer, Mr. Omenge to take all necessary steps to recover the premises since Mr. Odunsi has refused to comply with the notice to quit contending that he is entitled to a six months' notice under the Tenancy Law.

Answer the following questions:

- (a) In view of Mr. Odunsi's contention, comment on the validity of the Notice to Quit issued by his landlord.
- (b) Comment on the propriety or otherwise of the service of the Notice to Quit.
- (c) Itemize the steps Mr. Omengee should take to evict Mr. Odunsi from the premises.
- (d) Prepare a notice of owners intention to recover possession to be served on Mr. Odunsi.
- (e) Assuming that after serving relevant notices on Mr. Odunsi, he still fails to vacate the premises, state the most appropriate court to institute an action against him for recovery of possession. Give reasons for your answer.
- (f) Identify the originating process you will recommend if the case goes to court as in (e) above. Give reasons for your answer.
- (g) Comment on the legal implication (if any) of the mode of instruction given to Mr. Omengee by Mr. Koko.
- (h) Assuming the original copy of the Tenancy Agreement is lost and counsel intends to tender a photocopy of the Tenancy Agreement at the trial, set out the questions that counsel will put to the witness for the purpose of tendering the photocopy.

QUESTION 5

Mr Ayo Ijoba is the senatorial candidate under the auspices of Progress Congress Action Party (PCAP). Mr. Rilwan Ali the senatorial candidate under the auspices of Nigerian Truth Part (NTP). The senatorial election took place on the 10th of July, 2019 and on that day Chief Ayo Ijoba's agent with the active connivance of the Resident Electoral Officer of the Independent National Electoral Commission

(INEC) snatched the ballot boxes and voting materials at Sura Central Polling booth in Lagos Island, Lagos State. The name of Rilwan Ali, the senatorial candidate of the Nigerian Truth Part (NTP) was also omitted on the ballot papers in polling units. On 11th July, 2019 the INEC declared Chief Ayo Ijoba as the winner of the election with 15,425,000 votes while Mr. Rilwan Ali was said to have 8, 240,000 votes. There were other obvious irregularities at different polling units in the state. Mr. Rilwan Ali is aggrieved and has engaged you as his counsel to challenge the results of the election on grounds of irregularity, corrupt practices and conviction of Chief Ayo Ijoba by the High Court of Lagos State for rape offence of a female youth sometime in 2012.

Answer the following questions:

- (a) Comment on whether or not Mr. Rilwan Ali has a cause of action in the matter considering the grounds stated above. Give reasons for your answer.
- (b) What is the timeframe for the commencement and conclusion of the whole process
- (c) Draft ONLY the originating process by which you will commence the action.
- (d) Mr. Rilwan Ali plans to travel to Dubai for a heart surgery and he wants to be away for the next 8 months after the action is filed in court in order to recuperate abroad before he can be able to attend proceedings. He therefore wants you to apply that hearing of the matter be adjourned to April 2020. Advise him on the propriety or otherwise of doing this.
- (e) Assuming Chief Ayo Ijoba is evading personal service of the originating process(es) on him, state the procedure you will use to ensure that service of the originating process(es) are duly effected on him.
- (f) Assuming Mr. Rilwan Ali has just been informed by a whistle blower who is one of the staff of INEC, that INEC with the connivance of Chief Ayo Ijoba wants to destroy some of the ballot papers and records relevant to the action. What steps will you take as Mr. Rilwan's counsel to forestall INEC's plan as a matter of urgency before the next adjourned date.

(g) Assuming Mr. Rilwan Ali wants to tender the certified true copy of the election results in certain polling units, state the requirements for the admissibility of the certified true copy.

