



CIVIL LITIGATION

Practice Handbook



**COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL**

CIVIL LITIGATION PRACTICE HANDBOOK

**Editor-In-Chief
Prof. Isa Hayatu Chiroma, SAN
Director General.**

© Council of Legal Education
Nigerian Law School

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or any retrieval system, without permission from publishers.

Published in 2022

Printed by:
Yaliam Press Ltd.
No. 3, Abeokuta Street, Area 8, Garki, Abuja
08060010202, 09093232264

EDITORS

- 1. D. I. Efevwerhan, Ph.D., Barrister-at-Law**
Former DDG, NLS, Yenagoa
- 2. A. F. Afolayan Esq., LL.M., Barrister-at-Law**
Director of Academics and Head of Criminal
Litigation NLS, Abuja
- 3. P. C. Okorie Esq., LL.M, Barrister-at-Law**
Director of Academics NLS Headquarters, Abuja
- 4. O. O. Orimogunje Esq., LL.M., Barrister-at-Law**
Director of Academics and Head, Litigation Department,
NLS Lagos
- 5. Yinka Odukoya (Mrs.), LL.M., Barrister-at Law**
Director and Head of Academics, NLS Enugu.
- 6. C. U. Mmuozoba Esq., LL.M., Barrister-at-Law**
Deputy Director-General and Head of Campus, NLS, Port
Harcourt.
- 7. L. O. Alimi Esq., LL.M., Barrister-at-Law**
Director of Academics NLS, Yola.
- 8. C. O. Oba (Mrs.), Ph.D., Barrister-at-Law**
Deputy Director-General & Head of Campus, NLS, Yenagoa
- 9. Ibrahim Sule Esq., LL.M., Barrister-at-Law**
Deputy Director of Academics NLS, Kano
- 10. A. E. Chukwu Esq., Barrister-at-Law**
Senior Lecturer, NLS, Yola
- 11. S. M. Rilwanu Esq., LL.M., Barrister-at-Law**
Senior Lecturer, NLS Headquarters, Abuja
- 12. P. A. Bobai Esq., LL.M., Barrister-at-Law**
Senior Lecturer NLS, Yola
- 13. I. I. Adesina (Mrs.), LL.M., Barrister-at-Law**
Lecturer 1 NLS, Yenagoa
- 14. I. U. Ononye (Mrs.) LL.M., Barrister-at-Law**
Lecturer 1 NLS, Abuja
- 15. S. Udemezue Esq., Barrister-at-Law** Lecturer NLS,
Yenagoa
- 16. D.U. Dewan Esq., LL.M., Barrister-at-Law**
Lecturer 1 NLS, Kano
- 17. D. Apolos Esq., LL.M., Barrister-at-Law**
Lecturer II NLS, NLS Yola.

PREFACE

The review of the curriculum for the vocational legal training of aspirants to the Nigerian Bar is a core assignment that has been painstakingly undertaken periodically in line with international best practices. This edition is unique in that it contains: the vision and mission of the Nigerian Law School; the lesson plans for each module as well as the summarized explanatory notes on the topics, all simplified for ease of comprehension on the practical training of Lawyers in the 21st century. A user-friendly soft copy of the practice handbook is also enclosed to enable students work at their pace on their computer devices. The need for this practice handbook is underscored by the fact that a harmonized version of the revised curriculum for the hands-on interactive learning at the Nigerian Law School has not been made available to the students for some years now.

This work is the outcome of a concerted effort by the senior members of the academic faculties across the campuses of the Nigerian Law School. They have employed their years of practice experience and versatility to synthesise leading specialized works in this field to come up with this students cum practitioners' companion. It is a deliberate attempt to bridge the gap and mitigate the hardship which students of modest means may encounter at the Law School in procuring recommended texts.

It is important to point out, however, that this practice handbook is not a substitute for attendance at lectures, active participation in group activities or the procurement of recommended texts. While we have endeavoured to ensure the accuracy of the content of this handbook, we will take responsibility for any error discovered.

I acknowledge the invaluable contribution of all the academic faculties in making this 2016 - 2018 Practice Handbook a reality. Students will, no doubt, find it a treasured companion while preparing for the Bar Final examinations and a practice compass in the early years of legal practice.

PROF. ISA HAYATU CHIROMA, SAN

Director – General October, 2019.

VISION AND MISSION STATEMENTS

1. Vision Statement

1. To be a model Institution that aims to attain the highest standards of legal education and vocational training in the world;
2. Train lawyers grounded in the ethics of the legal profession, who can respond to current national and international legal challenges in a diverse society, providing leadership in different walks of life; and
3. To maintain vocational training and capacity building for lawyers to be intellectually and professionally effective for meeting global challenges and ethical values.

2. Mission Statement

1. educate and train law graduates in vocational skills that would enable them function optimally as barristers and solicitors;
2. adopt skills-based, interactive and clinical methods of learning that would adequately prepare the graduates for their roles as lawyers to function as teachers, advocates and solicitors, advisers, leaders in private enterprise and public service;
3. train students to conform to the ethics and traditions of the legal profession and exhibit the highest sense of integrity and candour in the discharge of their professional calling; and
4. inculcate in its graduates the ideals of rule of law, social justice and community service such as providing free legal services to the indigent and encouraging the development of opportunities for access to justice.

CONTENTS

Preface	iv
Mission and Vision Statement	v
Table of Cases	vii
List of Abbreviation	xix
Curriculum	1
Lesson Plan	4
Chapter 1: Introductory matters	46
Chapter 2: Courts with civil jurisdiction	54
Chapter 3: Parties to an action	72
Chapter 4: Commencement of actions	89
Chapter 5: Interlocutory applications	131
Chapter 6: Summary judgement	138
Chapter 7: Pleadings	145
Chapter 8: Pre-trial Issues and Proceedings	166
Chapter 9: Trial Preparations/Evidence/Trial	176
Chapter 10: Judgements and enforcement	184
Chapter 11: Applications pending appeals	198
Chapter 12: Appeals	205
Chapter 13: Recovery of possession of premises	221
Chapter 14: Election petition	233
Chapter 15: Matrimonial causes	244
Chapter 16: Fundamental rights enforcements..	260
Chapter 17: Costs and sanctions..	276
Chapter 18: Case studies..	282
INDEX	296

TABLE OF CASES

- A C B LTD v. Dominico Builders Co. Ltd (1992) 2 NWLR (Pt. 223) 296
- A.C.N v Lamido & Ors (2012) All FWLR (Pt. 630) 1316 SC
- A.M.C v. NPA (1987) 1 NWLR (Pt. 51) 475.
- Abiodun Adelaja vs. Yusufu Alade (1999) 4 SCNJ 225.
- Aboseldehyde Laboratories Plc v. Union Merchant Bank Ltd (2013) 13 NWLR (pt. 1370) 91
- Abowaba v. Adesina (1946) 12 W. A. C. A. 18
- Ace Jimona Ltd v. The Nigeria Electrical Contracting Co. Limited S. C. 589/64-
- Adamolekun v. Dike 1979 NMLR
- Adebisi & Ors v. Oke (1967) N.M.L.R. 64.
- Adebutu v. City Engineer (1968) I NMLR 133
- Adegoke Motors v. Adesanya (1989) 3 NWLR 250
- Adegoroye v. Adegoroye (1996) 4 NWLR (Pt. 433) 712.
- Adekeye v. Akin Olugbade (1987) 6 S.C.N.J. 137
- Adelakun v. Oruku (2006) 11 NWLR Pt. 992 p. 625 at 650,
- Ademola v. Sodipo (1992) 7 SCNJ 417
- Adenrele Adejumo v. Government of Lagos State (1970) I All NLR 183
- Adeoye v. Jinadu (1975) 5 S.C 102
- Adesoji Aderemi v. Joshua Adedire (1966) NMLR 398
- Adetona v. Igele General Enterprises Ltd (2011) 7 NWLR (Pt 1247) 535 at 564
- Adeyeye v. Ajiboye (1987) 7 SCNJ I at 22
- Adjarho v. Aghoghovwia (1985) [1985] 1 NSCC 376.
- Agbonmagbe Bank Ltd. v. General Manager, G.B. Ollivant Ltd. (1961) 1 All NLR 366
- Agip Nigeria Ltd v. Agip Petro International & Ors (2010) 5 NWLR (PART 1187) 348 at 419 H to 420
- Aigboje AIG-Imoukhuede v. Dr Patrick Ifeanyi Ubah & Ors (2014) LPELR-23965(CA)
- Aiki v. Idowu (2006) All FWLR (Pt. 293) 361 CA

Aja v. Okoro (1991) 9-10 SCNJ 1 at 18
Akere v. Akere (1962) WNLR 328
Akinsanya. v. UBA. Ltd (1986) 4 N.W.L.R. 173
Akintola v. Solano (1986) 2 N. W. L. R. 598.
Alao v. Omoniyi (1966) N.M.L.R. 161.
Alawode and Others v. Semoh (1959) 4 FS.C. 27
Alh.Aminu Ishola v. Societe Generale Bank (Nig.) Limited (1997)
2SCNJ at 6
Alhaji Isiyaku Yakubu v. Federal Mortgage Bank of Nigeria
Limited (2014) LPELR-24188(CA)
Alhaji Saude v. Abdullahi (1989)3 N.S.C.C. 177
Alhaji Tsoho Dan Amale v. Sokoto Local Government & Ors LER
(2012) SC 290/300
Amachree & Ors v. Newington, 12 W ACA 97,
Ambrosini v. Tinko (1929) N.L.R. 8
American Cynamid Co. v. Ethicon Ltd. (1975) 1 All ER 504
American International Insurance Company v. Ceekay Traders Ltd
(1981) 5 SC 81.
Amodu Rufai Shitta & Ors v Momodu Ligali & Ors, (1941) 16
NLR 21 @ 23
Amudipe v. Arijori (1978) 9-10 S. C. 27
ANPP v. Goni (2012) 7 NWLR (Pt. 1298) 147
Aqua Ltd v. Ondo State Sports Council (1988) 4 NWLR 622.
Aqua Motors v. Ondo State Sports Council (1986) N.W.L.R (pt. 91)
Ariori v. Elemo (1983)1 SC 13
Atanda v. Ajani (1989) 2 N. S. C. C. 511
Attorney General of Eastern Nigeria v. A. G Federation (1964) 1
All N. L. R. 224
Atuyeye v. Ashamu (1987)1 N.S.C.C. 117
Awhinawai v. Oteri (1984) 5 S.C. or (1984) N.S.C.C. 299
Awobiyi & Sons v. Igbalaiye Brothers (1965) 4 N.S.C.C. 123
Awojobi v. INEC (2012) 8 NWLR (Pt. 1303) 528
Awoniyi v Board of Customs and Excise (1990)1 NSCC. 103
Ayiwoh v. Akorede (1951) 20 N. L. R. 4
Ayoola James v. Mid-Motors Nigeria Co. Limited (1978)11
and 12 S.C 31 at 63

Ayorinde v. AG (Oyo State) (1996) 2 SCNJ 198
Balogun v. L.E.D.B. (1963) 2 All N.L.R. 80
Bambo v. Aderinola (1977) 1 SC 1 at p.6
Banwo v. A. G Leventis and Co. Limited (1960) L. L. R. 78
Barclays Bank D. C. O. v. Memunatu Hassan N. L. R. 837
Barclays Bank D. C.O. v. Olofintuyi and Anor: (1961) All N.L.R. 799
Belgore v. Ahmed (2013) All FWLR (Pt.705) 246 at 286-287 CA;
Blay v. Solomon (1947) 12 WACA 175.
Bola Ige v. Dr Victor Omololu Olunloyo (1984)1 SCNLR, 158 or (1984)1 Sc. 258
Bonsor v Musicians Union (1955) 3 All ER 518
Bowaje v. Adediwura(1976) 6 S.C. 143
Boyle v. Sacker (1888)39. Ch.D.249
Bradbury v. Cooper(1884) 12 Q. B. D. 94
Bronik motors Ltd v. Wema Bank (1983) 6 S.C. 158 at 168
Bruce v. Oldham Press Ltd (1939) I.K.B. (697)
Buhari v. INEC (2008) 4 NWLR (Pt 1078) 546
Bullock v. London General Omnibus company (1907) 1KB 264.
Carl Zeiss Shifting v. Rayner & Keeler Ltd (No. 3) 1970 Ch. 506
Chidiak v. Laguda 1964 NMLR 123 at 125
Chief Alimi Jagunnoye and Others v. Oba Ishmael Obafemi (1965) NMLR 140 at 142;
Chief Dominic Onuorah Ifezue v. Livinus Mbadugha and Another (1984) 5 S.C.79.
Chigbu v. Tonimas (Nig) Ltd (1996) 3 NWLR Pt. 593, 115 CA
Chiwete v. Amissah(1957) LLR 104
Coker v. Adetayo (1992)6 N.W.L.R. (Pt 249)612 at 652
Cole v. Agu LD/295/69
Commissioner for Lands Mid-Western State v. Osagie and Others (1973) 6 S.C 155
Coy. v. Michael (1975) 4 SC 143
Craig v. Craig (1966)1 ALL NLR 173;
Cunsin Nig. Ltd v. Inspector General of Police (2008) 38 WRN 48

D. J Perera v. Motor and General Insurance Company Ltd (1971)
1. N.M. L. R.181.

DG SSS v. OJUKWU (2006) 13 NWLR (Pt. 998) 575

Dike Geo Motors Limited & Anor. v. Allied Signal Inc. & Anor.
(2006) LPELR-9812(CA)

Dike v. Union Bank (1987) 4 NMLR 958

Doherty v. Doherty (1968) N.M. L. R. 241

Dr. Imoro Kubor & Anor v. Hon. Seriake Henry Dickson & Ors
(2012) LPELR-9817(SC); (2013) All FWLR (Pt. 392).

Eboigbe v. Nigerian Airways (1985) 1 QLRN 22;

Echo Enterprises Ltd v. Standard Bank of Nigeria Limited (1989)

Economic and Financial Crimes Commission v. Ekeocha (2008)
4 NWLR (Pt. 1106) 161

Economides v. Thomopulus and Co. Limited (1956) 1 F. C. 7 at 10

Edward Attah & Ors v. Chukwurah Nnacho &Ors (1965) NMLR.
28.

EIMSKIP Ltd. v. Exquisite Industries (Nig) Ltd., (2003) 105 RCN 85

Ekinwumife v. Wayne (W.A.) Limited (1989) 5 NWLR 422 at 446.

Ekun & Ors v. Messrs Younan & Sons & Anor (1959) WRLR
190, Enigbokan v. Akinoshio 22 NLR 88

Ephraim v. Agwu FSC 15/11/60 (unreported).

Etchie v. Raji (1980) FNLR 108.

Ezomo v. Oyakhire (1985) 1 NWLR 195.

Fadare v. A.G Oyo State (1982) 4 SC 1

Falobi v. Falobi (1976) 1 NMLR 169

Fasakin Foods Ltd. v. Shosanya (2006) 10 NWLR (Pt. 987) 126

Fasel Services Ltd v. NPA (2001) 11 NWLR (Pt. 723) 36 at 37

Fawehinmi v. Abacha (1996) 9 NWLR (Pt. 475) 701 at 729

Fawehinmi v. Akilu (1987) 4 NWLR (Pt. 67) 797.

Fawehinmi v. President FRN (2007) 14 NWLR (pt. 1054) 275.

Firth and Sons v. Delas Rivas (1893) I.Q.B. 768

Gafar v Governor of Kwara State (2007) 20 WRN 170

Gani Fawehinmi v. NBA (No.1) (1989) 2 NWLR (Pt. 105) 494 at
532.

Gbadebo and Another v. Fadioriaand Anor. (Unreported) W.S.
CAN/33/68 June 6, 1969

Gbagbeke Okotie v. C.O.P (1959) W.R.N.R. 2 at 5

Gbenga Adekoya v. The State (2014) LPELR-2933(CA)

Gebi v. Dahiru (2012) 1 NWLR (1282) 560

George Adumu v. The Comptroller of Prisons, Federal Prisons,
Aba & Ors (2013) LPELR-22069(CA)

George and Others. v. Dominion Flour Mills Limited (1963)1
All N. L. R. at 72

Gibbings v. Strong (1984)26 CH. D. 66.

Government of Lagos State and Others v. Chief Emeka
Odumegwu Ojukwu and Others (1986)1 N.W.L.R Part
18 at page 621

Governor of Kogi v. Col. Hassan Yakubu (Rtd.) (2001) 6 NWLR
(Pt. 710) 521

Grace Amanabu v. Alexander Okafor (1966)1 All N.L.R. 205 at
207

Grace Jack v. University of Agriculture, Makurdi (2004) LPELR
– 1587 (SC)

Green v. Green (1987) 3 NWLR (Pt. 61) 480

Haco Ltd v S.M Daps Brown (1973) 1 NMLR 158

Harkness v. Bell's Asbestos and Engineering Limited (1967) 2.Q.B.
729 at 735.

Harriman v. Harriman (1987) 2 N.S.C.C. 930.

Hassan vs Atanyi (2002) 8 NWLR (Pt.770)581

Hunt v. Worsfold (1896)2 Ch.D.224.

Ibrahim v. Balogun (1997) NWLR Pt 610 254

Idris v ANPP (2008) 8 NWLR (Pt. 1088) 1

Igbodin and Others v Ovianke (1967) 9 - 10 S.C. 179 at 191.

Ikeanyi vs. A C B Ltd (1997) 2 SCNJ 93.

Ikoku v. Oli(1962) 1 All N. L. R 194 at 199-200.

Intercontractors v. U .A. C. (1988) 2 N.W.L.R. 303 at 326

Ita & Anor v. Ekpenyong & Ors (1963) E. N. L. R. 21,

Jammal Steel Structure v. ACB Ltd (1973)1 ARNLR. (Pt. 1) 208

Jatauv. Mailafiya (1998) 1 NWLR (Pt. 535) P.682

John Holt and (Liverpool) Ltd v. Fajemirokun (1961) ALL NLR 402.

Josebson Industries Co. v. R. Lauwers Import-Export. (1988) 7.S.C.N.1 93 at 112 .

Katsina Local Authority v. Alhaji Barmo Makudawa (1969) N. N. L. R. 62 (1971) N.M. L. R. 100

Kigo (Nig.)Ltd v. Holman Brothers (Nig) Ltd (1980) N.S.C. 251

Sken Consult v. Sekondy Ukey (1981) ISC. 6 or (1981) N.S.C.C.1.

Kolawole v. Alberto (1989) 2 SCNJ.

Kotoye v. CBN [1989] 1 NWLR (Pt. 98) 419 at 441 and 442

Kpebimoh v. Board of Governors Western Ijaw TTC 1966 1 NMLR 130

L. E. D. B.v. Awode (1955). N. L. R. 80.

Laibru Ltd v. Building & Civil Eng. Contractors (1962) 1 All NLR 387

Lamai v. Orbih (1980) 5-7 S.C. 28

Lateef Aminu (Attorney for Alhaji Waziri Ibrahim) v. Amade (1977) IOCCHJ 273

Ibiyemi Oduye v. Nigerian Airways (1987) 2 NWLR; (1987) Vo1.18 N. S. C. C. 521

Leedo Presidential Motel Ltd. v. Bank of the North, (1998) 7 SCNJ 328 at 353,

Leventis Motors Limited v. G.C.S. Mbonu (1962)NMLR 19, Lewis & Peat (NRI) Ltd. v. Akhimien (1976) 7 SC 157

Lijadu v. Lijadu (1991) 1 NWLR (pt. 169) 627 at 644

Lion Building v. Shodipe (1976)12SC 135

Lion of Africa Insurance Co. Ltd v. Stella Anuluoha (1972)1 All N. L. R. (pt.2)32.

Ikemson v. State (1989) N.S.C.C. 471.

Internal Ministry of Affairs v. Shugaba (1982) 3 NCLR 915

Lloyd v. West Midlands Gas Board (1971) LW.L.R. 749; (1971) 2 All E.R. 1240

Madarikan J Janet Alatede v. Joseph Jeje Falode & Anor. (1966) N.M.LR 164 or (1966) 1 ALL NLR 104

Maja v. Johnson (1951) 13 WACA194.

Maja v. Samouris (2002) 9 NSCQR 546.

Majekodunmi v. Majekodunmi (1966) WNLR 191

Mandila and Karaberis Ltd v. Yesufu Otokiti (1963) 1 All NNL.R. 84.

Mandilas and Karaberis Ltd v. Lamidi Apena (1969) N.M.L.R. 199.

Mareva Compania Naveira S.A. v. International Bulk Carrier Ltd. (1975) Lloyd's Rep 509

Martins v. Nicanner (1988) 2 N.W.L.R. 75 at 83.

Marwa v. Nyako (2012) 6 NWLR (Pt 1296) 199

Maximum Insurance Company Ltd v. Owoniyi (1994) 3 NWLR (pt. 331) 178 at 194

Metropolitan Property Ltd v. Lannou (1969) 1 QB 572.