QUESTION 6

By an agreement dated 1st of January, 2014, Alhaji Daudu leased out his five bedroom duplex situated at 2, Dankwa Street, Wuse, Abuja to Mr. Lulu Kasper at the rate of 5.5 million Naira per annum. It was agreed the property would be used for strictly residential purpose because the area is designated for residential purpose by the Wuse Local Government. Although the nature of the tenancy was not stated in the agreement, Mr. Lulu Kasper usually paid his rent on the 1st January of each year. He paid his rent regularly for the first three years and thereafter stopped paying because he claimed that his business was no longer going on well and that he had to give up his shop at the Wuse Market since he could not afford to pay his rent anymore. Mr. Lulu Kasper has recently converted part of his residential property into shops where he sells clothes, shoes and bags. This has resulted in too many customers going in and out of the premises, and parking of various cars by his customers recklessly to the annoyance of other neighbours in the area. Alhaji Dauda is fed up with Mr. Lulu Kasper and has engaged you as a counsel to recover possession of the premises and all the rent owed from Mr. Lulu Kasper.

Answer the following questions:

- (a) What is the nature of Mr. Lulu Kasper's tenancy and how can this be discovered in view of the fact that it was not stated in the tenancy agreement?
- (b) State the documents that you are required to serve on Mr. Lulu Kasper before you can commence legal action in court to recover possession from him.
- (c) Draft the first document that you will serve on him to execute the instruction.

(d) In which court will you commence the action? Give reasons for your answer.

(e) Draft Alhaji Daudu's witness statement on oath for filing.

(f) Advise Alhaji Daudu on 3 other avenues by which the parties can resolve their disputes amicably without going to court.

(g) State 4 advantages that the ADR mechanisms you have identified above has over litigation.

(f) Assuming the matter goes to trial, in a sequential manner state the questions that Alhaji Daudu's lawyer will ask him in his examination-in-chief in order to lead him to properly put in his witness statement on oath in (e) above as an evidence before the court.

**COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL
CIVIL LITIGATION MARKING SCHEME
BAR PART 11 AUGUST 2019**

SECTION A

QUESTION 1---COMPULSORY (25 MKS)

A. The preliminary considerations I will take into account before commencing the action include the following:

- i. Exhaustion of available remedy
- ii. Existence of a Cause of action

iii. Issuance of Pre-action notices.

iv. Limitation of action

v. Locus standi of the party

vi. Jurisdiction of the court

vii. Parties to the action

viii. ADR

ix. Res judicata

2 MKS for any four

B. The first step to take before commencing the action in court is to resort to mediation as provided by the contract agreement between the parties.

3 MKS

C. The most expeditious process that will be used to commence the action is the Writ of Summons and as in Form 1 to the rules. It is the mode of commencing an action under the Summary Judgment Procedure under Order 11 or the Undefended List Procedure. Any of the procedures under the Abuja rules may be resorted to in order to expeditiously recover the contract sum. Where the Claimant believes that the defendant has no defence to the suit as in the instant case.

Order 11 Rule 1 and Order 35 Rule 1 Abuja, 2018.

Or

Since the outstanding contract sum is within the monetary jurisdiction of the District Court of the Federal Capital Territory, Abuja, which is N5 Million, the most expeditious originating process is to commence the action by plaint and then apply for the issuance of a Default Summons. This is the process used in commencing expeditious actions in the District Court of the Federal Capital Territory, Abuja, for recovery of liquidated monetary sums, where the plaintiff believes that the defendant has no defence to the suit.

See Order 2(b) District Courts (Increase of Jurisdiction of District Judges) Order 2014 & District Court Rules of the Federal Capital Territory, Abuja.

3 MARKS

D. Motion on Notice for Amendment

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

(Heading could also be in the District Court of the FCT)

SUIT NO: (¼ MK)

BETWEEN

KUNLE AND TUNDE KOMOLAFE

**(Suing under the name and style of Komolafe Bros)..... CLAIMANTS/
APPLICANTS (½ Mk)**

AND

COUNCIL OF LEGAL EDUCATION.....DEFENDANT/ RESPONDENT (½ Mk)

MOTION ON NOTICE

**BROUGHT PURSUANT TO ORDER 25 RULE 1 AND RULE 43 OF THE HIGH COURT OF
FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2018 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
reliefs:**

1) AN ORDER granting leave to the Claimants/Applicants to amend the Writ of Summons in this suit by changing the names of the Claimants, to read:

1) Kunle Komolafe

2) Tunde Komolafe

(Trading under the name and style of Komolafe Bros)----- **3 MARKS**

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

.

Dated this ____ day of _____ 2019 (½ Mk)

ABC Esq

Counsel to the claimant/ Applicant

ABC & Co.

House No. 2, Nigerian Law School Road,

Bwari,

Abuja (¼ mk)

Phone no: 08033335

Email: dimax@yahoo.com

On Notice to :

Council of Legal Education

Nigerian Law School headquarters

Bwari, Abuja.

OR

C/o XYZ Esq

Respondent's Counsel

No. 21 Ahmadu Bello Way,

Abuja.

Bwari@yahoo.com

08000000000000

E. Claimant's Final Written Address:

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: (¼ MK)

BETWEEN

KUNLE AND TUNDE KOMOLAFE

(Trading under the name and style of Komolafe Bros)..... CLAIMANTS/
APPLICANTS (½ Mk)

AND

COUNCIL OF LEGAL EDUCATION.....DEFENDANT/ RESPONDENT (½ Mk)

CLAIMANT'S FINAL WRITTEN ADDRESS. 1 MRK

1.0 Introduction

2.0 Brief Statement of facts

3.0 Issue(s) for determination

4.0 Legal Arguments

5.0 Summary/Conclusion

6.0 List of Authorities

½ MARK FOR EACH (TOTAL 3 MARKS)

Dated this ____ day of _____ 2019 (½ Mk)

ABC Esq

Counsel to the claimant/ Applicant

ABC & Co.

House No. 2, Nigerian Law School Road,

Bwari,

Abuja (¼ mk)

Phone no: 08033335

Email: dimax@yahoo.com

On Notice to :

Council of Legal Education

Nigerian Law School headquarters

Bwari, Abuja.

OR

C/o XYZ Esq

Respondent's Counsel

No. 21 Ahmadu Bello Way,

Abuja.

Bwari@yahoo.com

08000000000000

F. My advice to the Sheriff is to commence Sheriff's interpleader summons for the rival Claimants - the partnership and Mr. Cole to appear in court to state the nature and particulars of their respective claims to the vehicle.

Order 48 rule 1 High Court of the Federal Capital Territory, Abuja (Civil Procedure) rules, 2018.

Section 34 Sheriffs and Civil Processes Act. 2 MRKS

G. The facts the applicant will depose to in the affidavit in support of the application are as follows:

- i. That the vehicle is in the applicant's custody
- ii. That the applicant claims no interest in the subject matter in dispute other than for charges or cost,
- iii. That the applicant did not collude with any of the claimants;
- iv. That the applicant is willing to deal with or dispose of the vehicle as the judge may direct.

Order 48 rule 2(a)-(c) High Court of the Federal Capital Territory, Abuja (Civil Procedure) rules, 2018.

½ MRK FOR EACH, TOTAL 2 MARKS.

QUESTION 2

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

Suit No:..... (¼ MK)

IN THE MATTER OF AN APPLICATION BY MRS AYENI BASSEY FOR ENFORCEMENT
OF HIS FUNDAMENTAL RIGHTS OF MR. AYENI BASSEY.

BETWEEN

MRS AYENI BASSEY.....APPLICANT

AND

SENATOR DAMBABA..... RESPONDENT ½ MK

ORIGINATING MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER II RULE1 OF THE FUNDAMENTAL RIGHTS
(ENFORCEMENT PROCEDURE) RULES, 2009, SECTION 34 AND 35 OF THE
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS AMENDED AND
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 reliefs:

1. A declaration that the act of unleashing the Rottweiler dogs on Mr. Ayeni Basset by the respondent constitutes infringement of his fundamental rights to dignity of the human person as guaranteed by S. 34 of the 1999 Constitution as amended.
2. A declaration that the act of locking Mr. Ayeni Bassey in the respondent's garage against his will constitutes infringement of his fundamental rights to liberty as guaranteed by S. 35 of the 1999 Constitution as amended.
3. An order for the immediate release of Mr. Ayeni Bassey.
4. An order for the payment of the sum ofdamages to Mr. Ayeni Bassey by the respondent for the infringement of the applicant's fundamental rights. **1 MK**
5. Such further or other orders as this court may deem fit to make in the circumstance

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

.....

James John Esq.

Counsel to the Applicant

James & Co.