Mini Lodge Ltd v. Ngei (2007) 4 WRN 54

Minister of Lands v. Azikiwe (1969) 1 All NLR 490.

Mobil Oil Nigeria v. Agadaigho (1988) 4 S.C.N.J. 174

Mobil Producing (Nig.) Ultd v. LASEPA & Ors. (2002) 12 SCNJ 1

Mobil v LASEPA (2003) 104 LRCN 240 at 268.

Mogaji vs. Odofin(1978) 4 SC 91

Mohammed v. Husseini (1998) 12 SCNJ 136 at 137

Mokelu v. Federal Commissioner for Works and Housing (1976) 1 NMLR 329 at 433

Moore v. News of the World Ltd and Another (1972) I. Q. B. 441 at 448.

Morinatu and Oduka v. Kasumu and Another (1966) N.M.L.R. 28 at 31

Mr. Charles Okechukwu & Anor v. Economic and Financial Crimes Commission (EFCC) & Ors (2014) LPELR-24079(CA)

Mrs. Ebere Okoroafor v. Owerri Municipal Council (2014) LPELR-22847(CA)

Mukete v. N.B. C. and Another (1961) All N. L.R. 482 .

N B. N Ltd v. Alakija [1978] ANLR 231

N M Jebara v. Mercury Assurance Co. Ltd (1972) 2 U.L.L.R. 498

N.N.P.C. v. KLIFCO Nigeria Ltd. (2011) 10 NWLR (PART 1255) 209

NALSA & Team Associates v. NNPC (1991) 11 SCNJ 51

National Bank (Nig) Limited v. Shoyoye (1977) 5 S.C. 181;
National Investment Properties v. Thompson Org. Ltd (1969)1 ALL NLR.

National Investment Properties v. Thompson Org. Ltd (1969)1 ALL NLR.

National Pension Commission v. F.G.P Ltd (2014) 2 NWLR (pt. 1391) 346

Ndaba (Nig) Ltd v. U.B.N Plc (2007) 9 NWLR (pt. 1040) 439.

NDIC v. Okem Enterprises Ltd and Another [2004] 10 NWLR (Pt. 880) 107

NEPA v. Edegbero (2002)18 NWLR (Pt. 798) 79

Ngoh v. Ndoka and Another (1960) 5 F.S.C. 90 at 92 .

Nicholls v. General Manager Nigeria Railway) 4 N.L.R. 87

Nkado v. Obiano (1997)5 SCNJ 33

NNPC v. Fama Oil Ltd (2009) 12 NWLR (pt. 1156) 462

North Brewery Ltd v. Mohammed (1972) N. N. L. R. 133

Ntufam Offiong v. Eastern Nigeria Development Corporation (1966 - 67) 10 E.N.L.R. 162 .

Nwabueze v. Obi Okoye (1988) 4 NWL R 664 .

Nwabueze v. Nwosu (1988) 4 N.W.L.R (Pt. 88) 257.

Nwankpa Lawrence v. Dennis Ewulu (1995) 7 SCNJ 197

Nwobodo v. C.C. Onoh (1984)1S.C 1

Obanye v. Okwunwa Ijoma (1930) 10 N.L.R. 8.

Obasanjo v. Yusuf (2004) 9 NWLR (PT. 877) PG. 144 at page 221

Obuya Memorial Hospital v. Attorney-General of the Federation & Anor (1987) 7 SC (Pt. 1) 52

Obimonure v. Erinoshio (1966)1 All N.L.R. 250.

Odi v. Osafie (1985)1 N.W.L.R. 17.

Odogiyan v. Hispanic Construction Nigeria Limited (1986) 5 NWLR (Pt39)127

Odua Investment Co. Ltd v. Talabi (1997)10 NWLR (Pt 523)1 at 52

Odumosu v. A. C. B. Ltd (1976) 1. S.C. 55, 69

Oforma vs. IBWA. (1993) 4NWLR (Pt. 285)86 at 88.

Ogbolumani v. Okobi 1959 WNLR. 11

Ogugua v. The State (1998) HRLRA 167 at 187

- Ogunremi v. Dada (1963)1 ALL N.L R. 663.
- Ojokolobo v. Alamu (1987) 2 N.S.C.C. 991
- Ojora v. Odunsi (1964) 1 ALL NLR 61
- Ojosipe v. Ikabala 1973 1, ALL NLR Part I at Page 128.
- Okafor v. A . G Anambra State (1988) 2 N.W.L.R. 736
- Okafor v. Nweke (2007) All FWLR (Pt. 368) 1016 SC
- Okafor v. ACB Ltd and Another (1975) 5 Sc. 89.
- Okafor v. Ikeayi(1979) 3 and 4 S.C 99
- Oke v Mimiko (2013) All FWLR (Pt 693) 1853.
- Okereke v. Musa Yaradua SC. 246/2007
- Okereke v.Ibe (2010) All FWLR (Pt. 516) 516
- CA Okorie v. Udom (1960) 5 F. S. C. 162
- Okoruwa v. The State (1975) 5 S.C. 23 at 26.
- Okpala v. Iheme (1989) 2 NWLR (Pt. 102) 208 at 213-214
- Olabiyi v. Abiona (1955-56) WRNLR 126
- Olapeyo vs. Ajegungbada (1990) 5 SCNJ at 17
- Omonuwa v. Napoleon Oshodin (1985) 2 NWLR 925
- Omotunde v. Omotunde (2001) 9 NWLR (Pt. 718)252
- Onayemi v. Okunubi. (1966) NMLR 50.
- Onyia v. Oniah (1988) 2 S.C.N.J. 136
- Onyuike v Okeke (1976) NSCC 146
- Oriria v. Govt.of W.Nigeria & Ors (1971) All NLR 138,
- Oro v. Falade (1995)5 SCNJ 10
- Orukumpor v. Itebu and Ors 15 W.A. C.A 39
- Osadebey vs. AG (Bendel State) (1991) I NWLR (Pt. 169) 525
at 563
- Osawaru v. Ezeriruka (1978) 6-7, S.C 135 at 139 - 141.
- Osawere v. Ezeruka (1987) 6-7 SC 135.
- Oterial Odade v. Otowodo Okujeni & Ors 1973 1 All NLR.
(Part 1) 156
- Owoade v. Texaco Africa Ltd (1973)4 N. S. C.C. 61
- Owoniyi v. Omotosho (1951) All. N.L.R. 304(1962) WNLR. 1
- Oyedeji Akanbi (Mogaji) & Others v. Okunola Ishola Fabunmi
& Other (1986) 2 56 431.
- Oyekoya v. G B. Ollivant (Nig) Ltd (1969) 6 N.S.C.C. 69.

Oyeledun v. Shomoye (1960) WNLR 126.
Padawa v. Jatau (2003) 5 NWLR (Pt. 813) 247
Peenok Investment Ltd. v. Hotel Presidential Ltd (1982) NSCC 477.
Perestrello Ltd v. United Paint Co. Ltd,
Polini v. Gray (1979) 12 CHD. 438
Pontin v. Wood (1962) I.Q.B. 594.
RE POWER. Lindsell v. Phillips (1885) 30 Ch. D 291.
Re, Whaley v Busfield (1886) 32 Ch D 123
Reg Trustees of CA C v. Uffiem (1999) 7 NWLR Pt 610 254
Rein v. Stein (1892) I.Q.B. 753.
Rendell v. Grundy (1895) 1 Q.BB. 16 CA.
Reynolds v. Coleman (1887) 36 Ch. D 453. CA.
Same v. Same (1969). W. L. R. 579, (1969) 3 All E. R. 479
Samson Awoyale v. Ogunbiyi (1987) 2 N.S.C.C. 1063.
Samuel v. Samuel (1879) 12 Ch. D 152.
Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212
Sea Trucks Nig Ltd v. Anigboro (2001) SC (pt 1) 56
Shodeinde and Others v. Registered Board of Trustees of the
Ahmadiya Movement in Islam - (1980) 1-2 SC 163
Sken Consult v. Sekondy Ukey (1981) ISC. 6 or (1981) N.S.S.C.I.
Sodeke & Ors v. Pelu & Ors (1979) 3 LRN 227.
Sodipo v. Lemminkainen (1985) 2 N.W.L.R. Part 8 page 1.
Sotiminu v. Ocean Steamship (1992) 5 SCNJ 1
Sowole v. Erewunmi(1961) All N L.R.712.
SPDC (Nig) Ltd v. Amadi (2011) 14 NWLR (pt. 1266) 157
Stallworthy v. Geddis(1909) 28 N. Z. L. R.366.
The British India Insurance Company (Nigeria) Limited v.
Thawroles (1978) 35. S C. 143
The Commissioner of Police, Abia State & Ors v. Uzomba Okara
& Ors (2014) LPELR-23532(CA)
Trow v. Ind Coope Ltd (1967) 3 S .l. R.633.
Tukur v. Government of Gongola State (1989) 3 NSCC 225.
Tukur v. Government of Taraba State (1997) 6 NWLR (510) 549
Tukur v. Governor of Gongola State (1988) 1 NWLR (Pt 68) p. 39

Tunji Gomez & Anor. v. Cherubim and Seraphim Society & Ors,
(2009) 10 NWLR (pt. 1149) 223

U B. A. Limited and 3 ors v. Dike Nwora (1978) 11-12 SC.

UA.C. (Technical) Limited v. Anglo Canadian Cement Ltd (1966)
N. M. L. R. 349

Uchendu v. Ogboni (1999) 4 SCNJ 64 at 76

Udoh v. Udoh (Unreported) Civil Suit NO.1/1 86/68 September 10,
1970

Ugba v PDP (2013) All FWLR (Pt. 686) 544

Ugochukwu v. CCB (1996) 7 SCNJ 22

Ukegbu v. NBC (1997) 14 NWLR (Pt. 1055) 551 at 579

Uku v. Okumagba and Others (1974) 3. S.C. 35

Umar v Governor of Kano State (2006) All FWLR Pt 322 1516 CA

Ume v. Ifediora (2001) 18 NWLR (Pt. 714) 37 at 39.

Unakalamba v. C.O.P (1958) 3 FS.C. 7

Uniport v. Kraus Thompson Org. Ltd (1999) 1 N.W.L.R. (Pt.625)93
at 94.

United Spinners Ltd v. Chattered Bank Ltd (2001) 14 NWLR
(pt.732) 195

Universal Trust Bank Ltd v. Dolmetch Pharmacy (Nig) Ltd (2007)
42 WRN 1

University of Lagos v Aigoro (1984)11 SC 152

University of Uyo & Ors v. Dr. Edet P. Akpan (2013) LPELR-
19995(CA)

Uturu v. Chima Anyaibe (1996) 1 NWLR (Pt. 439) 646 at 660-661

Vaswani Trading Co. v. Savalakh and Co (1972) 12 SC. 77.

Vaswani v. Savalakh (1972) All NLR 922.

Vincent Bello vs. Magnus Ewek (1981) 1 SC 101

Wada Darma v. Lion of Africa Insurance Co. (1970) NNLR. 84.

Wada v. Kebbi (1962) 2 All N L. R. 73

WAEC v. Akinkunmi (2008) 9 NWLR pt. 1091, 151

Wanner v. Sampton (1959) 1 Q. B. 297, 310

Western Nigeria Housing Corporation v. Odeyemi 1/199/04 dated
2/2/66.

Western Steel works Ltd v. Iron & Steel workers Union (1986) 3 NWLR (Pt. 30) 617

Williams v. Daily Times (1990) 1 N.S.C.J. 15.

Williams vs. Hope-Rising & Voluntary Funds Society (1982) 2 SC 145-657

Wilson Electric Transfer Men Co. Ltd v. Electricity Commission of New South Wale s 1968 VR. 880.

Woluchem and Ors v. Gudi and Ors (1981) 5SC 291 at 320, (1981) NSCC. 214 at 227

Woluchem v. Wokoma (1974) 3 SC 153.

Yassin v. Barclays Bank D. C. O. (1968) NMLR 380, OR (1968) NMLR 46

Yesufu v. Cooperative Bank (1989) 2 N.S.C.C. 489

LIST OF ABBREVIATIONS

A.C	Appeal Cases
All ER	All England Report All
NLR	All Nigeria Law Reports
CCHCJ	Cyclostyled Copies of High Court Judgements
C.L.R	Commonwealth Law Reports
COX	Cox's Equity
Cr. App. R.	Criminal Appeal Reports
East, P.L.C	East Term's Reports, Privy Council
ECSLR	East Central State Law Reports
ENLR	Eastern Nigerian Law Reports
ERNLR	Eastern Region of Nigeria Law Reports
FNR	Federation of Nigeria Reports
FRCR	Federal Revenue Court Reports
FSC	Federal Supreme Court
K.B	King's Bench
L.L.R	Lagos Law Reports
LRN	Law Reports of Nigeria
LR, PC	Law Reports, Privy Council Appeals MJSC Monthly Judgement of the Supreme Court of Nigeria
MNLR Mid-	Western Nigeria Law Reports
NCLR	Nigeria Constitutional Law Reports
NCR	Nigeria Criminal Reports
NLR	Nigeria Law Reports
NMLR	Nigeria Monthly Law Reports
NNLR	Northern Nigeria Law Reports
NRNLR	Northern Region of Nigeria Law Reports
NWLR	Nigeria Weekly Law Reports
Q.B	Queen's Bench
QBD	Queens Bench Division
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgements
SCNLR	Supreme Court of Nigeria Laws Reports.
TLR	Times Law Reports
Vict. LR	Victoria Law Reports
WACA	West African Court of Appeal
WLR	Weekly Law Reports
WLRN	Weekly Law Report of Nigeria
WN	Weekly Notes
WNLR	Western Nigerian Law Reports
WRNLR	Western Region of Nigeria Law Reports

CURRICULUM FOR BAR PART II VOCATIONAL EXAMINATION

THE CURRICULUM

1. Introduction

The focus of the curriculum is the achievement of a set of outcomes at the end of the training. This curriculum intends to make the students the centre of the learning process. Students must be ready to prepare for lessons, by undertaking reading assignments, exercises, tasks, role plays, etc. as would be indicated by the tutors from time to time. Any student who fails or neglects to carry out assignments would be deemed not to have participated in the class. Students should not expect that tutors would come to the class and merely “fill” them up with knowledge by merely dictating or repeating lines and lines of pages of books, statutes and case reports. Every student shall be required to fully participate in class.

2. Duration

There would be:

- i. 2 weeks of induction (including a week of case studies and mock trials);
- ii. 18 weeks lecture contact;
- iii. 1 week mock trials;
- iv. I week of private revision before bar examination;
- v. 10 weeks of Court and Law Firm attachment (Placement clinic);
- vi. 3 weeks of Attachment portfolio assessment and evaluation;
- vii. 1 week of bar final examination.

3. The 18 weeks of lectures

There would be a maximum of 4 hours teaching time per day of 5 days of the week. This would give a total of 400

hours. Each day would be devoted to a specific module as shown in the Lesson Plan below.

4. Delivery Mode

Delivery would be through interactive workshops. It is hoped that the workshops would progressively be held in small groups in line with best practices in legal education and staff-students standard ratio.

There would be no special period set out as tutorials. Lessons shall be presented in a way to integrate learning in the modules with values, ethics and skills. This would give students the opportunity to understand how ethics work in real life and demonstrate the skills relevant to the daily application of the subjects of the modules in practical law.

Lessons would take the form of interactive framework teaching, discussions, simulation clinics and activities, role plays, video demonstrations, mock trials, drafting exercises, assignments, quizzes and tests, presentation by guest lecturers etc. All sessions would not be passive lessons for students. Students would be expected to participate. Teachers shall be expected to use and adhere to the lesson plans provided for each module as shown below for the sessions and provide stimulating activities and opportunities to make students participate.

Projector slides and power point presentations will be used in the sessions. In addition, video camera and tapes may be used for effective feedback and reviews by tutors and students themselves.

Students should be given before any lesson, materials and exercises or given instructions on the materials that need to be seen before any class.

5. Assessment

There would be continuous assessment throughout the course in addition to the Bar final examination. There would be a special portfolio assessment of the court and law office attachment (placement clinic). A student must score not less than 70% at the portfolio assessment to be eligible for call to the bar irrespective of the candidate's score at the bar examination.

There will be a summative examination in the Civil Litigation Module.

LESSON PLAN

WEEK 1- INTRODUCTION PROGRAMME FOR NEW STUDENTS

WEEK 2- MOCK TRIALS FOR NEW STUDENTS

**Note: Students attention should be drawn to Week 3
Pre-class activities.**

WEEK 3 – OVERVIEW AND INTRODUCTORY MATTERS

Contents

1. Overview of the civil litigation course
2. Introduction to Civil dispute resolution mechanisms- litigation, ADR processes including Online Dispute Resolution (ODR)
3. Sources of civil procedure
4. Courts with Civil Jurisdiction, including introduction to ECOWAS Court and contextualising the problem of jurisdiction
5. Ethical issues arising from improper use of the rules of court and wrong choice of court

Outcomes

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

- i. discuss the scope of the Civil Litigation course;
- ii. identify and explain the sources of Civil Procedure and discuss the relevance of each source to Civil Processes;
- iii. discuss the different civil disputes settlement mechanisms;
- iv. explain and discuss the aims, scope and application of rules of court;
- v. explain and discuss the meaning and scope of the Civil Jurisdiction of the courts and how to apply it in practice;.

- vi. identify the appropriate court to approach in a given case or situation; and
- vii. discuss the ethical implications relating to wrong use of rules of court and wrong choice of court as well as consequential sanctions.

Activities before class

1. Students are required to read the topics in advance; read the constitutional provisions on jurisdiction and case studies 1 and 2 provided in chapter 18.
2. Students are also required to read some case law on the problem of jurisdiction generally (including ECOWAS Court) and jurisdiction between the High Court of States and that of the Federal High Court. The cases should include the following: *NEPA v. Edegbenro* [2002] 18 N.W.L.R. pt. 798, p. 79; *Onuoha v KRPC Ltd* [2005] 6 NWLR pt. 921 p.393; (2005) FWLR pt. 256, p.1356; *Grace Jack v University of Agriculture Makurdi* [2004] NWLR pt. 865 p. 208; *Tukur v Government of Gongola State* [1989] 4 NWLR pt. 117 p. 517; *NDIC v Okem Enterprises Ltd* [2004] 10 NWLR pt. 880 p. 107; *Adetona v Igele General Enterprise Ltd* (2011) 7 NWLR (Pt 1247) 535; and *Wema Securities &Finance Plc v Nigerian Agricultural Insurance Corporation* (2015) 16 NWLR (Pt 1484) 93. Tutor would provide additional list of these cases to be studied in advance.
3. Each student should prepare a list of the ethical issues arising from wrong use of the rules of court and the wrong choice of court and the consequential sanctions.
4. Students should make a list of different dispute settlement mechanisms.
5. Each student to make notes listing all the civil courts and the scope of their jurisdiction including

Customary Courts/Customary Courts of Appeal and Sharia Courts of Appeal.

6. Each student should draw a table correlating the courts with rules and the sources of the rules.

Activities in class

1. Tutor presents an overview of the civil litigation course/questions and answers – **30 minutes**.
2. Tutor presents an overview of sources of civil procedure generally and particularly of Rules of court and its aims. And tutor requests students to identify civil procedure Rules known to them and their sources; Teacher fills in the blanks. - **30 minutes**.
3. Students make presentations on different dispute settlement mechanisms and a comprehensive list is drawn up- **30 minutes**.
4. students present table correlating the courts with Rules and the sources of the Rules-**30 minutes**.

15 Minutes Break

5. Tutor presents an overview of the issues of jurisdiction generally and jurisdiction between the Federal High Court and High Court of States with questions and answers. The discussion should include comparison of cases such as *NEPA v Edegbenro* [2002] 18 N.W.L.R. pt. 798, p. 79., *Onuoha v K.R.P. C. Ltd* [2005] 6 N.W.L.R. pt. 921 p. 393; [2005] All FWLR Pt. 256, 1356; *BPE v. National Union of Electricity Employees* (2010) and *Osakwe v. FCE Asaba* and cases such as ; *Grace Jack v University of Agriculture Makurdi*; *Tukur v Government of Gongola State*, *Adetona v Igele General Enterprise Ltd* and *Wema Securities & Finance Plc v Nigerian Agricultural Insurance Corporation (NAIC)*- **45 minutes**.

6. Students are presented with questions/exercises requiring them to identify the appropriate courts having jurisdiction from different perspectives of case studies 1 and 2. The questions/exercises should be done in groups and sample answers taken by the tutor and general discussions follow-**45 minutes**.
7. Sample presentation and discussion on ethical issues and sanctions arising from wrong use of rules and choice of court- **20 minutes**.
8. Assessment- questions and answers- **10 minutes**.
(NB: Students' attention should be drawn to Week 4 Pre-class activities).

WEEK 4 – PARTIES TO A CIVIL SUIT

Contents

1. Types of parties.
2. Capacity to sue and be sued; Classes of legal persons; Representative actions, Class actions and procedure.
3. Joint plaintiffs/Joint defendants.
4. Joinder of parties: Misjoinder and non-joinder of parties; Alteration of parties; Survival of parties.
5. Third party notice or proceedings.
6. Ethical issues involved in acting for and against a party in litigation under duties of lawyer to client, courts, the state and the legal profession.

Outcomes

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

- i. state the persons that can sue and be sued at law, select the appropriate parties in respect of any cause of action and discuss the capacity in which parties sue or are sued, and explain the effects of suing or being sued in a wrong capacity;

- ii. explain the procedures for bringing proceedings by or against various classes of parties and representative suits; discuss the scope of class actions;
- iii. explain the procedure for joinder and alteration of parties;
- iv. discuss the principles and scope of third party proceedings.
- v. draft the various applications on parties; and
- vi. identify and discuss ethical issues involved in acting for and against a party in litigation under duties of lawyer to client, courts, the state and the legal profession.

Activities before class

- 1. Students would be required to read the topic in advance of the lesson and the cases provided by tutor, such as *Green v Green* and *Mobil v LASEPA*.
- 2. Students should make a list of types and various classes of parties and persons that can sue or be sued at law.
- 3. Students should make a short note on the meaning and scope of class actions under the Lagos State Civil Procedure Rules.
- 4. Students should prepare their opinion on joinder and alteration of parties using Case Study 2 and come to class with same.
- 5. Students should bring to class precedent copies of applications for joinder or alteration of parties and third party proceedings application.
- 6. Students should prepare 3 applications using case study 2 and bring them to class, namely:
 - a. Joinder of NDIC as a co-defendant;
 - b. striking out the name of NDIC as co-defendant assuming they were originally joined as party;
 - c. joining ABC Insurance PLC (the company that

insured the consignment).

7. Students should make a list of likely ethical issues that may arise in acting for and against a party in litigation under duties of lawyer to client, courts, the state and the legal profession.

Activities in class:

1. Tutor gives an overview of Nos. (i) to (iii) outcomes and presents hypothetical or real cases on (i) to (iii) outcomes and students discuss the cases in their groups and sample presentations and discussions follow – **50 minutes**.
2. Tutor presents different causes of actions and scenarios for students to identify proper parties – **30 minutes**.
3. Tutor gives an overview on the procedure for joinder and alteration of parties and students present their opinion on joinder and alteration of parties using Case Study 2 – **40 minutes**.

15 MINUTES BREAK

4. Tutor gives an overview on the principles and scope of third party proceedings – **20 minutes**.
5. Students present the 3 applications namely:
 - a. joinder of NDIC as a co-defendant;
 - b. striking out the name of NDIC as co-defendant assuming they were originally joined as party;
 - c. joining ABC Insurance PLC (the company that insured the consignment)- **40 minutes**.
6. Short Quizzes are given to students on likely ethical issues and discussions follow – **40 minutes**.
7. General assessment – **20 minutes** (**NB: Students' attention should also be drawn to Week 5 Pre-class activities**).

WEEK 5

- 1. PRELIMINARY MATTERS: PRE-ACTION ISSUES**
- 2. COMMENCEMENT OF ACTIONS IN THE MAGISTRATE COURT**

Contents

1. Preliminary consideration before commencing an action or defending an action *viz:* limitation periods, pre-action notices/conditions precedent, *locus standi*, the appropriate venue for an action, cause of action, exhaustion of available remedies and their effect on the jurisdiction of a court, litigation costs, availability of alternative dispute resolution method and pre-action counselling, ethics against frivolous actions or avoiding abuse of court process.
2. Reflections on the relevance to the preliminary considerations of matters such as interviewing and counselling skills, letter writing, duty to client, accountability, cost and charges.
3. Commencement of action in the Magistrate Court including the procedure before the Small Claims Court.

Outcomes

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

- i. discuss and explain various matters that need to be considered before commencing or defending an action, such as limitation periods, pre-action notices/conditions precedent, litigation costs, the appropriate venue for an action, exhaustion of available remedies, availability of alternative dispute resolution method and pre-action counselling, cause of action, remedies, ethics against frivolous actions or avoiding abuse of court process;
- ii. identify preliminary issues in case studies;
- iii. discuss the relevance to the preliminary consideration of subjects such as interviewing and

- counselling skills, letter writing, duty to client, cost and charges; and
- iv. explain the general principles and procedure for commencing actions in the Magistrates Court of Lagos State and the procedure before the Small Claims Courts.

Activities before class

1. Students should read case studies 1 and 2 in addition to other case studies to be provided by the tutor and identify in writing the preliminary issues in the case studies.
2. Students should prepare pre-action counselling certificates and bring samples to class.

Activities in class

1. Tutor gives an overview of general principles and the procedure for commencing actions in the Lagos State Magistrate Court including the procedure in the Small Claims Courts – **30 minutes**.
2. Students and Tutor brainstorm on the relevance to the preliminary issues of subjects such as interviewing and counselling skills, letter writing, duty to client, accountability, cost and charges – **30 minutes**.
3. Presentations of pre-class assignments are made by students and discussions follow. Discussions to cover most preliminary issues whether identified in the cases or not – **60 minutes**.

15 MINUTES BREAK

4. Tutor presents quiz on general principles and procedure for commencing actions in the Lagos State Magistrate Court and procedure at the Small Claims Courts.- **40 minutes**.
5. Using modified case study 1 (modified by the tutor), students complete a Claim (provided to students) to commence an action. Sample presentations and discussions follow – **40 minutes**.

6. General assessment – 20 minutes

(NB: Students' attention should also be drawn to Week 6 Pre-class activities).

WEEK 6 – COMMENCEMENT OF ACTIONS IN THE HIGH COURT

Contents

1. Form and mode of commencement of action
2. The concept of frontloading
3. Issue of originating processes
4. Service of originating process
5. Renewal of originating process
6. Effect of non-compliance
7. Appearance and default of appearance
8. Fast Track Procedure
9. Ethical issues in the commencement an actions.

Outcomes

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

- i. explain how different types of proceedings are commenced including the Fast Track Procedure and the steps to take to initiate or contest actions and the effect of noncompliance;
- ii. complete writs of summons and list documents that should be frontloaded using Case studies 1 and 2;
- iii. explain how court documents are brought to the notice of the other party; review and critique sample affidavit of service;
- iv. discuss the principles governing the issuance and renewal of originating processes;
- v. discuss and explain the principles governing appearance and default of appearance;
- vi. discuss ethical issues that arise from the conduct of a lawyer in commencing an action in court.

Activities before the class

1. Students in a composite table make a list of different types of proceedings and the form used to commence each type of proceedings including the Fast Track Procedure.
2. Students are to be given in advance duly completed sample writ of summons and requested to read in advance Orders 1-10 High Court civil procedure Rules Lagos and Abuja.
3. Students are to read in advance, Case Studies 1 and 2 and complete 2 writs of summons in advance using the 2 case studies. Students are required to come to class with e-copies of their completed writ of summons; they should also produce a list of document necessary to be attached on each of the 2 completed writs using the case studies. Students should be required to have these documents in a file.
4. Students are to make a list of steps to be taken by either party (including filing appearance) after the issuance of a writ of summons and the consequences of failure to take any of the steps.
5. Students are to make a list of the Rules of Professional Conduct that may arise from the conduct of a lawyer in commencing an action in court.

Activities in class

1. Tutor presents an overview of commencement of action in the High Court – **45 minutes**.
2. Tutor presents quiz on different types of proceedings and the form used to commence each type of proceedings – **30 minutes**.
3. General discussions on service of documents, issues and renewal of originating processes and a review of a sample affidavit of service presented by the tutor – **45 minutes**.

15 MINUTES BREAK

4. Students make sample presentation of completed writs and lists of documents to be frontloaded with justifications for listing the documents shown; Discussions on presentations follow -**60 minutes**.
5. Students present list of steps to be taken by either party (including filing appearance) after the issue of a writ of summons and the consequences of failure to take any of the steps and discussions follow- **25 minutes**.
6. Students present list of the Rules of Professional Conduct that may arise from the conduct of a lawyer in commencing an action in court – **25 minutes**.
7. Assessment: questions and answers – **10 minutes**

(NB: Students' attention should also be drawn to Week 7 Pre-class activities).

WEEK 7 – INTERLOCUTORY APPLICATIONS

Contents

1. Meaning of interlocutory applications
2. The principles and scope of examples of interlocutory applications and relief like Interim and interlocutory injunctions, Mareva Injunction, Anton Piller injunction; and interpleader.
3. The meaning, types and contents of a motion.
4. Affidavit evidence.
5. Drafting and arguing simple motions (affidavits in support and written address inclusive).
6. Ethical issues involved in abuse of ex-parte injunctions, swearing of affidavits by counsel, suppression of facts in ex parte applications.

Outcomes

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

- i. Explain the meaning of interlocutory applications and list examples;
- ii. explain and discuss the principles and scope of

- examples of interlocutory applications and relief like Interim and interlocutory injunctions, Mareva Injunction, Anton Piller injunction; and interpleader;
- iii. explain the meaning, types and list the contents of a motion;
 - iv. discuss the principles regarding affidavit evidence;
 - v. draft and argue simple motions (affidavits and written address in support inclusive); and
 - vi. discuss ethical issues involved in abuse of ex-parte injunctions, swearing of affidavits by counsel, and suppression of facts in ex parte applications.

Activities before class

1. Students are to read the topic in advance of the lesson including case law, the case studies, and examples of drafted motions and interlocutory applications. Students are to bring to class precedent samples of motions and interlocutory applications.
2. Students are to make notes on the: (a) meaning of interlocutory applications and list examples; (b) the principles and scope of examples of interlocutory applications and relief like, Interim and interlocutory injunctions, Mareva Injunction, Anton Piller injunction; and interpleader; (c) the meaning, types and the contents of a motion; (d) the principles regarding affidavit evidence.
3. Students are to read the NJC Judges' rule on ex parte applications and make a list of decided cases where abuse of ex parte applications was discussed.
4. Students are to be paired to prepare in advance motions for interim and interlocutory injunctions. Using the case studies, a set of students draft motion for interim injunction (case study 2) while the other set draft a motion for interlocutory injunction (case study 1). Set 1 students hand over the motion for interim injunction to set 2 students while set 2 students hand over their motion for interlocutory

injunction to set 1. Set 1 students draft an affidavit in opposition to the motion for interlocutory injunction while set 2 students acting as judges prepare ruling/judgment on the motion for interim injunction. The application for interlocutory injunction should also be accompanied with an address of not more than one page. All students are to come to class with an **e-copy** of their motions, counter affidavit, addresses and judgment.

Activities in the class

1. Students and Tutor discuss meaning of interlocutory applications and list examples – **30 minutes**.
2. Students and Tutor discuss the principles and scope of interim and interlocutory injunctions, Mareva Injunction, Anton Piller injunction and interpleader – **60 minutes**.
3. Brainstorm/discussions on ethical issues involved in abuse of ex-parte injunctions, swearing of affidavits by counsel, and suppression of facts in ex parte applications. Discussion should be supported with Rules and case law– **30 minutes**.

15 MINUTES BREAK

4. Students and Tutor discuss the meaning, types and list the contents of a motion, and the principles guiding affidavits and affidavit evidence, tutor assisting – **40 minutes**.
5. Presentations of the motions already prepared by students before class are made by way of moving the motion and opposition arguments/the student-judges' rulings are presented and general discussions follow – **1 hour 20 minutes**.
6. Assessment: Questions and answers/Quiz – **30 minutes**

(NB: Students' attention should also be drawn to Week 8 Pre-class activities).

WEEK 8 – SUMMARY JUDGMENT PROCEDURE

Contents

1. Summary Judgment Procedure
2. Types of summary judgment
3. Default judgments
4. Undefended list procedure under Order 35 (Abuja)
5. Summary judgment – Order 11 and 13 procedure (Abuja and Lagos)
6. Duty of a lawyer in a summary judgment procedure

Outcomes

At the end of this lesson Students would be able to:

- i. list types of and explain the scope of the principles of summary judgments;
- ii. explain the procedures for obtaining different summary judgments under the rules and distinguish summary judgments from default judgments;
- iii. draft and argue applications for summary judgments; and
- iv. discuss the ethical duties of a lawyer in a summary judgment procedure.

Activities before class

1. Students read the subject in advance of the class including the Rules of Lagos and Abuja relating to summary judgment/procedures.
2. Students in a composite table make a list of the distinguishing factors (comparatively) between undefended list of Abuja FCT High Court Rules and Order 11 and 13 summary judgment procedures of Abuja and Lagos High Court Civil Procedure Rules respectively. Students are to bring e-copies of the composite table to the class.
3. Students make a list of different types of default judgments.

4. Students should be paired to exchange applications for summary judgment using case study 1. Using the case studies, a set of students draft application for summary judgment in the undefended list (case study 1) while the other set draft application for summary judgment under Order 11(case study 1). Set 1 students hand over their documents to set 2 students while set 2 students hand over their documents to set 1. Set 1 students draft documents in opposition to the documents served on them while set 2 students do the same. Students must provide all the documents required by the rules and the presentation in the class would be through power point slides. So e-copies are to be brought to class.
5. Students should prepare in writing ethical issues that may arise and the ethical duties of a lawyer in such cases in a summary judgment procedure.

Activities in class

1. Tutor gives an overview of lesson- **30 minutes**.
2. Students present the composite table comparing undefended list procedure and Order 11/13 summary judgement procedure; and a list of different types of default judgments - **30 minutes**.
3. Using the writ of summons produced by students in WEEK 6 and case studies 1 and 2 students are grouped to discuss the application of different summary judgment procedures and the consequences of any step to be taken- **25 minutes**.
4. Sample presentations are made by groups and discussions follow – **30 minutes**.
5. Assessment: Questions and answers - **5 minutes**.

15 MINUTES BREAK

6. Some students are made to argue their cases for summary judgment. The rest of the students listen as Judges and write short judgments/ruling- **60 minutes**.
7. **10 minutes** interval for students to conclude their judgments/ruling (at this stage the structure of the judgment would not be in issue). Students present their judgments and discussions follow- **30 minutes**.
8. Students present ethical issues that may arise and the ethical duties of a lawyer in such cases in a summary judgment procedure – **20 minutes**.
9. Assessment: questions and answers – **10 minutes**.

(**NB:** Tutor also presents WEEK 9 pre-class activities and take home assignment on the subject PLEADINGS – References (including books and case law) for advance reading; case studies. Students are paired to use the 2 case studies and exchange pleadings in advance of the class on PLEADINGS, one person acting as plaintiff in case 1 and the other acting as plaintiff in case 2 and the pleadings to be typed. Students also are to be given a precedent statement of claim and statement of defence and they would be required to individually read them and write in typed form a one page opinion on the precedent pleadings.)

WEEK 9 – PLEADINGS

Contents:

1. Functions of pleadings
2. Drafting of pleadings - Content of pleadings; Facts that must be specifically pleaded; Raising Points of Law in pleadings (See Order 17 Lagos and Order 23 Abuja); Formal requirement of pleadings; What will amount to General traverse, Specific Denial, Admission of facts, Negative pregnant traverse, Confession and avoidance, Set –Off and Counter claim.

3. Filing and service of pleadings; When to file a reply, reply and defence to counterclaim; Default of pleadings and close of pleadings.
4. Amendment of pleadings, and procedure for amendment
5. Filing of pleading.
6. Value: professional responsibility to disclose all necessary facts so as not to mislead the Court or the opposing Counsel; need not to plead untrue or frivolous facts. See Orders 17 – 19; 21 and 23 Lagos State High Court Civil Procedure Rules; Orders 15-18 20–21, 23 & 25 High Court of FCT Abuja Civil Procedure Rules.

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the principles relating to the functions, and drafting of pleadings;
- ii. explain the procedures for filing, service, close and default of pleadings and amendment;
- iii. draft pleadings (and observing ethics and rules of professional responsibilities in Drafting pleadings);

Activities before class

1. Students make notes on the functions and principles for drafting pleading; procedure for filing, service, close and default of pleadings and amendment.
2. Students are paired to use the 2 case studies and exchange pleadings in advance of the class on PLEADINGS, one person acting as plaintiff in case 1 and the other acting as plaintiff in case 2 and the pleadings to be typed. Students also are to be given a precedent statement of claim and statement of defence and they would be required to individually

read them and write in typed form a one page opinion on the precedent pleadings.

Activities in class

1. Teacher gives an overview of the general principles, with students' contribution; and teacher and students together develop checklists of principles on the outcomes including ethics and rules of professional responsibilities in drafting pleadings – **1 hour 30 minutes.**

15 MINUTES BREAK

2. Students present pleadings exchanged pre-class and the prepared legal opinion on the sample pleadings for general discussion- **2 hours.**
3. General debrief and Assessment: questions and answers- **30 minutes.**

NB. Assignment for Week 10- Actions to be completed before week 10 lesson

1. Students as paired in week 9 would, using the Lagos and Abuja Rules, discuss the principles and application of striking out pleadings for disclosing no reasonable cause of action; interrogatories and discovery of documents; make a note for presentation in the class on the relevance of these processes to the pleadings they exchanged for week 9 lesson. If they find the principles relevant, they exchange the necessary documents in typed form but if not relevant, give reasons for this position in a written note for presentation in the class. The same approach should also be taken for issues such as notice to admit facts, inspections, etc.
2. Students should also be grouped in 3s or not more than 4s to commence with the exchange of

necessary documents and hold a Case Management Conference/ Pre-trial Conference using one of the cases in which pleadings were exchanged in week 9. One or two (where they are grouped in 4s) of the students would act as Judges for the Case Management Conference/ Pre-trial Conference. The Judge is expected to produce a report as the Rules provides.

3. In addition to any other documents that may be produced by a group, each group of 3 or 4 must file (exchange) and settle issues from the pleadings chosen for the pre-trial conference.

WEEK 10 – PRE-TRIAL ISSUES AND PROCEEDINGS

Contents

1. Striking out Pleading where no reasonable cause of action disclosed, etc.
2. Interrogatories
3. Discovery of documents
4. Inspection of documents
5. Notices to admit
6. Settlement of issues
7. Pre-trial and case management conferencing and scheduling.

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the principles relating to Striking out Pleading where no reasonable cause of action is disclosed, etc., interrogatories, discovery of documents, inspection of documents, notices to admit, and settlement of issues;
- ii. explain & discuss the general principles, objectives & scope of Case Management Conference/ Pre-trial Conference and scheduling;

- iii. settle issues for trial.

Activities:

1. Teacher gives an overview of the principles relating to striking out pleadings where no reasonable cause of action is disclosed, etc., interrogatories, discovery of documents, inspection of documents, notices to admit, and settlement of issues, with questions and answers – **30 minutes**.
2. Students make presentations of assignment No. 1 above (given in week 9) and general discussions follow – **1 hour**.

15 MINUTES BREAK

3. Groups make presentation of their report of how they commenced and conducted a Case Management Conference/ Pre-trial Conference and the documents exchanged (filed) including the final report of the pre-trial Judge. Discussions follow – **1 hour**.
4. Groups make presentations of issues filed and settled and discussions follow including assisting in fine-tuning settled issues in standard form – **1 hour**.
5. Debrief and assessment – **30 minutes**

(NB: Students' attention should also be drawn to Week 11 Pre-class activities).

WEEK 11 – TRIAL PREPARATION AND EVIDENCE

1

Content

1. Case analysis/ Case theory/ Trial Plan
2. Rules of Evidence as to Burden and Standard of Proof, Admissibility of Documentary Evidence and the necessary foundation to be laid for that purpose, Use of Primary and Secondary Evidence.

Outcomes

At the end of this lesson Students would be able to:

- i. Prepare a trial plan and case theory and identify relevant evidence in a case; and
- ii. explain and discuss rules of evidence as to the burden and standard of proof, and admissibility of different types and forms of evidence, admissibility of documentary evidence and the necessary foundation to be laid for that purpose, use of primary and secondary evidence.

Activities before Class

1. Read the Evidence Act 2011 on admissibility of different kinds of evidence.
2. During weeks 9/10 lessons, students were grouped in 3s or 4s to hold pre-trial conference on one of the 2 cases on which they exchanged pleadings. For week 11 lesson, the same group of 3s or 4s should meet to discuss the lesson for week 11 and divide themselves into 2- one group acting for the claimant/plaintiff and the other acting for the defendant. The student(s) should prepare their case theory and trial plan for each of the parties.
3. Students should have samples of the trial plans.

Activities in class;

1. Tutor and students in plenary discuss the principles of burden and standard of proof of evidence and admissibility of different types and forms of evidence – **45 minutes**.
2. Tutor presents guidelines/checklist on how to prepare trial plan/case theory- **20 minutes**.
3. Students as grouped (see activities before the class) conduct group work and each party (i.e. either for

claimant or defendant) produces a trial plan and case theory for their case and also identifying the relevant evidence they would use in their case looking at the issues settled in their case, their pleading and the witness statements produced for this lesson. Students may be free to conduct their work outside the class – **55 minutes**.