No. 1 Law School Drive,

Victoria Island, Lagos.

FOR SERVICE ON:

1. The Respondent

Senator Dambaba

No. 1, Broad Street,

Lagos.

c.

i. Statement setting out the name and description of the applicant, the reliefs sought and the grounds upon which the reliefs are sought.

ii. Affidavit setting out the facts upon which the reliefs are sought

iii. Written address **1½ MKS**

d.

i. A declaration that the detention of Mr. Ayeni Bassey is unlawful and a breach of his right to personal liberty.

ii. Immediate release of Mr. Ayeni Bassey.

iii. The sum ofdamages

iv. A public apology published in any two national dailies or by any other mode.

(Any Two) ½ MK

e. The objection is not likely to be upheld because by virtue of Paragraph 3(e) (i-iv) of the Preamble to the Fundamental Rights Enforcement Procedure Rules, anyone acting on behalf of another can bring a fundamental rights enforcement proceedings for a person whose rights are being infringed or about to be infringed

upon. Mary is therefore an appropriate person to bring such an action as she is acting for her husband. **1½ MKS (1 MK for the principle, ½ for the authority).**

f. The objection raised by the respondent is not likely to succeed for the following reasons:

a. Leave of court is no longer required to commence a fundamental rights action by the Fundamental Rights Enforcement Procedure Rules, 2009 .

b. Verifying affidavit is nor one of the documents required to be filed in support of the application by **Order II Rule 3 of the Fundamental Rights Enforcement Procedure Rules, 2009 .**

c. It was previously the law that fundamental rights actions can only be maintained against government and not against private individuals. See Minister of Internal Affairs v. Shugaba. However, by the decision of the Court in Garba v. University of Maiduguri, the court held that fundamental right action can be enforced against private individuals as well. **Theresa Onwo v. Nwafor Oko; Nwachukwu v. Ezeonu 2 MKS**

g. No, the by the Fundamental Rights Enforcement Procedure Rules, 2009 will not have applied since the rights to companionship and conjugal intercourse with her husband are not fundamental rights recognized in the 1999 Constitution (as amended) nor the African Charter on Human and People's Right (Ratification and Enforcement) Act. **WAEC v. Akinkunmi**

h. He will be compelled by means of a Subpoena ad testificandum.

i. The objection is not likely to succeed. If a witness remains in Court despite the order of court to be "out of court and out of hearing ", the evidence of such witness does not ipso facto becomes inadmissible, rather the question goes to the weight that tgr court can attach to the said testimony. S. 212 EA. The witness however may be cited for contempt of court for disobeying the order of court. **2 MKS**

QUESTION 3

a. This is a simple action in tort. The Federal High Court lacks jurisdiction to entertain the suit. The subject matter falls within the jurisdiction of the FCT High Court. **See Sections 251 & 272 of the Constitution; Onuorah v. KRPC, Ikpekpe v. Warri Refinery & Petrochemical Co. Ltd &Anor. 2mrks**

b. My objection will be that the claim against tgr second defendant is incompetent and should therefore be struck out.

Diplomats and members of their families enjoy immunity from law suits and legal processes. The second defendant being a son of a Diplomat enjoys immunity from any legal process. See **S. 1(1) Diplomatic Immunities and Privileges Act. Ishola Noah v. British High Commissioner. 2 mrks**

c. The application will be by motion on notice, supported with an affidavit and written address- to strike out the name of the second defendant. **½ mrk.**

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: (¼ MK)

BETWEEN

CHIEF BENSON OLU..... CLAIMANT/ RESPONDENT

AND

SAMUEL

LADAN.....DEFENDANT/RESPONDENT

2. CHU YUNG

.....**DEFENDANT/APPLICANT (½ Mk)**

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 43 RULE 1 OF THE HIGH COURT OF FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2018 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 striking out the name of the 2nd Defendant/Applicant from this suit--- ½ MARK

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

.

Dated this ____ day of _____ 2019 (½ Mk)

ABC Esq

Counsel to the Defendant/ Applicant

ABC & Co.

House No. 2, Nigerian Law School Road,

Bwari,

Abuja (¼ mk)

Phone no: 08033335

Email: dimax@yahoo.com

On Notice to :

The claimant/Respondent

C/o Taylor Luka & Co.