15 MINUTES BREAK

4. Tutor gives an overview on the Rules as to the Admissibility of Documentary Evidence and the necessary foundation to be laid for that purpose; Use of Primary and Secondary Evidence - **40 minutes**.
5. Groups make presentation of their trial plan, case theory and identified relevant evidence in their case. Discussions follow – **1 hour**.
6. Debrief and assessment – **20 minutes**
(NB: Students' attention should also be drawn to Week 12 Pre-class activities)

WEEK 12 – TRIAL PREPARATION AND EVIDENCE

2

Content

1. Opinion Evidence and Expert Witnesses
2. Witnesses generally including Special Witnesses like Children, Experts and Hostile Witnesses
3. Use of Subpoenas, Witness Summons and Statements
4. Competence and Compellability of Witnesses.

Outcomes

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

- i. explain the principles regulating the evidence of special witnesses like children, experts and hostile witnesses;
- ii. prepare witness statements obeying ethical rules;
- iii. explain and discuss the principles regarding competence and compellability of witnesses;
- iv. explain and discuss the use of subpoenas and witness summons.

Activities before Class

1. During weeks 9/10 lessons, students were grouped in 3s or 4s to hold pre-trial conference on one of the 2 cases on which they exchanged pleadings. For week 12 lesson, the same group of 3s or 4s should meet to discuss the lesson for week 12 and divide themselves into 2- one group acting for the claimant/plaintiff and the other acting for the defendant. The student(s) acting for the plaintiff should prepare witness statements on oath and serve the other party and the defendant should also do the same for the defence case. Students should also make a list of ethical guideline in the preparation of a witness statement.
2. Students should have samples of subpoenas and witness summons.

Activities in Class

1. Tutor in plenary explains and discuss the principles regarding competence and compellability of witnesses; discusses how to prepare witness statements obeying ethical rules; explain and discuss

- the use of subpoenas and witness summons - **50 minutes.**
2. Tutor gives an overview on the competence and compellability of witnesses; use of subpoenas and witness summons (for competent and compellable witnesses) using the pleadings and cases produced by the students to question the students for answers and illustration- **40 minutes.**

20 MINUTES BREAK

3. The Tutor discuss how to treat special witnesses like children, experts and hostile witnesses – **40 minutes.**
4. Debrief and assessment – **20 minutes**

(NB: Students' attention should also be drawn to Week 13 Pre-class activities).

WEEK 13 – TRIAL – EXAMINATION OF WITNESSES

Content

1. Procedure of Presentation of a Party's Case
2. Examination-in-Chief
3. Cross Examination
4. Re-examination
5. Virtual hearing.
6. Refreshing memory.
7. Tendering documents and other exhibits during Examination of Witnesses
8. Ethics of Examination of Witnesses
9. Presentation of a Video on Trial.

Outcomes

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

- i. explain and discuss the role, principles including

- ethics, scope and techniques of examination –in chief, cross-examination and re-examination of witnesses;
- ii. explain and discuss the procedure and foundation for tendering documents and other exhibits during examination of witnesses;
 - iii. explain the procedure for virtual hearing.
 - iv. examine a witness in chief and tender documents or other exhibits
 - v. cross examine and re-examine a witness.
 - vi. explain the procedure for refreshing memory.

Activities before class;

Students are to read the topic in advance of the class lesson and make notes on the role, principles including ethics, scope and techniques of examination-in-chief, cross-examination and re-examination of witnesses; the procedure and foundation for tendering documents and other exhibits during examination of witnesses.

Activities in class;

- 1. Tutor and students in plenary discuss the role, principles including ethics, scope and techniques of examination-in-chief, cross- examination and re-examination of witnesses; and the procedure and foundation to be laid for tendering documents and other exhibits during examination of witnesses– **50 minutes.**
- 2. Tutor presents guidelines/checklist on examination-in-chief and presents short scripted role plays (including scenarios where documents are tendered) that students would be made to critique in relation to the checklist/guidelines on examination in chief-**40 minutes.**

3. Each Student is requested to prepare in writing in a sequence they may be presented, examination-in-chief questions based on one of the cases in which the student prepared statement of claim in week 9 and opening statement in Law in Practice Week 12-**30 minutes.**

15 MINUTES BREAK

4. Students groups (i.e. those of 3s or 4s) of week 10 would be required to prepare to present examination of witnesses based on the pleadings and witness statements exchanged. The Judge or judges of the groups in week 10 would now act as witnesses. The witness statements used by the groups in week 11 would be used here. The plaintiff/claimant in the group would prepare the witness for examination in chief (and re-examination if necessary) while the defendant would get ready to cross examine the same witness- **20 minutes.** Party in each group use not more than 5 minutes each to examine or cross-examine a witness and additional 2 minutes for re-examination where necessary. The Tutor acts as Judge and time-keeper. Discussions should follow each group's presentations. No objections should be allowed during each examination but students should be asked to make note of any objections they may have to any question and present it during the discussions that follow. Tutor would need to make the students take note of the manner of presenting **examination-in-chief** in jurisdictions like Lagos where witness statements are generally adopted. Where a video clip is a matter that dwells on

criminal litigation, the attention of the students need be drawn to that and noting any difference between any forms in the process from civil litigation. - **1 hour 40 minutes.**

5. Students continue to present activity 3 or Tutor plays video clips like the Inns of Court School of Law Training Series “There are two sides to a story”- **10 minutes.**
6. General discussions and Assessment – **20 minutes**

(NB: Students’ attention should also be drawn to Week 14 Pre-class activities).

WEEK 14 – CLOSING ADDRESS AND JUDGMENT Contents

1. Closing address: role and functions; format, structure, content, delivery, and ethics in presenting closing address including virtual address.
2. Judgment: meaning, characteristics of good judgment, types, requirement and procedure for delivery of judgment including virtual judgment.

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the role, and functions of closing or final address in a trial;
- ii. prepare and present a closing address;
- iii. explain and discuss the meaning, characteristics of good judgment, types, requirement and procedure for delivery of judgment.

Activities before class

1. Students are to read the topics in advance of the class lesson. Students are also to prepare one page opinion on one judgment on a case from the law

- report pointing out any strengths and weaknesses in the judgment.
2. The week 10 students groups prepare in writing and present within their groups closing addresses in their cases (week 10)- plaintiff/Claimant against Defendant while the judges in each group make a note of opinion on the closing addresses.

Activities in class

1. Tutor and students in plenary discuss the role, and functions of closing or final address in a trial format, and presents guidelines/checklist on, structure, content, delivery, and ethics in presenting closing address - **30 minutes**.
2. Groups present the same closing addresses prepared in activity 2 above in plenary and the judges in each group also read their criticism or opinion (not judgments) on the closing addresses. Each person to use not more than 3 minutes to present his/her closing address and the judge's opinion. Discussions follow- **1 hour 10 minutes**.

15 MINUTES BREAK

3. Tutor and students in plenary discuss the meaning, characteristics of good judgment, types, requirement and procedure for delivery of judgment- **40 minutes**.
4. Students present their opinion on one judgment from a law report and discussions follow- **30 minutes**.
5. Tutor presents quizzes on judgments and general discussions and assessment – **30 minutes**.

(NB: Students' attention should also be drawn to Week 15 Pre-class activities).

WEEK 15 – ENFORCEMENT OF JUDGMENT AND APPLICATIONS PENDING APPEAL

Contents

1. Enforcement of judgment: writ of fifa (moveable/ immovable), garnishee proceedings and payment by instalments, methods for enforcement and execution, processes and limitations in the enforcement of interstate and foreign judgments.
2. Applications and orders pending appeal.

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the best methods for the enforcement and execution of judgments - writ of fifa (moveable/ immovable), garnishee proceedings and payment by instalments) and the processes and limitations involved in the enforcement of interstate and foreign judgments;
- ii. explain and discuss various forms, purpose, principles, scope and procedure of applications pending appeal; and
- iii. draft applications for stay of execution, stay of proceedings and injunctions pending an appeal.

Activities before class

1. Students are to read the topics in advance of the class lesson.
2. Students should also receive from the Tutor and study precedent copies of applications pending appeal.
3. Students should draft applications pending appeal based on the modified case studies.

Activities in class

1. Tutor and students in plenary discuss the best methods for the enforcement and execution of judgments and the processes and limitations

involved in the enforcement of interstate and foreign judgments— **50 minutes**.

2. Tutor presents quizzes and discussions follow review of answers- **50 minutes**.

5 MINUTES BREAK

3. Tutor and students in plenary discuss various forms, purpose, principles, scope and procedure of applications pending appeal- **50 minutes**.
4. Tutor presents checklist of principles for drafting applications for stay of execution, stay of proceedings and injunctions pending an appeal and using case studies 1 and 2 as modified by the tutor for this purpose, students review their draft of these applications- **30 minutes**.
5. Students present their drafts of activity 4 and general discussions follow – **50 minutes**.
6. Assessment – **10 minutes**

(NB: Students' attention should also be drawn to Week 16 Pre-class activities).

WEEK 16 – APPEALS

Contents

1. Right of Appeal and appeal with leave of court
2. Procedure for appeals and extension of time to appeal matters related to appeals in the Court of Appeal
3. Respondents notice and cross-appeal
4. Drafting notice of Appeal
5. Brief of Arguments.

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the scope of right of appeal and procedure for appeals;

- ii. explain and distinguish between a Respondents notice and a cross-appeal;
- iii. draft a notice of appeal and brief of arguments.

Activities before class

Students are to read the topic in advance of the class lesson. In addition to text books, students should read and familiarise themselves with the Court of Appeal Rules, the 1999 Constitution on the Court of Appeal's jurisdiction, composition, right of Appeal, etc; and case law.

Activities in class

1. Tutor and students in plenary discuss the scope of right of appeal and procedure for appeals, notice of appeal, respondent's notice and a cross-appeal. Tutor would present precedents of notice of appeal and respondent's notice in hard copies or by power point slides - **50 minutes**.
2. Tutor presents short judgments based on case studies 1 and 2 and checklist of guidelines for drafting notice of appeal and students are required to draft 2 notices of appeal- **20 minutes**.
3. Students present drafted notices of Appeal and discussions follow- **40 minutes**.

15 MINUTES BREAK

4. Activity No. 3 continues – **30 Minutes**.
5. Tutor presents guidelines for drafting brief of arguments and precedents or examples- **20 minutes**.
6. Based on the notices of appeal drafted by students Tutor pairs the students to draft and exchange brief of arguments for and against. One person drafts an appellant's brief in one of the cases and serves the other who drafts a respondent's brief. During this activity each student would be an appellant in case 1

- and respondent in case 2. Students may carry out this activity outside the class – **40 minutes**.
7. In the class students present their briefs and discussions follow – **30 minutes**.
 8. Assessment – **10 minutes**.

(**NB: Students' attention should also be drawn to Week 17 Pre-class activities**).

WEEK 17 – RECOVERY OF POSSESSION OF PREMISES

Contents

1. General principles, jurisdiction
2. Procedure for recovery of possession of premises; notice to quit and notice of owners intention to apply to recover possession
3. Writ or plaint commencing an action for the recovery of possession of premises

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the general principles including the courts that exercise jurisdiction for the recovery of possession of premises;
- ii. state and discuss the material facts to be proved for recovery of possession of premises and the procedure for recovery;
- iii. draft a notice to quit, notice to tenant of owner's intention to recover possession of premises, and a writ or plaint commencing an action for recovery of possession of premises.

Activities before class

1. Students are to read the topic in advance of the class lesson. Students are to see and bring to the class copies of precedents of notices to quit, notice to

- tenant of owners intention to recover possession and writ or plaint commencing the action in court.
2. Tutor should present case studies to students in advance of the class lesson.

Activities in class

1. Tutor and students in plenary discuss the general principles including the courts that exercise jurisdiction for the recovery of possession of premises; the material facts to be proved for recovery of possession of premises and the procedure for recovery- **50 minutes**.
2. With the case studies presented, students are grouped to discuss and give legal opinion on the cases presented. The grouping and the group discussions - **30 minutes**.
3. Groups report in plenary with their opinion on the case Studies and discussions follow- **40 minutes**.

15 MINUTES BREAK

4. Students draft notice to quit and notice to tenant of owners intention to recover possession based on the case studies/scenarios presented by tutor – **20 Minutes**.
5. Students present drafts and discussions follow- **40 minutes**.
6. Students draft writ or plaint based on the case studies and the notices drafted – **15 minutes**.
7. Students present activity No. 6 and discussions follow – **35 minutes**.
8. Assessment – **10 minutes**

(NB: Students' attention should also be drawn to Week 18 Pre-class activities).

WEEK 18 – ELECTION PETITION

Contents

1. General principles, jurisdiction and composition of Election Petition Courts/Tribunals
2. Contents of election petitions
3. The procedure: Commencement of election petition and the sequences of events up to conclusion of trial
4. Drafting Election Petitions

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the general principles including the courts that exercise jurisdiction for election petitions;
- ii. state and discuss the content and material facts to be pleaded and proved in election petition cases;
- iii. explain the procedure and sequence of events involved in election petitions up to the conclusion of trial;
- iv. discuss standard of proof in election petitions: (a) on a general proof (b) where fraud, illegality, crime, etc is alleged.
- v. draft an election petition and the reply to it.

Activities before class

1. Students are to read the topic in advance of the class lesson including the Statutes (such as Evidence Act, Sections 135 & 136), Rules and Case law on the subject, including *Nwobodo v. Onoh*, *Ajasin v. Omoboriowo*, *Torti v. Ukpabi*, *Ngige v. Obi*. They are also to read and bring to the class precedents of Election petitions and Reply.
2. Tutor should present at least 2 case studies to students in advance of the class lesson. Students

- would be required to use the case studies to draft petitions and replies.
3. Tutor would also present a list of judicial decisions on election petition and request students to read these in advance for discussion in the class.

Activities in class

1. Tutor and students in plenary discuss the general principles including the courts that exercise jurisdiction for election petitions; the content and material facts to be pleaded and proved in election petition cases; and the procedure and sequences of events up to the conclusion of trial- **1 hour**.
2. With the case studies presented, students are paired to draft and exchange election petitions and reply. One student in each group becomes petitioner in one case and the other petitioner in the other case. **10 minutes**.
3. Students draft and exchange their petitions **and each partner drafts a reply to the petition exchanged**. This can be done outside the class – **50 minutes**.

15 MINUTES BREAK

4. Presentation of report of activity 3 and discussions – **1 hour**.
5. Tutor presents quizzes, cases or scenarios and students are grouped to discuss them and present their positions/answers (E.g. of quizzes: What would be the implications of: filing petitions after the statutory period?..., amending petitions after the statutory period?..., filing an unsigned or undated petition?..., filing a petition that has no prayers/reliefs?..., failure to pay for security for costs? etc) – **25 Minutes**.

6. Groups present report of activity 5 and discussions follow – **25 minutes**.
7. Assessment – **10 minutes**.

(NB: Students' attention should also be drawn to Week 19 Pre-class activities).

WEEK 19 – MATRIMONIAL CAUSES

Contents

1. General principles, jurisdiction and courts for matrimonial causes
2. Contents of matrimonial petition
3. The Procedure: Commencement of matrimonial matters and the sequences of events up to conclusion of trial
4. Drafting matrimonial causes petitions

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the general principles including the courts that exercise jurisdiction for matrimonial petitions;
- ii. state and discuss the content and material facts to be pleaded and proved in matrimonial causes petition and to explain the procedure and sequences of events up to the conclusion of trial;
- iii. draft a matrimonial cause petition and reply;

Activities before class

1. Students are to read the topic in advance of the class lesson including the Matrimonial Causes Act and the Rules and Case law on the subject. Students are to see and bring to class copies of precedents of matrimonial causes petitions and reply.
2. Tutor should present at least 2 case studies to students in advance of the class lesson. Students

- would be required to use the case studies to draft petitions and replies.
3. Tutor would also present a list of judicial decisions on matrimonial petition and request students to read these in advance for discussion in the class.

Activities in class

1. Tutor and students in plenary discuss the general principles including the courts that exercise jurisdiction for matrimonial causes; the content and material facts to be pleaded and proved in matrimonial causes petition and the procedure and sequences of events up to the conclusion of trial- **1 hour**.
2. With the case studies presented, students are paired to draft and exchange petitions and reply. One student in each group becomes petitioner in one case and the other petitioner in the other case. **10 minutes**.
3. Drafting and exchange of petitions and reply. This can be done outside the class – **50 minutes**.

15 MINUTES BREAK

4. Presentation of report of activity 3 and discussions – **1 hour**.
5. Tutor presents quizzes, cases or scenarios and students are grouped to discuss them and present their positions/ answers- **25 minutes**.
6. Groups present report of activity 5 and discussions follow – **25 minutes**.
7. Assessment – **10 minutes**.

(NB: Students' attention should also be drawn to Week 20 Pre-class activities).

WEEK 20

1. COSTS AND SANCTIONS IN CIVIL LITIGATION

2. FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE

Contents

1. Fundamental Rights Enforcement Procedure: Courts with jurisdiction; modes of application and drafting; remedies; applicable rules; advantages, disadvantages and limitations of the rules; Comparison of Fundamental Rights Enforcement Procedure with Judicial Review and Writ of Habeas Corpus.
2. Costs and Sanctions

Outcomes

At the end of this lesson Students would be able to:

- i. explain and discuss the general principles, procedure and scope of Fundamental Rights Enforcement Procedure Rules, including the courts that exercise jurisdiction over Fundamental Rights Enforcement;
- ii. draft applications under the Fundamental Rights Enforcement Procedure Rules;
- iii. explain the similarities and differences between Fundamental Rights Enforcement Procedure Rules and Judicial Review/Writ of Habeas Corpus.
- iv. list, explain and discuss the principles, scope and applications of costs and sanctions in Civil Litigation;

Activities before class

1. Students are to read the topics in advance of the class lesson including the Fundamental Rights Enforcement Procedure Rules, provisions of the

High Court Rules on Costs and Sanctions, and Case law on the subjects.

2. Tutor should present at least 1 Case Study to students in advance of the class lesson. In the class, the students would be required to use the Case Study to draft Applications to enforce fundamental rights under the Rules.
3. Students would also be required to draw up **in advance** a composite table of costs and sanctions in a comparative manner between the High Court Rules of Lagos and Abuja. Each student would present his/her table in the class. The table should be in this format:

CIVIL PROCEEDINGS COSTS AND SANCTIONS

CIVIL PROCEEDINGS COSTS AND SANCTIONS

S/N	SUBJECT	LAGOS	ABUJA
1.	Irregular proceedings	Or.7- May set aside/costs	0r.5 May set aside / costs
2.	Late appearance	Or.11 R.5-N1000 for each day of default	Defendant shall be bound by provisions of Or 56 r.10 or any amount that the Chief Judge may determine from time to time.
3.	Frivolous	Not specified but general	

	suit	<p>provisions on award of cost against legal practitioner for certain defaults.</p> <p>Questionable cases and abuse of process sanctioned under the rules of professional conduct- R.24(2) & (3) RPC</p>	
4.	Irregular proceedings	O.7 Lagos- May set aside/costs	O.5 Abuja- May set aside/ costs
5.	Late appearance:	O.11 R.5 Lagos- N1000 for each day of default	Or 9 r.5 Abuja-defendant shall be bound by provisions of Or 56 r.10 or any amount that the Chief Judge may determine from time to time.
6.	Frivolous suit:	Lagos- Not specified but general provisions on award of cost against legal	Abuja-Counsel personally liable for costs – Or 2 r.8; Questionable cases and

		<p>practitioner for certain defaults; Questionable cases and abuse of process sanctioned under the rules of professional conduct- R.24(2) & (3) RPC.</p>	<p>abuse of process sanctioned under the rules of professional conduct- R. 24(2) & (3) RPC.</p>
--	--	--	---

Activities in class

1. Tutor and students in plenary discuss the general principles, procedure and scope of Fundamental Rights Enforcement Procedure Rules, including the courts that exercise jurisdiction over Fundamental Rights Enforcement – **1 hour.**
2. With the case studies presented, students draft applications to enforce fundamental rights under the Rules- **20 minutes.**
3. Presentation of the drafts and discussions – **40 minutes.**

15 MINUTES BREAK

4. Tutor and students discuss the similarities and differences between the fundamental rights enforcement procedure and Judicial review/writ of habeas corpus- **30 minutes.**
5. Tutor presents quizzes/questions and answers on Activity 4 - and students are randomly appointed to discuss them and present their positions/answers (E.g. of quizzes: What are the similarities and differences between Fundamental Rights Enforcement Procedure and Judicial Review? What are the similarities and differences between

Fundamental Rights Enforcement Procedure and Writ of Habeas Corpus? List sequentially the processes involved in fundamental rights enforcement procedure.) – **30 Minutes.**

6. Students present prepared composite tables of pre-class assignment on costs and sanctions under the High Court Civil Procedure Rules of Lagos and Abuja and discussions follow – **50 Minutes.**
7. Assessment – **10 minutes**

CHAPTER ONE

INTRODUCTORY MATTERS

THE FOCUS OF THE SUBJECT

Civil Procedure is one of our bodies of adjectival laws. Its focus is to provide orderly and possibly expeditious methods for citizens to assert and defend their claims in court. The central role Civil Procedure plays in litigation lies in the fact that no matter how good a case appears to be, if it is not canvassed before the court according to the rules laid down by law, the consequences may be grave to the litigant. Counsel have been known to lose very good cases by some kind of lackadaisical application of rules of practice and procedure. The rules of procedure are binding on parties as they are supposed to guide every step taken by a litigant in an action from commencement till judgment (including enforcement) and appeals.

Our approach to the study of this subject has always been to expose students to the rules of court and guide them on how to apply these rules. Civil Procedure Rules are found in the Constitution, Sheriff and Civil Process Act/Laws, Statutes, Case Laws, Rules of Court e.g. Supreme Court Rules, Court of Appeal Rules, Federal High Court Rules, National Industrial Court Rules, High Court Rules, Magistrates' Court Rules, Customary Court Rules etc., and also practice directions.

Sometimes, our ex-students complain that they meet glaringly different situations in practice from the supposed guide they got at the Law School. The reality remains that as diverse as Nigeria is, so are the laws and rules applicable. For instance, there are 36 states and the Federal Capital Territory, Abuja. Each state has its own High Court Rules, Magistrate Court Rules and Customary Court Rules. The attempt by the Nigerian Law Reform Commission in

1987 to introduce a code of Uniform Civil Procedure for the High Courts in Nigeria though quite commendable has not been resoundingly successful. Most states have modified the rules. Even Kano state which retained the uniform rules for some years has also jettisoned same and introduced the Kano High Court (Civil Procedure) Rules of 2014. Since we cannot take students through the respective rules of court as adopted and/or modified, by some states, reference will be made only to the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 and High Court of Lagos State (Civil Procedure) Rules 2019, subsequently referred to as the Abuja Rules 2018 and Lagos Rules 2019. The substance in the various rules of court is basically the same. Students must be familiar with Court forms e.g. format for Writ of Summons, Originating Summons, Petitions, Originating Motions etc. These forms are normally annexed to the Rules of Court.

Students must also be familiar with ORDERS and RULES e.g. ORDER 10 RULE 10 which is usually abbreviated as O.10 R. 10. Orders may loosely be said to refer to "actions" capable of being taken in Court while the Rules refer to the procedures of taking such actions e.g. Order 12 Lagos State Rules 2019 provides for "Default of Appearance" and Rule 2 states "where any defendant fails to appear, a claimant may proceed upon default of appearance under the appropriate provisions of these rules upon proof of service of the originating process" (Order 12 Rule 2, Lagos Rules 2019).

Since Nigeria has a lion share of the global phenomenon of case glut in courts, an attempt has been made to incorporate alternative methods of resolving disputes. Most importantly, we have incorporated some aspects of the sweeping reforms that have given civil proceedings a new

outlook. Most of these reforms are incorporated in the latest amendment to the Supreme Court Rules of England 1997. These reforms aimed at more purposeful and expeditious disposal of matters in court are already being implemented in countries such as Australia, Canada and USA. Some of these reforms include relaxation of the rules of hearsay evidence and relaxation of some technical rules that give rise to cumbersome interlocutory proceedings. This also includes the advance exchange of written statements on oath of witnesses to replace examinations in chief, etc. The approach recommended for students is to first of all understand the rules as they are and often times ponder over their efficacy and what should be done to improve them.

SOURCES OF CIVIL PROCEDURE

A. RULES OF COURT

Every court has its own rules e.g. Supreme Court Rules 1985, Court of Appeal Rules 2021, Federal High Court Rules 2019 and High Court (for convenience, reference in the course will be made to Abuja Rules 2018 and Lagos Rules 2019 only), Sharia Court of Appeal Rules, Customary Court of Appeal Rules, Magistrates Courts Rules, District Court Rules, Customary Court Rules. Rules of Court are the primary focus of our study of Civil Procedure.

Who makes the rules of court?

It is always the statute creating the court that states who should make rules of the court e.g. The 1999 Constitution as amended creates State High Courts. Section 274 of the Constitution provides that the Chief Judge of a state may make rules for regulating the practice and procedure of the High Court of the State (including the service and

execution of all civil and criminal processes) subject to the provision of any law made by the House of Assembly of a State. In respect of service and execution of court processes especially of superior courts of record, it is the Sheriff and Civil Process Act contained in chapter S6, Laws of the Federation 2004, Volume 14 that is the principal legislation. This is because Second Schedule, Part One of the 1999 Constitution as amended providing for exercise of legislative powers, has service and execution of court processes as item 57 in the exclusive legislative list, the list reserved for the National Assembly.

It follows therefore that rules of court made in exercise of the powers conferred by Section 274 of the Constitution as amended especially as regards service and execution of court processes or under the respective High Court Laws, must conform to the Sheriff and Civil Process Act contained in Chapter S6, Vol. 14, Laws of the Federation of Nigeria, 2004 or be void to any extent of its inconsistency. Otherwise, if strictly followed as it ought to be, States are precluded from legislating on service and execution of court processes of superior courts of record which is in the exclusive list. See Nwabueze v Obi Okoye [1988] 10 - 11 SCNJ. 60.

For the Federal High Court, Section, 254 of the 1999 Constitution as amended provides that subject to the provisions of any Act of the National Assembly, the Chief Judge of the Federal High Court may make rules for regulating the practice and procedure of the Federal High Court. The Federal High Court Rules 2019 is the applicable rules for practice and procedure in the Federal High Court. Section 248 of the 1999 Constitution as amended provides that subject to the provisions of an Act of the National Assembly, the President of the Court of Appeal may make rules regulating the practice and procedure of that court. In

the exercise of the powers conferred on him under the aforementioned section, the then President of the Court of Appeal made the Court of Appeal Rules 1981 amended in 1984. This was further amended by the Court of Appeal Rules 2021 and those of 2007 and 2011. But the current one in use now is the Court of Appeal Rules 2021. Section 236 of the Constitution as amended vests in the Chief Justice of Nigeria the responsibility of making rules for practice and procedure of the Supreme Court. Presently, the applicable rules in the Supreme Court as made by the then Chief Justice of Nigeria, Hon. Justice G. S. Sowemimo, is the Supreme Court Rules 1985.

We shall be referring to the rules of courts in our discussions of the general principles of Civil Procedure. Incidentally, the rules of court are not an end in themselves; they are merely the means to the end of litigation, which is, when judgment is handed down. This may be said to be a lacuna in all the court rules. Enforcement of Judgment is subject to the procedure provided in the Judgment (Enforcement) Rules, annexed to the Sheriff and Civil Process Act and the Sheriff and Civil Process Laws of the respective States. We shall use the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018, as well as the High Court of Lagos State (Civil Procedure) Rules 2019. Needless to say Lagos is the commercial capital of Nigeria and nearly 70% of the lawyers in Nigeria are based in Lagos and more than that percentage of the volume of litigation in Nigeria are in Lagos. Both Lagos rules and the Abuja rules represent a departure from the Uniform Rules. The Uniform Rules were represented by the Kano Rules of 1988 but Kano has since departed from the uniform rules by introducing its 2014 Rules which largely followed the Lagos Rules of 2012.

B. STATUTE CREATING THE COURT

Examples are section 8 (2) Court of Appeal Act which confers power on the appropriate authority to make rules of the Court of Appeal; section 7 of the Supreme Court Act and section 25 of the Court of Appeal Act which provide for filing of notice of appeal. Conflict between rules and statute is resolved in favour of statute.

C. OTHER STATUTES

- (i) The Sheriffs and Civil Process Act/Law and the Judgment (Enforcement) Rules: These clearly deal with the appointment and duties of sheriffs; the enforcement of judgment and orders and the service and execution of civil process of the courts throughout the Federation and the States.
- (ii) Foreign Judgment (Reciprocal Enforcement) Act, 1961. This Act regulates the enforcement of foreign judgments in Nigeria.
- (iii) Companies and Allied Matters Act. The Companies and Allied Matters Act contains provisions enabling applications to be made to the Federal High Court in respect of a company or for other proceedings to be taken under the general law. Under the Act the Company Proceedings Rules 1992 and Company Winding Up Rules 2001 and the Company Winding Up (Amendment) Rules 2013 were made which stipulates the practice and procedure for the winding up of company.
- (iv) Matrimonial Causes Act and the Matrimonial Causes Rules 1983. This Act and Rules regulates practice and procedure in matrimonial causes in the State High Courts.
- (v) The Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules 2011. The Rules was made pursuant to section 21 of the Admiralty Jurisdiction Act 1991 and the rules apply to every admiralty cause or matter brought before the Federal High Court.

(vi) Companies Income Tax Act and Federal High Court (Tax Appeals) Rules 1992. The Rules was made under the Companies Income Tax Act for the purpose of regulating procedure in respect of appeals made from Appeal Commissioners to the Federal High Court.

D. CONSTITUTION

This enables the making of rules of court and other procedural rules. Examples are section 46(3) of the Constitution of the Federal Republic of Nigeria 1999 as amended which enables the making of the Fundamental Right Enforcement Rules; section 248 and 236 which enable the making of Court of Appeal and Supreme Court Rules respectively. The Constitution also directly provides for practice and procedure e.g. provision on right of appeal.

E. DECISIONS OF COURT ON PROCEDURE

This arises in the course of interpretation of rules of court (including formulation of new rules) that the courts have developed over the years. These are not stated in any rules or statutes but laid down in decisions of superior courts in the course of interpretation of rules or statutes. Examples include the requirement of addressing the court before making an order of non-suit. See Craig v Craig (1966)1 ALL NLR 173; Lion Building v Shodipe (1976)12SC 135. However, this rule is presently provided in some High Court Rules. For example, Order 34 (1) of the Lagos Rules 2019 provides thus:

Where satisfactory evidence is not given entitling the claimant or Defendant to the Judgment of the Court, the Judge may *suo motu* or on application non-suit the claimant, but the parties“ Legal Practitioners shall have the right to make submissions about the propriety or otherwise of making such order.

Also, the rule that a court should not permit a defence counsel to make a no-case submission except he elects to stand by the submission, without given evidence is a practice of court enunciated in judicial decisions. *Ikoro v Safrap (Nigeria) Ltd* (1977) SC 123

F. PRACTICE DIRECTIONS

Practice Direction is a direction given by the appropriate authority stating the way and manner a particular rule of court should be complied with, observed or obeyed. See *University of Lagos v Aigoro* (1984)11 SC 152. Non-compliance with the Practice Direction is fundamental as it vitiates all steps taken at the trial resulting in nullity. See *Nwankwo v Yar'adua* (2010)12 NWLR (Pt.1209)518.

CHAPTER TWO **COURTS WITH CIVIL JURISDICTION**

SUPREME COURT OF NIGERIA

This is apex court in the hierarchy of courts in Nigeria. It consists of the Chief Justice and such number of Justices of the Supreme Court not exceeding twenty-one as may be prescribed by an Act of the National Assembly: Section 230(2) 1999 Constitution.

It has both original and appellate jurisdiction – See S. 232 of the 1999 Constitution and S. 1(1) of the Supreme Court (Additional Original Jurisdiction) Act 2002 for the original jurisdiction of the Court. The Court hears appeals from the Court of Appeal – S. 233 of the 1999 Constitution.

COURT OF APPEAL

The Court of Appeal is next to the Supreme Court in the hierarchy of courts in Nigeria. It consists of a President and such number of Justices of the Court of Appeal not less than forty-nine of which not less than three shall be learned in Islamic Personal Law and not less than three also learned in Customary Law. It should be noted that the number of Court of Appeal Justices was increased to ninety by Court of Appeal (Amendment) Act 2013. The Court has original and appellate jurisdiction. Its original jurisdiction lies in the determination of the election of the President or Vice President and allied matters – S. 239 of the 1999 Constitution. The Court hears appeals from the High Courts, National Industrial Court, Customary and Sharia Courts of Appeals, National and State Houses of Assembly Election Tribunals, Governorship Election Tribunals, Court Martial and other tribunals See Ss. 240 and 246 of the 1999 Constitution.

THE FEDERAL HIGH COURT

See generally Sections 249-253 of the Constitution 1999.

The Federal High Court was first established by the Federal Revenue Court Act of 1973 and known under that statute as the Federal Revenue Court. It was restyled the Federal High Court by section 230 (2) of the Constitution 1979. The civil jurisdiction of this court is as defined by section 7 (1) of the 1973 Act. However, under the constitution additional jurisdiction was conferred on the court.

Section 251 1999 CONSTITUTION vests the Federal High Court with jurisdiction as follows:

Notwithstanding, anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from:

- a) the revenue of the Government of the Federation in which the said government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;
- b) the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation;
- c) customs and excise duties and export duties, including any claim by or against the Department of Customs and Excise or any member or officer thereof, arising from the performance or purported performance of any duty imposed under any regulation relating to customs and excise duties and export duties;
- d) banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other

fiscal measures: Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank;

- e) the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act;
- f) any Federal enactment relating to copyright, patents, designs, trade marks, and passing off, industrial designs and merchandise marks, business names, and commercial industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards;
- g) any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports), and carriage by sea;
- h) diplomatic, consular and trade representation;
- i) citizenship, naturalization and aliens, deportation of persons who are not citizens of Nigeria, as follows: extradition, immigration into and emigration from Nigeria, passport and visas;
- j) bankruptcy and insolvency;
- k) aviation and safety of aircraft;
- l) arms, ammunition and explosives;
- m) drugs and poisons;
- n) mines and minerals (including oil fields, mining, geological surveys and natural gas);

- o) weights and measures;
- p) the administration or the management and control of the Federal Government or any of its agencies;
- q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies; and
- r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; Provided that nothing in the provisions of paragraph (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.

The Federal High Court shall also have and exercise jurisdiction and powers in respect of treason, treasonable felony and allied offences. Further, it shall also have and exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by sub-section 1 of this section.

THE ADMIRALTY JURISDICTION OF THE FEDERAL HIGH COURT

Admiralty jurisdiction was conferred on the Federal High Court by section 9 (i) (d) of the 1973 Act but as the Decree does not define the scope of Admiralty jurisdiction, the limit of Admiralty jurisdiction of the court is understood as prescribed by the Administration of Justice Act of England 1956. See American International Insurance Company v. Ceekay Traders Ltd (1981) 5 SC 81. By section 7 (i) (g) (h) of the 1956 English Act, the Admiralty' jurisdiction of

the High Courts covers (i) any claim for loss or damage to goods carried in ship (ii) any claim arising out of any agreement relating to the carriage of goods in ship.

The cause of action, to cover admiralty jurisdiction must *inter alia* have arisen on the high seas. The goods must have been lost when they were being carried in ship as cargo and not lost after they had been offloaded from the ship. See A.M.C v. NPA (1987) 1 NWLR (Pt. 51) 475.

Note that disputes arising out of International Documentary Credits do not always come under the admiralty jurisdiction of the Court. Here five contracts are involved in the letter of credit i.e. the contract between the buyer and the seller, the contract between the buyer and the issuing bank, the contract between the confirming bank and the issuing bank, the contract between the seller and the confirming bank; contract of affreightment between the supplier and the ship owner. The Supreme Court held that dispute arising from a contract between the buyer and the issuing bank does not fall under matters of admiralty as it has nothing to with admiralty. Federal High Court is now vested with exclusive jurisdiction in admiralty matters. It should be noted that under the Admiralty Jurisdiction Act 1991, the scope of admiralty has been extended to include matters which ordinarily were not considered admiralty matters, e.g. damages arising from oil pollution.

On the jurisdiction of the Federal High Court, see the following cases:

1. Bronik motors Ltd v. Wema Bank (1983) 6 S.C. 158 at 168
2. Jammal Steel Structure v. ACB Ltd (1973) 1 ARNLR. (Pt. 1) 208
3. American International Insurance Company v. Ceekay Traders Ltd (1981) 5 SC 81
4. Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212

5. *Awoniyi v Board of Customs and Excise* (1990)1 NSCC. 103
6. NEPA v. Edegbero (2002)18 NWLR (Pt. 798) 79 NDIC v. Okem Enterprises Ltd and Another [2004] 10 NWLR (Pt. 880) 107
7. *Wema Securities and Finance Plc v. NAIC* [2015] 16 NWLR (Pt. 1484) 93

THE STATE HIGH COURTS (HIGH COURT OF FCT AND OF THE STATES)

These are courts of general and wide jurisdiction limited only by provisions of the constitution that expressly exclude or curtail their jurisdiction. See generally sections 255-257 (for FCT) and Sections 270-274 (for States).

Under 1979 Constitution, the State High Courts were courts of unlimited jurisdiction and as such any matter could be commenced there. See. section 236 CFRN 1979. In Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212 (supra) the Supreme Court held that the State High Court can exercise concurrent jurisdiction on matters upon which the Federal High Court can exercise jurisdiction. See also *Awoniyi v Board of Customs and Excise* (1990)1 NSCC. 103 (Supra). Note however, the provisions of section 38 of the Copyright Decree 1988 conferring exclusive jurisdiction on the Federal High Court. See also section 560 of the Companies and Allied Matters Decree, which defines a court in the Decree to mean the Federal High Court. The foregoing provisions limited the extensive powers of the State High Courts to exercise unlimited jurisdiction so far as they relate to matters therein concerned.

Under 1999 Constitution the Jurisdiction of the State High Court is limited by section 251 of the Constitution, which confers exclusive jurisdiction on the Federal High Court in certain matters.

CONCURRENT JURISDICTION OF THE FEDERAL HIGH COURT AND THE STATE HIGH COURTS

Certain matters are concurrently adjudicated upon by both the Federal High Court and the State High Courts. These are matters pertaining to a banker-customer relationship under the proviso to s. 251(1)(d) of the 1999 Constitution; reference of questions of law; and fundamental rights enforcement matters.

Matters arising from a Banker – Customer Relationship under the Proviso to S. 251 (1) (d) of the 1999 Constitution.

The Supreme Court has held in *FMBN v. NDIC* [1999] 2 SCNJ 57 and *NDIC v. Okem Enterprises* (2004) 4 SC (Pt. 2) 77 that in a dispute arising from a banker-customer relationship, both courts share the jurisdiction to adjudicate on same. The proviso, the court said, limits the exclusivity of the jurisdiction conferred on the Federal High Court in the preceding subsection but not to divest the Court of the jurisdiction.

Reference of Questions of Law

Matters of reference of questions of law as to interpretation or application of the Constitution from inferior courts to the Federal and States High Courts, under S. 295 (1) of the 1999 Constitution is also concurrently shared by both courts. The matter must be “a substantial question of law” – *Okewa v. Military Governor of Imo State* (1996) 6 SCNJ 22 at 234; *African Newspapers of Nigeria Ltd. v. The Federal Republic of Nigeria* (1985) 2 NWLR (Pt. 6) 137 at 149; *Bamaiyi v. AG. (Fed)* (2001) 7 SCNJ 346 at 356; [2001] 8 NWLR (Pt. 715) 270; *Akan v. AG (Rivers)* (1982) 3 NCLR 881. Once the Supreme Court has pronounced on a provision of the Constitution, the question of interpretation or application of same ceases to be a

substantial question of law to be referred – Rossek v. ACB (1993) 10 SCNJ 20 at 60

Fundamental Human Rights Enforcement Cases

Another area where both the Federal High Court and State High Courts have concurrent jurisdiction is the area of enforcement of fundamental human rights entrenched in Chapter IV of the 1999 Constitution – section 46 (1) and (2). The section provides:

Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.

There was a Controversy surrounding the concurrent jurisdiction of the Federal High Court and the State High Court to try Fundamental Rights Cases. This Controversy emanated from the decisions of the Supreme Court in **Tukur v Government of Gongola State (1989) 4 NWLR (pt 117) 517** and **Grace Jack v University of Agriculture, Makurdi (2004) 5 NWLR (Pt 865) 208.**

In Tukur, it was held that the FHC can only try fundamental right cases arising from matters over which it

has jurisdiction under S.251 of the Constitution. In Grace Jack, It was held that both courts can exercise jurisdiction irrespective of the subject matter.

However, this controversy is now settled by the recent decisions of the Supreme Court in **Federal University of Technology Minna v Olutayo (2018) NWLR (Pt. 1617) 176 and EFCC v Reinal (2020) 9 NWLR (Pt 1730) 489**. The position is that both the Federal High Court and the State High Court can try fundamental Rights Cases irrespective of the Subject matters of enforcement.

See Chapter Sixteen on Fundamental Rights Enforcement for Further discussion on the issue.

POWER OF TRANSFER OF CASES FROM FEDERAL HIGH COURT

Under the Federal High Court Act, section 22 (2) provides that no cause or matter shall be struck out by the Federal High Court merely because such matter or cause was taken to the Federal High Court instead of the High Court of a State in which it ought to have been brought and the judge of the Federal High Court before whom such cause or matter is brought may cause such cause or matter to be transferred to the appropriate High Court of the State. The Supreme court held that although, the word used in the section is "may", such word must be construed as imposing an obligatory duty and that it will be absurd to hold that a discretion is given because when a judge of the Federal High Court holds that he has no jurisdiction and then refuses to order a transfer, he can neither strike out the case nor dispose of it in any other manner. See section 26 of the Act for the power of the F.H.C see also Mokelu v. Federal Commissioner for Works and Housing (1976) 1 NMLR 329 at 433; A.M.C v. NPA (1987) 1 NWLR (Pt. 51) 475.