Plot 15, Adetokunbo Crescent,

Wuse II, Abuja

Tel: 0800000

Email: Taylor L@yahoo.com

1st Defendant/ Respondent

C/o Counsel

XYZ Esq.

No. 5 Adetokunbo Crescent,

Wuse II, Abuja.

d. The pleading is settled in the name of a law firm and therefore incompetent. A court process issued by a legal practitioner can only be signed or endorsed by a person who is qualified to practice law in Nigeria and whose name is on the roll of legal practitioners and not a law firm. See **Okafor v. Nweke 2 MRKS**

e. I will draft paragraph 6 & 8 as follows:

6. The defendants deny paragraph 6 of the statement of claim and further avers that the defendants were duly invited to the birthday party held on the property of the claimant. The defendants shall rely on the invitation cards at the trial. **¼ mrk**

8. The defendants deny damaging the windscreen of the claimant's G-Wagon Mercedes Benz or any other property at all. **½ mrk**

f.

A claim for special damages must not only be specifically pleaded, every head of claim must be itemized/particularized.

Redraft

---The sum of N10,000,000.00 (Ten Million Naira) as special damages **½ mrk**

Particulars of special damages **½ mrk**

i. The cost of damaged windscreen=== #7,000,000

ii. The cost of damaged head lamps === #3,000,000. **½ mrk**

(Any student who allocates any sum of money to each of the items which is different from the above should not be penalized provided it adds up to 10 million)

g.

This raises issue of conflict of interest. A lawyer in such a situation is required to make a full disclosure to his client to enable the client make a choice as to whether the counsel should accept/continue with the brief or not. The defendant's counsel ought to have disclosed his relationship with Chief Benson.

Rule 17 RPC. 2 mrks

h.

a. List of witnesses to be called at the trial;

- b. Written statements on oath of the witnesses except witnesses on subpoena;
- c. Copies of every document to be relied on at the trial;
- d. certificate of pre-action counseling. **See Order 2 Rule 2(2) FCT rules 2018. 2 marks**

**COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL
CIVIL LITIGATION MARKING SCHEME
BAR PART 11 AUGUST 2019**

SECTION B

QUESTION 4 (COMPULSORY) 25 MARKS

a) Mr. Odunsi's contention is wrong. 1 mrk

Parties can agree to notice shorter than that provided by the statute. The one month's notice to quit given to the tenant is valid. **1½ mrk.**

See S. 13(1) Tenancy Law, Lagos; A.P. v. Owodunmi

b) The mode of service of the Notice to quit on Mr. Odunsi by posting same on the door of his house is valid. 1 mrk

The law allows service of notice to quit on a tenant either on the tenant in person, or by delivery to any adult residing at the premises to be recovered, or by courier

where the tenant cannot be found, or by affixing the notice on a prominent part of the premises to be recovered. 1 ½ MRK. See 18 Tenancy Law, Lagos. ½ MRK.

c) The steps are:

- i. Obtain letter of consent from the landlord (if the Solicitor or Agent)
- ii. Serve the statutory notice to quit on the tenant
- iii. If the tenant does not vacate the premises at the expiration of the notice to quit, serve 7 days notice of owner's intention to apply to recover possession
- iv. If he still fails to vacate at the end of the 7 days, apply to the Court by plaint/claim or writ to recover possession before the appropriate court. **4 MRKS**

d.

A.B. SMART & CO.

**(BARRISTERS AND SOLICITORS OF THE SUPREME COURT OF
NIGERIA**

No. 1 Borinshade Road, Lagos

Tel No: 080085899

Email: borin@yahoo.co Fax:4169541255

Our Ref:.....

Your Ref:.....

Date: 15 August 2019

TO:

Odunsi,

No. 24, Gwarimpa Crescent,

Ikeja,

Lagos.