POWER OF TRANSFER OF CASES FROM STATE HIGH COURT

The power to transfer must be in accordance with the rules of practice and procedure applicable to the State High Court. The Supreme Court held that the Lagos State High Court under Section 22 (3) of the Federal High Court Act had no power to transfer a case before it to the Federal High Court after deciding that it had no jurisdiction over such a case. The appropriate step to take is to strike out the action. The rationale for this decision was that the Federal High Court Act being a federal law could not regulate practice and procedure in the State High Court in view of section 274 of the Constitution which vests same in the Chief Judge of the State subject to laws made by House of Assembly of the State. *See A.M.C v. NPA (1987) 1 NWLR (Pt. 51) 475.* Fasakin Foods Ltd. v. Shosanya (2006) 10 NWLR (Pt. 987) 126.

There are however, provisions in the High Court Laws for transferring matters to Magistrates Courts/District Courts. See section 55 High Court Law of Lagos State 2015; section 65 High Court Act of FCT.

SHARIA COURT OF APPEAL

The Court shall in addition to any other jurisdiction as may be conferred upon it by a Law of a State exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic Personal Law. *See section 277 (2) 1999 Constitution* for matters the court can adjudicate upon. They relate to marriage, family relationships, gift, wills, guardianship of infants, succession, maintenance or guardianship of a physically or mentally infirm Muslim. The Court also has jurisdiction on any question where all the parties are Muslims and have elected that the case be determined in accordance with Islamic personal law.

CUSTOMARY COURT OF APPEAL

Section 280 (1) of the 1999 Constitution provides that there shall be for any state that requires it a Customary Court of Appeal. It consists of a President and such number of Judges as may be prescribed by the House of Assembly of a State. The President and Judges are appointed by the Governor on the recommendation of the National Judicial Council.

NATIONAL INDUSTRIAL COURT

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, S. 2, inserted a new S. 6(5)(cc) to the 1999 Constitution, which established the National Industrial Court as a superior court of record and clothed it with the powers of a High Court (S. 254D (1) of the 1999 Constitution as amended by S. 5(c), Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010).

JURISDICTION OF THE NATIONAL INDUSTRIAL COURT

Under S. 254(C) (1) of the 1999 Constitution as amended by the Third Alteration Act, the National Industrial Court is, notwithstanding the provisions of sections 251, 257, 272 and anything contained in the Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, vested with exclusive jurisdiction to hear and determine civil causes and matters:

- a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;*

- b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;*
- c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters Connected therewith or related thereto;*
- d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;*
- e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising there from;*
- f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;*
- g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;*
- h) relating to, connected with or pertaining to the application or interpretation of international labour standards;*

- i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;
- j) relating to the determination of any question as to the interpretation and application of any-
 - i. collective agreement;
 - ii. award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;
 - iii. award or judgment of the Court;
 - iv. term of settlement of any trade dispute;
 - v. trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
 - vi. trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;
 - vii. dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;
- k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;
- l) relating to-
 - i. appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;

- ii. appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and*
 - iii. such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;*
- m) relating to or connected with the registration of collective agreements.*

Subsections

(2) Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

(3) The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the Court premises on matters which jurisdiction is conferred on the court by this Constitution or any Act or Law:

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any matter that the National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.

(4) *The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.*

(5) *The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any other Act of the National Assembly or by any other law.*

(6) *Notwithstanding anything to the contrary in this Constitution, appeal shall lie from the decision of the National Industrial Court from matters in sub-section 5 of this section to the Court of Appeal as of right.*

On the jurisdiction of the National Industrial Court, see *Coca-Cola (Nig) Ltd v. Akinsanya* [2017] 17 NWLR (Pt. 1593) 74 at 130, per Eko, JSC; *Skye Bank Plc v. Iwu* [2017] 16 NWLR (Pt. 1590) 24

ECOWAS COMMUNITY COURT OF JUSTICE

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

JURISDICTION OF THE COMMUNITY COURT

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

- a) the interpretation and application of the Treaty, Conventions, Protocols, regulations, directives and decisions of the Community;
- b) the failure by Member States to honor their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of ECOWAS;
- c) the provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States;
- d) the Community and its officials;
- e) the action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions.
- f) Cases of violation of human rights that occur in any Member State;
- g) the Court shall have jurisdiction over any matter provided for in an agreement where the parties provide that the Court shall settle disputes arising from the agreement;
- h) any specific dispute referred to the Court by The Authority of Heads of State and Government.

MAGISTRATE'S COURTS AND DISTRICT COURTS

Magistrates Courts are courts of summary jurisdiction created by the law of the House of Assembly of a State as courts of summary jurisdiction i.e., matters are determined therein without pleadings or briefs filed by the parties. In the Southern part of Nigeria, Magistrates Courts are presided over by "Magistrates". But when a Magistrates' Court sits in its civil jurisdiction in the Northern parts of

Nigeria, it is called a “District Court” and its presiding officer is referred to as a “District Judge”. It is only referred to as a “Magistrates” Court” when it sits in its criminal jurisdiction and the presiding officer becomes a “Magistrate”.

In Lagos, the Magistrates’ Courts Law 2009, vests civil jurisdiction on the Magistrates Courts under section 28 thereof, over all personal actions arising from contract, tort or both, where the debt or damage claimed, whether as a balance of account or otherwise, is not more than ten million Naira (₦10,000,000.00) at the time of filing; all actions between landlord and tenant for possession of any land, agricultural, residential or business premises or house claimed under agreement or refused to be delivered up, where the annual rental value does not exceed ten million Naira (₦10,000,000.00) at the time of filing; This amount is exclusive of claim of arrears of rent and *mesne* profits, which may claimed in addition not minding the fact that the total claim exceeds ten million Naira (₦10,000,000.00); appointment of guardian *ad litem* and to make orders, issue and give directions relating to their appointment; and grant of injunctions or orders to stay, waste or alienate or for the detention and preservation of any property, the subject of such action or to restrain breaches of contract or tort; and to handle appeals from the Customary Court – See s. 28(1)(a)-(e), Magistrates” Courts Law

SMALL CLAIMS COURT (LAGOS)

Lagos State recently created within the Magistrates” Courts system, some courts designated as Small Claims Courts. See Small Claims Court Practice Directions 2018. The main objective of the small claims court is to provide easy access to an informal, inexpensive and speedy resolution of simple debt recovery disputes in the Magistrates” Courts.

The bases for commencement of action in a Small Claims Court are the same for the regular Magistrates' Courts. The claim must be for a liquidated money demand in a sum not exceeding ₦5,000,000.00 (five million naira), excluding interests and costs; and the Claimant shall have prior to filing the action, served on the Defendant, a letter of demand as in Form SCA 1.

CHAPTER THREE **PARTIES TO AN ACTION**

Capacity to sue or be *sued as a party in an action* plays a very important if not decisive role in Civil Litigation. The general principle is that an action, by or against a person who is incompetent in law is void and irremediable. Courts may however grant an amendment to regularize parties so far as the effect of the amendment would not be to wipe out one set of proceedings and substitute another.

Under the new rules in both Lagos and the Federal Capital Territory, Abuja, a person who institutes an action in court against another person is referred to as the "Claimant". The names of the persons proposed as plaintiffs/claimants and/or defendants or "applicants/petitioner" and respondents" must be clearly set out in the writ of summons or other originating processes *as the case may be*. If this requirement is not met, the proper order the court may make in the circumstances is striking out the suit.

For an action to be competent, parties must be legal persons i.e. either natural persons or an artificially created legal person e.g. a limited liability company. If the legal capacity of a plaintiff/claimant or a defendant is raised, the onus lies on the person claiming *that he has* capacity to prove his competence to conduct the action. If a party is proved not to be competent to sue or defend the action, he may be struck out of the suit. If the incompetent party is the plaintiff/claimant, the action itself may be struck out. See *Agbonmagbe Bank Ltd. v. General Manager, G.B. Ollivant Ltd.* (1961) 1 All NLR 366. In *Amodu Rufai Shitta & Ors v Momodu Ligali & Ors*, (1941) 16 NLR 21 @ 23 twelve individuals who described themselves as Executive of the Central Mosque Lagos and who sued in that capacity were

held to be nothing more than a collection of individuals with no capacity to sue.

TYPES OF PARTIES

It is important to bring the appropriate parties before the court in order for the court to be able to properly determine the case and also so that the judgment of the court will become binding on such parties.

There are basically four types of parties to an action namely:

- (a) Proper Parties
- (b) Desirable Parties
- (c) Necessary Parties
- (d) Nominal Parties

See generally (1) Green v. Green (1987) 3 NWLR (Pt. 61) 480 Compare with the case of Mobil Producing (Nig.) Ultd v. LASEPA & Ors. (2002) 12 SCNJ 1. (2)Hassan v. Atanyi (2002) 8 NWLR(Pt.77)0581 (3) Peenok Investment ltd. V. Hotel Presidential Ltd (1982) NSCC 477.
(4) Padawa v. Jatau (2003) 5 NWLR (Pt. 813) 247.

JOINDERS OF PARTIES

All persons may be joined in one action as Claimants in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such Claimants as may be found to be entitled to without any amendments. See Order 13 Rule 1, FCT High Court (Civil Procedure) Rules 2018 and Order 15 Rule 1, High Court of Lagos State (Civil Procedure) Rules 2019 for similar provision.

Providing for who may be defendants, Order 13 Rule 4 FCT High Court (Civil Procedure) Rules 2018 and Order 15 Rule 4 High Court of Lagos State (Civil Procedure) Rules 2019 both provide that any person may be joined as defendants against whom the right to any relief is alleged to exist whether jointly, severally or in the alternative.

Judgment may be given against one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.

Although the purpose of the above provision is to prevent multiplicity of actions wherever possible i.e. where several persons could maintain separate actions which arose from the same transaction or series of transactions and which could be determined under a common question of law or fact, it is difficult to deduce from them what manner of persons qualify as claimants or as defendants.

It had been held that although the above provisions cover joinder of parties, they do not cover joinder of causes of action. In *Amachree & Ors v. Newington*, 12 W ACA 97, the plaintiff and others were detained by District Officer Newington. They jointly sued the defendants for false imprisonment. It was held that each of the plaintiffs had a separate cause of action which may be determined on the respective damages suffered by them. Akinola Aguda, learned author and jurist in his book, *Principles of Practice and Procedure*, is however of the opinion that if the causes of action arise from one transaction, it would be correct to institute a common action.

The Abuja Rules and Lagos Rules have made provision for the following classes of parties:-

1. Partners may sue or defend in any of the following 3 different ways namely: (1) in the name of the firm, but any party to the action may apply to the court for a statement of the names of the partners to be furnished or verified on oath or as the court may direct. See Order 13 rules 25 and 26 Abuja High Court Rules 2018; Order 15 rule 24 and 25 of Lagos High Court Rules 2019 (2) All the partners of the firm & (3) one or more of the partners as representatives of the firm/partnership. See *Marki v.*

Hassan Said (1961) All NLR 502; Iyke Med. Merchandise v. Pfizer Inc. (2001) 10 NWLR (Pt. 722) 540

Apart from the above provision of the High Court rules and case laws on partnership, the new Companies and Allied Matters Act (CAMA) 2020 has provided for 2 new different types of partnerships. These are (i) The Limited Liability Partnership under S.746 of Part C of CAMA which provides that “a limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from the partners. A limited liability partnership shall have perpetual succession.” (ii) The Limited Partnership under S. 795 of Part D of CAMA which provides that Limited partnerships may be formed in the manner and subject to the conditions set out in this Part. A limited partnership shall not consist of more than 20 persons. A limited partnership shall consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons called limited partners who shall not be liable for the debts or obligations of the firm, beyond the amount they have contributed or agreed to contribute to the partnership at the time of entering into the partnership.

Going by the above provisions of CAMA, the Limited Liability Partnership being a body corporate and a legal entity can sue and be sued in its corporate name. In the case of the Limited Partnership, the general partners and limited partners can sue and be sued for the debts and obligations of the firm.

2. Infants, lunatics and persons of unsound mind are generally categorized and referred to as “Persons under legal disability” both under the Lagos and

Abuja rules. Under the rules they may respectively sue or defend by their guardian or guardians appointed for that purpose. See Order 13 Rule 11 of FCT Abuja Civil Procedure Rules 2018 and Order 15 Rule 9 of Lagos State High Court (Civil Procedure) Rules 2019

3. Trustees, Executors and Administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives without joining any of the beneficiaries. See Order 13 Rule 13(1) of FCT Abuja (Civil Procedure) Rules 2018 and Order 15 Rule 11(1) of the Lagos State High Court (Civil Procedure) Rules 2019
4. The Rule did not provide for legal capacity of Married Women. Under Common Law, marriage divested a woman of her capacity to contract. This is as a result of the common law presumption of legal unity of spouses. Husband and Wife were regarded as one person. The common law rules in this regard were essentially designed to preserve family unity and domestic harmony. Therefore, a husband and wife could be sued jointly but could not sue each other. But the Married Woman Property Act 1882 as amended in 1893 changed the position and gave married women capacity to enter into contracts and sue and be sued in respect of their separate property as if they were unmarried. Therefore under the Act, a married woman could maintain civil action against all persons including her husband in respect of her pre-marriage contracts or properties for the security and protection of her separate property.
5. Registered Associations which are registered under Part C of the old CAMA 2004 (now Part F of CAMA 2020) can sue and be sued in their registered names (i.e the registered trustees of that association- See section 590 CAMA 2004 now section 830(1) CAMA 2020). See *Bambe v. Yesufu Aderinola*

(1977) 1 SC 1. Example is the Registered Trustees of Nigerian Bar Association.

6. Unincorporated Associations cannot sue as they are not legal persons. Generally they cannot sue or be sued in their names. However they can sue through their members or officers are representatives of the association. But in Kpebimoh v. Board Of Governors Western Ijaw TTC 1966 1 NMLR 130, the court held that an unincorporated body empowered by law to do certain acts which could result in injury to others must be assumed to be impliedly clothed with the power to sue and be sued. Compare this case with the case of Gani Fawehinmi v. NBA (No.1) (1989) 2 NWLR (Pt. 105) 494 at 532, where it was held that an Unincorporated Association is just an association of members and can only sue and be sued through its members or officers as representatives of the Nigerian Bar Association (NBA) since the NBA was not an incorporated association. However after this decision, it was found that the NBA had already been registered at the Corporate Affairs Commission as Registered Trustees of the NBA sometime in April 1983. It can therefore sue and be sued in its registered name as the “Registered Trustees of the NBA”. The decision of the court in Gani Fawehinmi v. NBA is therefore no longer the law as it relates to the NBA not being registered.
7. Registered Business names formerly under part B of CAMA 1990 (now under part E of CAMA 2020) can sue or defend an action in the name of their owners and there must be an indication under the name that the owner is trading under the name and

- style of the business name. See *Okechukwu v. Ndah* (1967) *NMLR* 366.
8. Trade Unions can sue and be sued in their registered names. In *Bonsor v Musicians Union* (1955) 3 All ER 518 it was held that though an unincorporated body, the Musicians Union could be sued for breach of contract as a legal entity and that damages could be recovered out of the Union funds.
 9. In the case of Statutory Bodies they can sue and be sued in their statutory or corporate names.
 10. Actions for and against Government will be commenced and defended by the Attorney General of the Federation and the State as the case may be.

SUITS IN A REPRESENTATIVE CAPACITY (REPRESENTATIVE ACTION)

Where there are numerous persons having the same interest in one matter, one or more of such persons may sue or be sued or may be authorized by the court or judge in chambers to defend the matter on behalf of the others. Examples include suits by or against executors/administrators, trustees, holders of Power of Attorney, land, family or communal matters. The reason behind the provisions in the Rules of Court permitting representative actions include: - Convenience for the court and the parties, the need not to overcrowd the courts with parties whose interest would be adequately protected by some responsible members of the group. See Order 13 rule 14 Abuja High Court Rules 2018; Order 15 rule 12 Lagos High Court Rules 2019. See also the case of *Tessi Opebiyi v. Oshoboja & Ors.* (1976) 9 – 10 SC 195

Under both rules the need to seek leave of court to sue in a representative capacity seems to have been dispensed with.

CLASS ACTIONS:

This is a type of representative action and it is provided for under both the FCT Abuja rules, 2018 and the High Court of Lagos State rules, 2019. It will apply in a situation where in any proceedings the person or class of persons or some other members of that class that may be interested in the subject matter cannot be ascertained or cannot be readily ascertained or if ascertained cannot be found or if ascertained and found, it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class.

In the above instance the judge may make an appointment of a person or persons for the purpose of the proceedings. The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented. See Order 13 rule 15 Abuja Rules 2018; Order 15 rule 13 Lagos Rules 2019. NOTE however that the scope of application of the Class Actions vary from one jurisdiction to another.

NON-JOINDER AND MISJOINDER OF PARTIES

Non-joinder refers to when all persons who may be entitled to or who claim some shares or interest in the subject matter of the suit or who may likely be affected by the result have not been made parties. If this situation arises, the court may either on the application of any of the parties or *suo motu* order that the names of any party who ought to have been joined or whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.

The court may adjourn the suit to a future date with a direction that such person or persons should be joined as parties to the action either as claimants or defendants in the suit as the case may be. Every party whose name is added

as defendant shall be served with the originating processes or notice in the manner prescribed in the Rules or in such manner as may be prescribed by the court and the proceedings against such person shall be deemed to have begun on the service of such originating processes or notice. On proof of due service of such notice, the person or persons so served, whether he or they appeared or not, shall be bound by the proceedings. See Order 13 rule 18 (3) & (5) High Court of FCT Abuja (Civil Procedure) Rules 2018; and Order 15 Rule 16 (3) & (5) of High Court of Lagos State (Civil Procedure) Rules, 2019, for similar provisions.

Mis-joinder on the other hand refers to when parties were improperly joined in an action either because they have no cause of action or any interest whatsoever in the suit. The court may at any stage of the proceedings and on such terms as may appear to the court to be just, order that the name or names of any party or parties improperly joined, whether as **claimants** or defendants be struck out. See Order 13 rule 18 (2) of the High Court of FCT Abuja (Civil Procedure) Rules, 2018 and Order 15 rule 16 (2) Lagos State High Court (Civil Procedure) Rules 2019. The Court may do this either *suo motu* or on the application of a party to the suit. However, if several claimants in a suit start disagreeing among themselves or canvassing conflicting interests, the court may strike out the name of one of them and make him a defendant.

Similarly, in the case of non-joinder, the court has a discretion which it may exercise *suo motu* or on the application of either party to order the joinder of a person who ought to be made a party, so that all the matters in dispute will be completely determined between all the parties concerned. A party desiring to be joined in an action may make an application by motion on notice supported by

an affidavit and written address deposing to the reasons for seeking to join the action. All existing parties in the suit must be served with a copy of the application. See also Onayemi v. Okunubi. (1966) NMLR 50.

JOINDER OF PERSONS JOINTLY AND/OR SEVERALLY LIABLE

Order 13 rule 7 Abuja High Court Rules 2018 and Order 15 rule 7 Lagos High Court Rules 2019 both provide that “a claimant may at his option join as parties to the same action, all or any of the persons severally or jointly and severally, liable on any contract, including parties to bills of exchange and promissory notes”. Consequently, when a person has a joint and several demands against more persons than one, either as principals or sureties, it will not be necessary for him to bring before the court as parties, all persons liable thereto. He may at his option proceed against any one or more of the persons severally or jointly liable.

Both the Abuja and Lagos High Court (Civil Procedure) Rules further provide the procedure to be adopted where a claimant is in doubt as to persons from whom he may seek redress. See Order 13 rule 8 Abuja High Court rules 2018 and Order 15 rule 8 Lagos High Court Rules 2019. In such circumstances, a claimant may join two or more defendants such that the question as to which (if any) of the defendants is liable and to what extent may be determined between all the parties by the court. See also the case of Ekun & Ors v. Messrs Younan & Sons & Anor (1959) WRLR 190, where two drivers of different vehicles collided with and caused damage to the plaintiff. The two drivers were blaming each other for the damage. The court recognized that it was proper for the plaintiff to sue both parties and claim damages severally and in the alternative, but not jointly. See Bullock v. London General Omnibus company (1907) 1KB 264.

Generally the following guiding principles have emerged in considering joinder of parties:

1. before parties are joined in the same suit, counsel must consider whether the defendants or any of them would have a good ground for a counter claim against any of the plaintiffs/claimants, which will embarrass the others;
2. whether the plaintiffs/claimants are likely to put up conflicting cases *inter se*: Sodeke & Ors v. Pelu & Ors (1979)3 LRN 227.
3. the impecuniosity of the other plaintiffs/claimants in case of joint liability for costs.

Note however that where it was not convenient for the plaintiffs/claimants to institute a joint action, each may institute his own action and they may consolidate the actions later. On consolidation of cases, see Ume v. Ifediora (2001) 18 NWLR (Pt. 714) 37 at 39.

ALTERATION OF PARTIES

Circumstances may change while a matter is still pending in a Court of Law. The following situations may arise;

- (a) A party may become bankrupt or die.
- (b) An unmarried female may get married.
- (c) There may be an assignment, transmission or devolution of the interest or liability of the party in the pending suit.

In (a) above, since a dead party cannot physically take part in the proceedings, his place must of necessity be succeeded to by the Personal Representatives to his Estate or whoever inherited his properties-the inheritance of assets goes with liabilities including pending litigation. Also the action involving a person who subsequently became bankrupt must be succeeded to by his trustees in bankruptcy. There are however, exceptions to the above

rules. In some cases the death of a party automatically extinguishes the action e.g. enforcement of contracts of personal service or torts of assault and battery.

In the foregoing circumstances, the Lagos High Court Civil Procedure Rules, and the Abuja High Court (Civil Procedure) Rules provide that the death of a claimant or defendant shall not cause a suit to abate or terminate if the cause of action survives. If there are two or more claimants or defendants and one of them dies, if the cause of action survives to the surviving claimant or claimants alone or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving claimant or claimants, and against the surviving defendant or defendants. See Order 13 rule 30 Abuja rules 2018; Order 15 rule 29 Lagos rules 2019

Where the action only survives for both the surviving claimant or claimants and the legal representatives of a deceased claimant jointly; on the application of the legal representatives of the deceased claimant, the court may have his name in place of the deceased claimant and the suit shall proceed at the instance of the surviving claimants and the legal representatives of the deceased claimant. If the legal representatives of the deceased claimant did not apply to have their name substituted for that of the deceased or show interest in the matter after they had been served with a notice to appear, the action will proceed and they will be bound by the judgment given in the same manner as if the action had proceeded co-jointly with surviving claimants.

DEATH OF A SOLE DEFENDANT OR A SOLE SURVIVING DEFENDANT

Where one of several defendants or a sole surviving defendant dies, if the cause of action survives, but not against the surviving defendant or defendants alone, and

also in the case of death of a sole defendant or sole surviving defendant, the plaintiff may apply to the court specifying the name, description and place of abode of any person whom he alleges to be the legal representative of such defendant and whom he desires to be made the defendant in his stead. The court shall thereupon enter the name of such representative in the suit in place of such defendant and issue an order to him to appear on a day to be therein mentioned to defend the suit and the suit shall proceed normally as if such representative had originally been made a defendant or had been party to the former proceedings in the suit.

PARTIES BY INTERVENTION

From the general rules of court laid down for joinder of parties and from conventional practice, parties may be allowed to intervene in an action where they were not originally claimants or defendants. Any person who makes himself a party to a suit on his own intervention is referred to as an intervener. In Oriare v. Govt. of W. Nigeria & Ors (1971) All NLR 138, the Supreme Court was considering Whether the provisions of the High Court rules of Western Nigeria (Order 7 Rule 10 (1 & 2) were wide enough to admit the joinder of two parties who were interveners. The court held that it was. The Court also held that Order 15 R 6(2) RSC England permits that a person who is not a party may be added as a defendant against the wishes of the claimant either on the application of the defendant or on his own intervention or in rare cases by the court of its own motion.

The Supreme Court has also laid down the conditions for joining interveners as follows:-

- (a) That looking at the facts of the case, the intervener ought to have been joined in the first instance
- b. that the joinder of the intervener as a party would be necessary to enable the court effectively and completely

determine or settle all the questions involved in the matter.

(c) the intervener must satisfy the court that his presence is necessary for an effective adjudication of the matter, and:-

(d) That the claimant must have a claim against him which the claimant desires to pursue and that his interest is identical with that of the defendant. See Oyedeji Akanbi (Mogaji) & Others v. Okunola Ishola Fabunmi & Other (1986) 2 SC 431.

Generally the courts would not compel a claimant to proceed against a party he does not desire to sue.

The procedure for joining an intervener either as claimant or defendant is by motion on notice, supported by an affidavit and written address to be served on all existing parties. Oterial Odade v. Otowodo Okujeni & Ors 1973 1 All NLR. (Part 1)156. The test which the court will apply in considering whether or not to grant the application to intervene is whether the relief which the claimant is seeking will directly affect the intervener in the enjoyment of his legal rights. Therefore, the court, will grant an application for intervention by a person who claims to own or have interest in a piece of land, title to which is in dispute in court between two parties. See Samuel v. Samuel (1879) 12 Ch. D 152.

Since it is the rules governing joinder of parties that permits the intervention of parties, can it be said that a party may intervene or join or be joined in an action after judgment or on appeal?

In Laibru Ltd v. Building & Civil Eng. Contractors (1962) 1 All NLR 387 the precedent seemed to have been laid that an order of joinder or substitution of parties could be made on appeal. In that case, the Federal Supreme Court by a majority of 2-1 (Bairaman and Brett FJJ, Taylor FJ dissenting) held that where, by a mistake of law the lower court refused to substitute or join a party as claimant, who

should have been substituted or joined and especially where joinder of such a party did not involve any amendment to the pleadings or affect the substantive rights of the other parties to the action, the Supreme Court on appeal, on its own motion can order the joinder of such a party for all purposes of the action without remitting the case back to the High Court.

Taylor F J dissenting said "I concede that we have the power to order that a person not a party who will be affected by the result, be joined in a suit, but it is in my view a far different thing for this court to make such an order in the face of the pleadings and the ground of appeal and relief, claimed, all of which have not been amended".

Note: The Federal Supreme Court Rules provided for a Notice to Appear to be served on a party who ought to, but had not shown interest in a matter. In Lagos and Abuja it is possible to obtain an ex-parte order against such a party compelling him to participate in the pending suit. Note where a defendant is added or substituted, the claimant shall amend the originating process accordingly and the amended originating process shall be filed and served on the new defendant in the same manner as the original defendant unless otherwise directed by the Judge. See Order 13 rule 20 Abuja High Court Rules 2018; Order 15 rule 18 Lagos High Court Rules 2019

THIRD PARTY PROCEEDINGS

Third party proceedings are special proceedings created by the rules of court in favour of a defendant only, or in favour of a Claimant who is himself a Defendant in a counterclaim. The procedure allows the joinder of a third party by the Defendant not for the purpose of prosecuting the suit in court but for the purpose of prosecuting another action between the Defendant and the third party in the same suit between the Defendant and the Claimant.

The objective of a third party proceeding is to prevent multiplicity of actions – *Bank of Ireland v. Union Bank of Nigeria Ltd* (1998) 7 SCNJ 385; *Soyinka v. Oni* (2011) LCN/4466(CA)

A Defendant desirous of joining a third party shall apply to the court or a judge in chambers by way of ex parte application for leave to issue and serve a third party notice. As in other motions, the application shall be supported by an affidavit stating the grounds for believing that the third party may bear eventual liability – Order 15 Rule 19(1), Lagos, Order 13 Rule 21 Abuja.

The application shall be supported by a written address-Order 43 Rule 1(2) Abuja; Order 43 Rule 1(2) (a) Lagos. A third party may be joined if the court is satisfied that he may bear eventual liability whether wholly or partly – Order 15 Rule 19(1), Lagos, Order 13 Rule 21 Abuja.

The effect of a third party notice is to make the third party a party in the suit in the same manner as if he had been sued in the ordinary manner by the defendant.

See *Okafor v. ACB Ltd and Another* (1975) 5 SC. 89. Here, the respondent bank had sued the defendant for the recovery of the loan granted to him. The defendant joined the appellant for liability to contribution. In the third party proceedings that ensued, the defendant had alleged in his statement of claim against the 3rd party appellant, that he and the appellant were subscribers and directors of a limited liability company. That both of them negotiated for and obtained the loan on behalf of the company and that the loan was wholly utilized for the business of the company.

The application for leave to join the company as proper third party instead of the appellant was granted by the trial Judge. The Supreme Court however criticized the trial Judge for granting the application at the very late stage of the proceedings because it would have entailed substantial amendment of pleadings and introduction of fresh evidence.

CHAPTER FOUR

PRELIMINARY CONSIDERATIONS AND COMMENCEMENT OF ACTIONS

The discussion here relates to preliminary considerations before commencing an action as well as the mode of institution of actions in the Magistrates' Courts in Lagos state and also the High Courts of both, the Federal Capital Territory, Abuja and Lagos State. Note also the relevance to the preliminary consideration, matters such as interviewing and counselling skills, letter writing, duty to client, accountability, cost and charges.

NB. Reference will also be made to the procedure in the National Industrial Court. The applicable laws and rules are:

- a) For the Magistrates' Court in Lagos State, see the Magistrates' Court Law, 2009 and the Magistrates' Court Rules, 2009;
- b) For the High Courts (Abuja and Lagos), see the High Court Laws (Abuja & Lagos), High Court Civil Procedure Rules of the FCT (2018) and the High Court of Lagos State (Civil Procedure), 2019.
- c) Note also the National Industrial Court Rules and the Sheriffs and Civil Processes Law.

A. PRELIMINARY CONSIDERATIONS BEFORE COMMENCING AN ACTION:

Before instituting or defending an action in any court, a party should be advised by the party's counsel to consider the following preliminary matters:

- 1) Availability of Alternative Dispute Resolution methods. Before resorting to litigation, a counsel representing a party should draw the attention of his client to the availability of ADR options. See Rule 15 (3) (d) RPC.

- 2) Existence of a reasonable cause of action. Cause of action refers to facts sufficient to give rise to an action entitling the claimant to a relief in law. See *Mobil v LASEPA* (2003) 104 LRCN 240 at 268. See also *A.G. Lagos State v A.G. Federation* (2020) unreported suit No: SC/CV/260/2020
- 3) Parties. Issues to consider here include but not limited to immunity, Capacity of parties, joinder of parties. This is especially to avoid falling into the error of non-joinder or mis-joinder or abuse of the process of court arising from multiplicity of action, non-applicability or estoppel, etc.
- 4) Cost of Litigation, including the opportunity cost.
- 5) Previous relationship and need to preserve relationship.
- 6) Exhaustion of available remedies and their effect on jurisdiction.
- 7) Satisfaction of all conditions precedent such as service of pre-action notices etc, where necessary.
- 8) Requirement of pre-action counselling. (Note how to draft a pre-action counselling certificate under the Abuja High Court Rules).
- 9) Jurisdiction of the Court; (especially the subject matter/statutory, territorial, and the monetary jurisdiction. Magistrates' Court – see s.28 MCL Lagos)
- 10) Venue -- Place of institution of the action.
- 11) Locus Standi (i.e. the legal standing/right to sue, which is determined by interest in the subject matter). See expansive view of interest" in *FAWEHINMI v. AKILU* (1987) 4 NWLR (Pt. 67) 797; and *FAWEHINMI v. PRESIDENT FRN* (2007) 14 NWLR (pt. 1054) 275.
- 12) Statutory limitations. An action is said to be statute-barred where it is brought outside the statutory time-limit set/prescribed by the various statutes of limitation for commencing such actions or for taking such steps.
- 13) Note the relevance of a lawyer interviewing, counselling and letter writing skills as well as observance of professional Legal Ethics especially with respect to accountability, preliminary considerations.
- 14) Cost of enforcing judgments. This is especially to avoid a situation where the party's victory is merely a Pyrrhic victory.
- 15) Procedure for commencing the action.
- 16) Applicable/relevant laws.

17) Length of time it might take to conclude litigation vis-a-vis the remedies being sought.

B. COMMENCEMENT OF ACTION IN THE MAGISTRATES' COURTS

See the Magistrates' Courts Law Lagos (MCL), No. 16, 2009, which repeals the Magistrates' Courts Law Lagos (MCL), 2003, as amended in 2007 , and and the Magistrates' Court (Civil Procedure) Rules (MCR), 2009 (Lagos). See also see 4th Schedule Magistrates Court Law. Note also the provisions of the Sheriffs and Civil Process Laws for purposes of service of processes and enforcement of judgments. Note also that the categorization of Magistrates in Lagos into grades of has been abolished by s.93 (1) MCL, 2009. Further, subject matter includes all personal actions arising from contracts, torts etc., actions between landlord and tenant ,etc. See s. 28, MCL. Magistrates' Courts in Lagos are divided/grouped into Magisterial Districts. The limit of monetary jurisdiction of Magistrates/ Courts in Lagos is now N10, 000, 000.00 (Ten Million Naira). See s. 28 MCL 2009. In tenancy matters, rental value determines jurisdiction not cumulative arrears of rent over a period. S. 28 (1) (b).

a) Place of Institution of Actions: For actions that may be commenced in the Magistrates' Court in Lagos State, see Order 1 Rule 1 & 2 MCR. The place of instituting a civil action is where defendant resides or carries on business (if in Lagos) or where the cause of action arose (provided it arose wholly or in part in Lagos). Note that where the claimant sues as an assignee of a debt or other things in action, the action may be commenced in Lagos if the assignor might have commenced it in Lagos but for the assignment.

b) Modes of Commencing Actions In the Magistrates Court In Lagos: There are basically two modes of commencing civil action under the MCR 2009:

- i. Action by claim. Order.1 R.1 MCR;

ii. Action by Originating Application. Order.1 R.2 MCR

c) Actions by claim is commenced either by issuance of:

i. Ordinary summons in Civil Form 1 – See Order 1 R: Ordinary summons is issued for contentious matters. The application for ordinary summons is by the claimant filing copies of his claim together with the particulars of claim showing his cause of action, and his pecuniary or other claim must be furnished with copies sufficient for each additional defendant if more than one. The Magistrate then issues the summons as in Civil Form 1. Civil Form 4A is annexed for use by the defendant for admissions, defence or counterclaim as the case may be. The court may strike out any action which discloses no reasonable cause of action. See Order 1 Rules 4 & 5. The court shall issue the summons together with the particulars of claim filed to be served on the defendant who shall appear on a date determined by the registrar not less than 5 days after ensuring service has been effected. See Order 2 r 1. Defendant may then respond to the claim by either asking for further particulars, admission, defence, a counterclaim or tender. See Order 2 r 4, 5 & 6 MCR. Take note of the time limits for taking steps by defendant. Also note the timelines for responding by the defendant.

ii. Summary summons in Civil Form 4 – See Order 3 R. 1. Summary summons is used in actions involving liquidated money demands with or without interest. Summary summons may be exchanged for ordinary summons if not served within the stipulated time upon payment of prescribed fees. See order 3 r 9 MCR 2009.

d) Format And Contents Of Particulars Of Claim: Actions by claim as stated above are commenced by filing particulars of claim which contains the facts forming the substance of the claim and the reliefs sought by the claimant. The format of the particulars is as follows:

- i. Headed in the court including the suit number,
- ii. Contain the names of the parties,
- iii. The title,
- iv. The body which contains the facts succinctly describing the parties, the facts constituting the cause of action and the reliefs,
- v. The specific fact to be stated in the body of the claim depends on the subject matter as set out hereunder:

A) **Ordinary Debt Cases:** The particulars should show dates of all items, goods or other debts, and also cash received or credits. Note: Where the claimant is willing to abandon the excessive portion of his claim so as to be able to commence his proceedings in the Magistrates' Court or District Court, this fact must be noted at the end of the particular See order 2 rule 11 DCR 2021 (Abuja) for District Court. Unliquidated damages: In claims for unliquidated damages, the claimant can state that he limits his claim to a certain sum, which will then in general be deemed to be the amount claimed, which certainly affects the court fee to be paid or in relation to any award of costs against an unsuccessful claimant.

B) **Moneylender's Action:** In money lender's action the particulars of claim must show that the Claimant was at the date of the loan, a duly licensed money lender and also state the following:

- i. the date of the loan,
- ii. the amount actually lent,
- iii. the rate per cent of interest charged,
- iv. the date of the note or written memorandum of contract,
- v. the date the contract was signed by the borrower,
- vi. the date when a copy of the contract was sent, or delivered to the borrower,
- vii. payment received, with the date of payment,
- viii. amount of every sum due to the claimant,
- ix. the date the same became due; and

- x. amount of interest accrued due thereon and unpaid

C) **Hire Purchase Claims:** In action for recovery of goods let under Hire-Purchase agreements, the particulars of claim must state:

- i. the date of the agreement and the parties thereto,
- ii. the goods claimed,
- iii. the amount of the hire-purchase price,
- iv. the amount paid by or on behalf of the hirer,
- v. amount of the unpaid balance of the hire-purchase price,
- vi. the date when the right to demand delivery of the goods accrued,
- vii. the amount if any claimed as an alternative to the delivery of the goods; and
- viii. the amount claimed in addition to delivery of the goods or the alternative money claim.

D) **In Possession Cases:** The Claimant can join a claim for mesne profit, arrears of rent, damages for breach of covenant, or payment of the principal money or interest secured by a mortgage or charge. A full description of the property in question, together with a statement of the net annual rateable value (or if not having a separate rateable value, the rent (if any) and the grounds on which possession is claimed, must be included in the particulars.

E) **Claims on Mortgages:** Claims by a mortgagor to recover moneys secured by his mortgage or charge (whether principal or interest), must show the following particulars:

- i. the date of the mortgage or charge,
- ii. the amount of principal money lent,

- iii. the amount still due with interest, and
- iv. what if any, proceedings have been taken by the claimant in respect of the property mortgaged and whether he has obtained possession thereof.

Regarding claims for possession of the mortgaged property, the claimant must give the details required at (ii) and (iii) above and add particulars of the proceedings taken in respect of the principal money or interest.

- F) **Claims against the State:** In proceedings against the State, the particulars of claim must contain information as to the circumstances in which it is alleged the liability of the State has arisen and as to the government departments and officers of the State concerned.
- e) **Life Span of Summons:** 3 months. Claimant is at liberty to file a fresh claim upon the expiry of the period. See Order 2 rule 3 MCR 2009
- f) **Amendment of Claims:** The claimant's claim can be amended at any time before judgment with leave of court by filing and delivering amended particulars. The amount of the claim can be increased, in this case, an additional court fee may become payable. The court at the hearing may allow or disallow the amendment.
- g) **Note the provisions relating to the following:**
- i. The need to explore ADR options;
 - ii. The requirement of personal service, or (where personal service fails or is not practicable) of substituted with leave of court (sought and obtained by way of) motion. See Order 5;
 - iii. Provisions on joinder of parties, persons under disability, change of parties – Order 5 MCR,
 - iv. Third Party Procedure – Order 7;
 - v. Amendments – Order 8

- vi. Maximum number adjournments -Order 9
- vii. Evidence and Witnesses – Order 14
- viii. Mediation and Conciliation –Order 16
- ix. Trial – Order 17
- x. Judgment and Orders – Order 19

h) Specimen Scenarios And The Particulars Of Claim Drafted In Respect Thereof

A. STATEMENT OF AJAYI ABEOKUTA

I am a carpenter and live at 21, Onilegogoro Street, Lagos. I work at the Railways, Ebute-Metta. On the 24th September, 2015 at the Jolly Bar, Onike Street, Lagos, one James Fighter of 18, Idumota Avenue, Lagos inflicted very severe injury on my body by hitting me with a beer bottle. I had very deep lacerations on the head and was treated for shock in the hospital. I paid N250.00 Naira for medical treatment. I had much pain and I could not go to work for two weeks thereby losing N5000.00 Naira being my wages for the period. I wish to sue James Fighter for damages. I spent an additional N60.00 Naira for medical treatment.

Draft of the application.

IN THE MAGISTRATES' COURT OF LAGOS
IN THE LAGOS MAGISTRATE DISTRICT
HOLDEN AT LAGOS

CLAIM NO:

BETWEEN

AJAYI ABEOKUTA -----
----- CLAIMANT

AND

JAMES FIGHTER -----
----- DEFENDANT

PARTICULARS OF CLAIM

- 1) The Claimant has suffered damages from the Defendant on the 24th day of September, 2010 at the Jolly Bar, Onike Street, Lagos.
- 2) The Defendant assaulted the Claimant by violently striking him on the head and face with a beer bottle whereby the Claimant was severely injured and was put to great pain and incurred expenses and suffered loss
- 3) **PARTICULARS OF PERSONAL INJURIES:**
 - a) The Claimant was severely bruised on his head and face, and he suffered severely from shock;
 - b) The Claimant had deep laceration on the head;
 - c) Loss of earning for two weeks from 24th September, 2015 to 6th October, 2015;
 - d) Medical treatment: N 310.00 Naira
 - e) Loss of earnings for 2 weeks: N 5000.00 Naira. From 24 September 2015 to 6 October 2015.
 - f) General Damages:N 250.00 Naira

TOTAL: N5.560.00 Naira

- 4) And the Claimant claims N 5, 560.00 Naira being special and general damages.

Dated in Lagos this day of November, 2015.