Dear Sir,

NOTICE TO OWNER'S INTENTION TO APPLY TO RECOVER
POSSESSION

I, -----, Solicitor to Mr. Koko, the owner, do hereby give you notice that unless peaceable possession of the (description of the premises) with the appurtenances thereto situate at No. 24, Gwarimpa Crescent, Ikeja, Lagos which you held of the owner under a yearly tenancy which tenancy was determined by a notice to quit -----day of----- and which premises are now held over and detained from the said owner, be given to the owner on or before the expiration of seven (7) clear days from the service of this notice, I -----(name of the practitioner) shall on -----;---the -----;-----day of-----, apply to the High Court/ Magistrates' Court (being the district, division or place in which the premises is situated) for su acting for summons to eject any person from the premises.. **1 MRK**

Dated this.....day of.....2014

AB smart Esq,
Solicitor to Owner,
A.B smart & Co.,
No. 1 XYY Road, Lagos.

e) The most appropriate court to institute the action for recovery of possession is the High Court of Lagos State, Ikeja Judicial Division. (1 mrk)

The reasons are:

i. The annual rental value of the property of N11 million is above the jurisdiction of the Magistrate Court of Lagos. So the proper court to institute the action will be the Lagos High Court. (1 mrk)

ii. All actions relating to land and personal property shall be commenced in the judicial division in which the land situates. Order 2 Rule 1 Lagos High Court Rules. In this case, since the property is in Ikeja, the action will be commenced in the Ikeja Judicial Division. (1 MRK).

f) The originating process that I will recommend for commencing the action at the Lagos High Court will be by Writ of Summons. **Order 3 R.1 Lagos High Court Rules, 2012.**

This is because the matter will be contentious and will need to go to trial. **Doherty v. Doherty; Director of SSS v. Agbakoba (1½ MRKS)**

g) The mode of oral instruction given to Mr. Omenge by Mr. Koko is wrong. (1 mrk)

The mode of instruction ought to have been in writing otherwise, any statutory notices given will be null and void. **Coker v. Adetayo; Ayiwoh v. Akorede (2 MARKS)**

h) The questions that Counsel will ask the witness will be as follows:

i. Mr. Koko in paragraph-----of your witness written statement on oath you referred to a tenancy agreement between you and the tenant.

ii. If you see the document will you recognise it?

iii. How will you recognise it?

iv. Take a look at this document, is that the document?

v. What copy is that?

Vi. Where is the original?

3 MKS, i.e, ½ mrk for each question

QUESTION 5

(a) Ali has a cause of action only on two grounds:

(a) that the election is invalid by reason of corrupt practices or non-compliance with the provision of the Electoral Act; and

(b) that he was validly nominated but unlawful excluded from the election.

See S. 138(1) Electoral Act 2010.

The conviction of Chief Ayo Ijoba by the High Court of Lagos State for the offence of rape of a female Young Corper in 2012 will not suffice because though the conviction is less than 10 years, rape is not an offence involving dishonesty or fraud. **See S. 66 of the 1999 Constitution.**

1 MRK

(b) The timeframe for the commencement is within 21 days of declaration of results while the time for conclusion is within 180 days from the date of filing of the petition. See S. 285(6) 1999 Constitution as amended by **S. 9 of the Constitution of the Federal Republic of Nigeria (2nd Alteration) Act 2010. 1 mk**

(c)

IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNAL

HOLDEN AT LAGOS

PETITION NO.....

**ELECTION TO THE SENATE FOR LAGOS CENTRAL SENATORIAL CONSTITUENCY
HELD ON 10TH OF JULY, 2019**

BETWEEN

1. RILWAN ALI

2. NIGERIAN TRUTH PARTY (NTP) PETITIONERS ½ MRK

AND

1. AYO IJOBA

2. PROGRESSIVE CONGRESS ACTION PARTY (ACAP)

**3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
(INEC).....RESPONDENTS ½ MRK**

PETITION ½ MRK

**THE PETITION OF RILWAN ALI OF NO 18, LAW SCHOOL ROAD, VICTORIA ISLAND,
LAGOS, LAGOS STATE whose name is subscribed ½ MRK**

1. Your 1st Petitioner Rilwan Ali, was a candidate at the above election and your petitioners states that the election was held on the 10th of July, 2019, where the 1st Respondent was also a candidate.

2. Your 1st Petitioner contested under the platform of the 2nd Petitioner, Nigerian Truth Party(NTP). The 1st Respondent contested under the platform of Progressive Congress Action Party (PCAP).

3. The results as released by the 3rd Respondent were as follows:

Ayo Ijoba ----- 15,425,000 votes

Rilwan Ali-----8,240,000 votes

4. Your petitioners states that the 1st Respondent, Ayo Ijoba, was then returned as the elected candidate and or winner of the election.³²Your petitioner shall found and rely on the results declared by the 3rd Respondent at the trial.

1 mk

GROUND FOR THE PETITION:

Your petitioners state that the grounds on which he relies for the petition are as follows:

- a. The return of the 1st Respondent as winner of the election for Lagos Central Senatorial District held on the 10th July, 2019 was invalid by reason of non-compliance with the provisions of the Electoral Act 2010.
- b. The 1st Respondent was not duly elected as a majority of lawful votes cast.
- c. The petitioner was validly nominated but unlawfully excluded.

FACTS IN SUPPORT OF THE PETITION:

- a. Your petitioners states that the 1st Respondent with the active connivance of the Resident Electoral Officer of the 3rd Respondent snatched the ballot boxes and voting materials at the Sura Central Polling Booth in Lagos Island.
- b. The name of the 1st petitioner was omitted on the ballot papers in all polling units.
- c. There were wide spread cases of voter intimidation, over -voting, under age voting and vote buying.
- d. Despite the fact that the election was scheduled for 8am to 3pm, no election materials were supplied in 3 local Government Area of Ijaye-West, Lagos Island and Ikotun until 2:30pm.

RELIEFS SOUGHT

Wherefore, your petitioner prays:

- 1. DECLARATION that the 1st Respondent, Ayo Ijoba was not duly elected and returned.

b. A declaration that tgr election and return of the 1st Respondent is void, the election having been marred by substantial irregularities.

c. An Order that a fresh election be conducted by the 3rd Respondent with or without the 1st Respondent.

1½ Mks

Dated day of August, 2019 ¼ **Mrk.**

A.B. Ijakaye (SAN)

(Petitioner"s Counsel)

Ijakaye & Co.

24, Adetokunbo Ademola

Street, Lagos. ¼

The name of my solicitor is A.B Ijakaye (SAN)

Signed before me This Day of 2019

.....

Secretary

ADDRESSFOR SERVICE:

1. The 1st Petitioner

18, Law School Road,

Victoria Island,

Lagos. ¼ mrk

2. 2nd Petitioner

31, Umokoro Street,

Ikoyi, Lagos. ¼ mrk

3. 1st Respondent

8, Akinjide Street

Victoria Island,

Lagos. ¼ mrk

4. 2nd Respondent:

101, Imoniyi Crescent

Victoria Island,

Lagos. ¼ mrk

5. 3rd Respondent:

C/o INEC State Headquarters,

33, Ogunlowo Drive,

Ikeja, Lagos. ¼ mrk

(d) Mr. Rilwan Ali is advised to postpone his travel because, the trial must be concluded within 180 days of filing. See **285(6) 1999 Constitution as amended by S. 9 of the Constitution of the Federal Republic of Nigeria (2nd Alteration) Act, 2010.**

1 MRK

(e) If Ayo Ijoba is evading personal service of the petition, I will apply to the Tribunal by motion exparte for substituted service by posting same at the 1st Respondent's last known address or such other means for service as provided by Statute.

1 MRK

(f) I will apply for Anton Piller injunction by motion exparte with affidavit for an order allowing the petitioners to enter INEC premises to search, seize, detain and preserve the documents in possession of INEC before the next adjourned date. See **Anton Piller K.G. v. Manufacturing Processing Ltd; also Order 38 rule 4(1), Lagos.**

(g) The requirement for the admissibility of the certified true copy of the electoral results in the polling units are:

(a) It was certified by an INEC official.

(b) Payment of prescribed legal fees.

(c) Certificate written at the foot of such copy that it is a true copy of such documents or part of it as the case may be .

(d) The certificate shall be dated and subscribed by the officer with his name and official title and shall be sealed if the officer is authorized by law to make use of a seal.

See Sections 102, 104 and 110 Evidence Act.

1 MRK

QUESTION 6

a) The nature of the tenancy is a yearly tenancy. The nature of the tenancy shall, in the absence of any express agreement to the contrary, be determined by reference to the mode of payment and demand for rent. Mr. Lulu Kasper usually pays his rent on 1st January of each year. See Section 8(3) Recovery of Premises Act, Abuja. **1 MRK.**

b) The documents that are required to be served on Mr. Lulu Kasper are:

I. Notice to Quit as in C

II. Seven days' notice of Owner's Intention to Apply to Recover Possession as in Form E

See Section 7 of the Recovery of Premises Act, Abuja; Tinuola v. Okon; Chiwete Amissah. **2 MRKS.**

c. The first document to be served on Mr. Lulu Kasper is the notice to quit.

Amada Duke & Co
(Barristers and Solicitors of the Supreme Court of Nigeria)
No. 31 Zik Avenue, Wuse Abuja
Phone No: 0803333343

Email: dimazik@ yahoo.com

Our Ref:

Your Ref:.....

To:
Mr. Lulu Kasper
No. 2 Dankwa Street, Wuse, Abuja. ½ MRK

Sir,

NOTICE TO QUIT ½ MK

I, XYZ, as solicitor to Alhaji Dauda, your landlord, and on his behalf do hereby give you notice to quit and deliver up possession of the 5 bedroom duplex together with the appurtenances thereto situate at No. 2 Dankwa Street, Wuse, Abuja which you hold of him as tenant on or before 31st of December, 2020. 1½ **MKS**

Dated this day August,, 2019 ¼ **MK**

.....

XYZ Esq.

Solicitor to the Landlord ¼ **MK**

d) The action will be commenced at the High Court of the Federal Capital Territory, Abuja, only, because the rental value is above N5 Million. Section 257 of the 1999 Constitution as amended. 1½ **MRKS**

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO: (¼ MK)

BETWEEN

ALHAJI DAUDA..... CLAIMANTS

AND

MR. LULU KASPER.....DEFENDANT (½ Mk)

WRITTEN STATEMENT ON OATH OF ALHAJI DAUDA ½ MRK

I, Alhaji Dauda, Male, Adult, Muslim, Businessman and Nigerian Citizen of No. 2 Dankwa Street, Wuse, Abuja do hereby make oath and state as follows:

1. I am the claimant in this suit.
2. By an agreement dated 1st January, 2014, I leased out my 5-bedroom duplex situate at No. 2 Dankwa Street, Wuse, Abuja to the Defendant. **½MRK.**
3. It was agreed that the premises will be used strictly for residential purpose.
4. The rent payable was agreed and fixed at 5.5 million per annum.
5. The Defendant usually paid his rent on the 1st of January of each year.
6. The Defendant paid his rent regularly for the first 3 years and thereafter stopped paying.
7. The Defendant contrary to the agreement on the usage of the premises converted part of the premises into shops where he sells clothes, shoes and bags.
8. The conversion of the premises by the Defendant into shop has become a nuisance to other neighbors.
9. The Claimant to this end, seek to recover possession of the premises.
10. Noticed to quit was served on the defendant on ... and seven days' notice of owner's intention to recover possession was served on...
11. I make this statement on oath in good faith believing it to be true and correct in accordance with the Oath Act, 2004.

.....

DEPONENT

SWORN TO at the High Court Registry, Abuja

Thisday of 2019

BEFORE ME

COMMISSIONER OF OATHS

f) The other avenues through which the matter can be resolved without going to court are through Alternative Dispute Resolution Mechanisms namely:

I. Negotiation

II. Mediation

III. Conciliation

IV. Hybrid process

V. Early Neutral Evaluation

VII Any other known ADR mechanism

g) The advantages of ADR are:

I. It is voluntary

II. It saves time

III. It saves cost

IV. Flexibility of procedure

V. It preserves relationship

VI. It is collaborative

VII. It is party driven

VIII. Neutrality

IX. Confidentiality

X. It is non-judgmental

2 MRKS FOR ANY 4

h) The sequential questions I will ask Alhaji Dauda in examination in chief are:

i. 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? **1 ½ MKS**