S. A. UKO
Claimant's Solicitor
24 Calabar Street, Lagos.

Defendant's Address:
31, Ikot Ekpene Way, Lagos.

B. STATEMENT OF MALLAM GARUBA JARA

I am Grade One Certificate Teacher and teach at Popular Secondary Modern School, a school owned by Mr. Nwanko

Ogine. On 14 September 1980, one Peter Ojoke of 33, Karakata Avenue, Lagos wrote a letter to Mr. Nwanko Ogine the proprietor of the School where I teach, containing the following words:

"Mallam Garuba Jara goes about town deceiving people that he is a Grade Two Certificate Teacher, which he is not. He attended Grade Three Training College at a town in Ondo State and after teaching for a number of years, he passed the Grade Two Teachers Examination externally. In addition to this qualification, he passed one subject (Economics) at the Advanced Level and the General Certificate of Education Examinations. Does this qualify a person as Grade One Certificate Teacher? No. Mallam Garuba is a crook. You should dismiss him from your school".

This is a false statement. I passed the Grade One Teacher Examination in 1960. I now tender my Certificate. This letter was injurious to my reputation and I am worried about it. Since the writer has failed to correct his statement and to apologize to me for this false statement, I intend to sue him for damages, claiming about N1, 000.00 Naira.

Task for Student: Draft the application for summons.

- C. **ABANDONMENT OF CLAIM:** A claimant may at any time before trial, abandon any part of his claim and the abandonment shall be entered in the records of the court. See Order 8 R. 4 Magistrates' Court Rules Lagos
- D. **APPLICATION FOR SUMMARY SUMMONS:** Summary summons may be issued where the Claimant files a claim and request by letter to the registrar for the endorsement of the claim as a summary summons. See Order 3 r 1. Note the exceptions to the filing of summary summons; infants, actions against money

lenders etc. The procedure is as follows:

- i. Claimant's Counsel prepares a letter applying for a summary summons,
- ii. The application must be supported by the particulars of claim,
- iii. Counsel leaves copies with the Registrar to assess the necessary fees to be paid by the Claimant,
- iv. The summons in Civil Form 4, Form 4A and the claim is served on the defendant.

i) Originating Application

Any proceedings authorised to be commenced in court and not required by any law to be commenced otherwise, may be commenced by originating application and shall be referred to as an action. See Order 1 R 8 MCR 2009. Service done personally. Where personal service is impossible or inconvenient substituted service may be allowed. See generally Order 5 MCR. The judgment obtained on a summary Summons is as valid as one obtained after a full hearing. It may be regarded as a judgment by consent of the parties, but sometimes it may turn out to be judgment obtained in the absence of the defendant. In the latter case, the judgment may be set aside by the magistrates' court on the application of the defendant if he is able to satisfactorily disclose a *bona fide* defence to the claim.

C. COMMENCEMENT OF ACTION IN THE HIGH COURT

- 1) **Venue:** The Rules in the respective jurisdictions provide for the appropriate venue for commencement of actions in relation to the type of action. For land matters, mortgages or charges thereon, personal property distrained or seized for any reason, it is the judicial division where the land is situate or the distress or seizure took place. O. 4 r. 1(1) Lagos and O. 3 r. 1 Abuja. Actions for breach of contract or for Specific performance: commenced in the judicial division where the contract ought to have been performed or where the defendant resides or carries on business. O. 4 r.

1(3) Lagos and O. 3 r. 3 Abuja. For corporate bodies, the place of residence is the place of its central control and management. See Kraus Thompson Organisation Ltd v University of Calabar (2004) 4 SC (pt. 1) 65 at 86; See also Unit Construction Company Ltd v Bullock (1960) AC 351. Note that for purposes of service of processes, office does not mean head or registered office. Such service can validly be rendered at any of its branch offices. Bello v NBN (1992) 6 NWLR (pt. 246) 206. Note also the case of Mark v Eke (2004) 5 NWLR (pt.865) 54 says proper personal service must be at company's registered office. This appears to overrule Bello v NBN. For actions against public officers or for recovery of penalties and forfeitures, the action shall be commenced where the cause of action arose. See O. 4 r. 1(2) Lagos and O. 3 r. 2 Abuja. Where there is more than one Defendant resident in different judicial divisions, the action can be commenced in any one of the judicial divisions. In all other circumstances, actions are to be commenced where the Defendant resides or carries on business or where the cause of action arose. Actions commenced in the wrong judicial division may be tried there unless the Chief Judge otherwise directs. O 4 r. 3 Lagos; O 3 r 6 Abuja; Egbe v Agbara (1997) 1 SCNJ 91 at 107

2) **Mode and Procedure For Commencement:** There are basically 4 modes for commencement of action (see O. 2 r. 1 Abuja), namely:

- a) Writ;
- b) Originating Summons;
- c) Originating Motion; and
- d) Petition

O. 5 r.1(1) Lagos recognizes other modes of commencement of action as may be provided for in the rules or any applicable law (e.g. petition for proceedings in revenue matters under O.60 r.3- see Form 40),however, the Order specifically provides for only two general modes of commencement of action in Lagos, namely:

- a) By Writ;
- b) By Originating Summons See O.5 r.1 and r.4 Lagos

ORIGINATING MOTIONS

Used where the Rules or any written law prescribes for it. It is usually used for prerogative writs or orders such as prohibition, certiorari, mandamus and habeas corpus. Also used for enforcement of fundamental human rights though the Fundamental Rights Enforcement Procedure Rules provides that such action may now be commenced by any originating process approved by the court. Where a statute recommends the use of application for commencement, without providing for the procedure, Originating Motion should be used. See *Akunnia v AG Anambra* (1977) 5 SC 16. Parties are referred to as Applicant and Respondent. During the proceedings, the hearing of the motion is the trial. Usually headed "In the matter of the subject matter and in the matter of the enabling statute".

PETITIONS

Used when the Rule or any written law prescribes for it. Usually used for winding up of Companies. S. 410 CAMA. It is also used for electoral matters and matrimonial proceedings S. 54 of MCA. Parties are called Petitioner and Respondent. It is also headed like originating motions O.2 r. 1 of Abuja merely mentions the use of petitions as one of the means by which actions may be commenced.

Note however that the petitioner's residence or an address within jurisdiction, his occupation and address for service of the Respondent must be stated if he petitions in person, but if he petitions by his Legal Practitioner, then the petitioner's address, name or firm and address of the Legal Practitioner must be stated. Where the Legal Practitioner is an agent of another, the name or firm and address of the principal must be stated.

ORIGINATING SUMMONS

Used to commence action when it is provided for by the Rules or any written law. Usually used for construction of a written law or any instrument, deed, will, contracts or other documents or where there is no likelihood of disputes as to facts. See *Director of SSS v Agbakoba* (1999) 3 NWLR pt.595 p. 425;

Adeyelu II v Ajagungbade III (2007) 14 NWLR (pt. 1053) 1 at 14. See also O. 5 rr. 4 of Lagos and O. 2 r. 3 (1-3) Abuja. It may also be used where errors in judgments are sought to be corrected. See UNILAG v Aigoro (1991) 3 NWLR pt.179 p. 376. Originating Summons are in FORMS 3, 4 and 5 of Appendix to Lagos and Abuja Rules O. 5 r 5(3) of Lagos insists that originating summons must be accompanied by the following documents:

- i. affidavit setting out the facts relied upon,
- ii. Exhibits relied upon at the trial,
- iii. A written address in support of the application, and
- iv. Pre-action protocol Form 01

Note that O. 2 r. 3(5) Abuja replaces protocol Form 01 with pre-action counselling certificate. Main function is to obtain a direction from court and not to dispute facts. See Doherty v Doherty (1969) NMLR 24. Where an action is wrongly commenced by originating Summons, the trial court may either strike it out or convert it to writ of summons and order for pleadings. See PDP v Atiku (2007) 3 NWLR (Pt. 1022) 515 at 541 Note that where the question to be determined arises in the administration of an estate or a trust, then the summons is titled “In the matter of the estate or trust”

WRIT OF SUMMONS

This is used to commence all actions unless a particular Rule or law prescribes otherwise. See O. 5 r. 1(1) Lagos and O. 2 r. 2 (1) Abuja. It is used usually for contentious actions. Where there is uncertainty as to which process to employ, use writ. See Doherty v Doherty supra

Endorsement of the Writ

- i. If the claimant sues or the defendant or any of the defendants is sued in a representative capacity, the Writ must show it,
- ii. In probate actions the endorsement must show whether the claimant claims as creditor, administrator, legatee, next-of-

- kin, heir-at-Law, successor under native law devisee or in any other character,
- iii. In all cases in which the Claimant desires to have an account taken the Writ must be indorsed with a claim that account be taken,
 - iv. In actions for libel the endorsement on the Writ must state sufficient particulars to identify the publication which is the subject matter of the complaint,
 - v. In all cases, the parties to the action should be correctly described and at the back of the writ a concise statement of the nature of the claim must be stated.
 - vi. If a person acting under a Power of Attorney sues on behalf of the donor, it is the name of the donor not that of the donee that should appear on the writ. See D. J Perera v Motor and General Insurance Company Ltd (1971) 1. N.M. L. R.181. For endorsement of the Writ generally, See Order 6 of the High court Civil Procedure Rules (Lagos) 2019. Also for endorsement of claim and claimant's Address See O. 4 Rules 6 and 7 Abuja Rules.

FRONT LOADING SYSTEM

For the front-loading concept, see O.5 r. 1 (2) Lagos and O.2 r. 2(2) Abuja. In Lagos the writ must be filed along with:

- a. Statement of claim
- b. List of witnesses
- c. Written statement on oath of witnesses except those on subpoena. (Uduma v Arunsi (2012) 7 NWLR (pt.1298) 55 at 96 – need not take any format)
- d. Documents to be relied on at the trial
- e. Pre-action protocol Form 01.(certifies that claimant has attempted out-of-court settlement unsuccessfully) O. 5 r. 1(2). Note that failure to comply with rule shall nullify the action. See O. 5 r. 1(3)

NOTE:

An unsworn statement of a witness or any other defect in a statement is a mere irregularity which will not invalidate or render inadmissible such statement or any document tendered therein. Whatever defect in the original oath is cured by the second oath made in court before the judex prior to the adoption

of the statement by its maker and his subsequent cross-examination. See Aregbesola v Oyinlola (2011) 9 NWLR (pt. 1253) 458 at 462; Agagu v Mimiko (2009) 7 NWLR (pt.1140) 342 INEC v AC (2009) 2 NWLR (pt. 1126) 524 at 615. Subpoenaed witnesses are usually served with special witness summons in Forms 28-31 Abuja to give evidence or deliver documents on behalf of the party calling them, on a specified date and time. This requirement of filing upfront the statement of claim and these other documents with the writ is what we refer to as the front-loading system. The registrar is empowered to reject a writ that is not filed with these documents and if he should accept them in error, the court will still strike out the writ. See Jabita v Onikoyi (2004) All FWLR (pt. 233) 1625 at 1647. However the case of Olaniyan v Oyewole (2008) 5 NWLR (pt. 1079) 114 says that such failure should be treated as an irregularity. The Abuja Rules in O. 2 r 2(2) and r. 8 prescribes in place of the pre-action protocol Form 01, the filing of certificate of pre-action counselling in Form 6 signed by the legal practitioner and litigant as evidence that parties have been advised as to the relative weakness and strength of their cases as well as the availability of ADR with an undertaking to pay the cost of the litigation should the action turn out to be frivolous. By O. 2 r. 9 of Abuja, all processes filed at the registry shall bear the seal of the counsel filling the suit as evidence that such counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria. This is absent in the Lagos Rule. The purpose of the use of the front-loading system are:

- a. Quick dispensation of justice
- b. Avoidance of frivolous actions
- c. Is a catalyst for ADR
- d. Removes springing of surprises on parties
- e. Reduces the incidence of frivolous adjournments
- f. Helps court and counsel in effective case-management.

ISSUE OF ORIGINATING PROCESS

The writ is prepared as in Form 1, 2 and 33 in the appendix to the rules by claimant or his counsel in an A4 quality paper. O.6 r.1 Abuja and O. 8 r. 1 Lagos. Writ is deemed issued once it is sealed by the registrar though in practice it is also signed. O.8 r.

2(1) Lagos; O. 6 r. 2(1&3) Abuja. The writ of summons essentially commands the Defendant to enter appearance to the action instituted against him at the instance of the Claimant within the time limited on the writ; and warning that should Defendant fail to do so, the claimant shall proceed to enter judgment against him. Every writ of summons must contain the following:

- i. The heading of the court showing the judicial division.
- ii. The name, description and capacities of the parties (eg where they sue in representative capacity, this must be stated on the writ).
- iii. Address of the Defendant within jurisdiction.
- iv. The nature of the claim against the Defendant normally endorsed on the reversed side of the writ not a separate paper. Endorsement of the claim on an attached paper is a fundamental defect. See Nwoye v Road Construction Ltd (1966) NMLR 254. This is what is called general endorsement. Special endorsement is when it is accompanied with a statement of claim. Where however the claim is not contained on the reverse side, a continuation in a separate paper is allowed. See Alatede v Falode (1966) All NLR 101 at 103. With the advent of the front-loading system, it may be safe to say that all writs are specially endorsed. Where claimant is represented by counsel, the name and address of the claimant's counsel within jurisdiction should be stated as the person issuing the writ and not the name of his firm otherwise it can be set aside for being defective. See Okafor v Nweke (2007) 10 NWLR (pt. 1043) 521 at 533. The address of the claimant within jurisdiction must be stated else it becomes defective if objection is raised by the Defendant. See Sken Consult v Ukey (1981) 1 SC 6. Apart from the requirement as to endorsement of the claim and the address of the claimant within jurisdiction which are fundamental, every other defect may be treated as mere irregularity which can be rectified by amendment. Such objection to defects must also be timeous. Time for entering appearance is usually stated on the writ not in the Rules. In Abuja, it is 14 days while Lagos is 42 days

RENEWAL OF THE WRIT

The writ is valid for 6 months in the first instance. O. 6 r. 6 of Abuja and O. 8 r. 6 Lagos Rules. Note that the Abuja Form stipulates that the writ must be served within 3 calendar months. This looks like an error as being inconsistent with O.6 r.6 Abuja. Concurrent writ is a duplicate of an original writ issued either at the same time as the original writ or at any time while the original writ is valid. It is valid in the first instance for the unexpired period of validity of the original writ. O. 6 r. 9 Abuja and

O. 8 r. 9 Lagos Rules. In Abuja, the writ may be renewed only twice provided that no originating process shall be in force for longer than a total of 9 months. O. 6 r. 7 Abuja. This looks like an error because if original life span is 6 months and renewal is 3 months for two times, it will give 12 months and not 9 months. Application for renewal may be made before the expiration of the writ.O.6 r 6(2) Abuja. In Lagos, where the writ cannot be served before the expiration of the validity period, the court may on application made to it before the expiration, renew the life of the writ for a further period of 3 months. Such renewal shall not be more than two upon good cause and prompt application so that no originating process shall be in force for longer than 12 months. Such a suit may be struck out. O. 8 rr. 6 & 7 of Lagos. In Lagos, application for renewal must be brought before the expiration of the 6 months period.O. 8 r 6(1) Lagos. In Alao v Omoniyi (1966) NMLR 161, the court dismissed an application for renewal which was brought after the expiration of the writ on the ground that the writ had become void at the time of the application. However, in Kolawole v Alberto (1989) 1 NWLR (pt. 98) 382, the Supreme Court held that the application may be made either before or after the expiration of the writ and that the rule regarding extension of time also apply to renewal of writs. Note however that the above decision was given under the old rule. Application for renewal is by motion ex parte

supported by affidavit disclosing the reason for failure to serve within the life span of the writ. In both rules now there is a Fast Track procedure in which matters allocated to it must be concluded and judgment delivered within 9 months. See O 59 r. 1 Lagos; O.37 r.4 Abuja does not state the time limit. Note the condition for fast track.

APPEARANCE

The Defendant is commanded by the writ to cause an appearance to be entered for him within 14 days in Abuja and 30 days if it is to be served out of jurisdiction. The Defendant in Lagos is to enter appearance within 42 days. Appearance is entered by the defendant completing and filing Form 11 or 12 in the appendix called Memorandum of Appearance. O. 11 r. 1 Lagos and O. 9 r. 1(1) Abuja respectively. In Lagos, a defendant entering appearance shall not later than 7 days thereafter serve a sealed Memorandum of Appearance on the Claimant's Legal Practitioner or the Claimant if he sues in person. See O. 11 r. 1 (3) Lagos. By entering appearance, the defendant is deemed to:

- i. Acknowledge service of the writ;
- ii. Submit to the jurisdiction of the court;
- iii. Indicate willingness to contest the action.

Where appearance is entered after the time specified on the writ, the cost as prescribed by the CJ for every day of such default and any other cost shall be borne by the defendant or the person making the application. The Lagos Rule makes the defendant liable for additional penalty fee of N1000 each day of the default. A person under legal disability enters appearance by his guardian.

CONDITIONAL APPEARANCE

This is an appearance entered by the defendant under protest. It indicates that the defendant intends to either challenge the jurisdiction of the court, or the issuance of the writ or the service thereof or other irregularities. The defendant does this by adding the word "conditional" before "appearance" in the Memo of appearance. After the entry of conditional appearance, the

defendant must promptly and without taking any further steps, raise the objection by way of motion on notice otherwise, he would be taken to have waived his right of objection. The court will rule on the objection before proceeding with the substantive suit. Note that substantive or subject matter jurisdiction can be raised at any time even on appeal, whether conditional appearance was entered or not because here, jurisdiction cannot be vested by acquiescence of the parties. *Mobil Producing v LASEPA*. Note also that the entry of a conditional appearance in order to protest improper service does not amount to submission to the jurisdiction of the court. *Holman Brothers (Nig) Ltd v Kigo (Nig) Ltd.* (1980) NSCC 251. A party may without entering any form of appearance challenge the jurisdiction of the court by straight filing a motion or summons supported by affidavit stating the ground on which the challenge is based.

WAYS OF PROTESTING DEFECT IN A SUIT

- i. Defendant may enter a conditional appearance and later file a motion or summons raising the objection.
- ii. He may without filing any form of appearance file a motion or summons to set aside a defective writ or the service thereof.
- iii. He may also without any form of appearance bring an application challenging the jurisdiction of the court.

DEFAULT OF APPEARANCE

Where the defendant fails or neglects to enter appearance within the time limited on the writ for entry of appearance, the claimant may apply for judgment. Such judgment is default judgment. That is, in default of appearance. In Abuja, such judgment can only be entered in cases of liquidated money demand, actions for recovery of lands or money lenders action. O. 10 Abuja. In Lagos, judgment in default of appearance is obtainable by the claimant in respect of actions for detention of goods, mesne profit, and recovery of land and liquidated money demands. See O. 12 Lagos. In all other circumstances, the claimant is not entitled to judgment in default of appearance but can only apply for the matter to be set down for hearing in the process of which he might get judgment. See O. 12 r. 10 Lagos. Such judgment termed default judgment can only be set aside upon show of

payment of penalty, good cause for defaulting and good defence shown by the defendant, if application for it is brought within a reasonable time. O.10 r. 11 Abuja Note that where there is more than one defendant, only those defendants that defaulted in appearance may have judgment entered against them. See O. 12 rr 3 Lagos and O. 10 r. 6 Abuja.

EFFECT OF NON-COMPLIANCE WITH THE RULES OF COURT

Non-compliance may occur in many ways. E.g. use of wrong originating process, improper endorsement of the writ, giving the defendant less than 30 days to respond to a writ served outside jurisdiction etc. In Abuja, non-compliance is to be treated as irregularity and shall not nullify the proceedings, judgment or document. O. 5 r. 1 (Abuja, 2018), which provides:

1 (1) where in beginning or purporting to begin any proceeding, there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, the failure shall not nullify the proceedings. (2) Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularize such steps. (3) The Judge shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process
other than the one used.

See *Olaniyan v Oyewole* (*supra*). The court may give any direction as he thinks fit to regularize such step. The court may also allow such amendment to be made as will bring it into compliance with the rules, upon terms as it

deems fit. But in Lagos, anything that is done or left undone under O.5 rr. 1 (2) and 5 dealing with accompanying documents during commencement, nullifies the proceedings if such failure occurs in the cause of commencing or initiating the action, but if the failure occurs after commencing the action, it is to be treated as an irregularity and the judge may give direction as he thinks fit to regularise the defect. O 7 r. 1 Lagos. In Lagos, application to set aside for irregularity may be made by motion only while Abuja admits of summons or motion and the grounds for the objection shall be stated – See O. 5 r. 2 Abuja and O. 7 r. 2 Lagos. Such application must be made within a reasonable time and before the party complaining has taken any fresh step after becoming aware of the irregularity. O.5 r. 2(1) of both Rules; *Oti v Mobil Oil* (1991) 7 NWLR (pt. 206) 700; *Skenconsult v Ukey* (*supra*); *Adegoke Motors v Adesanya* (1989) 5 SCNJ 80. Also note that most of the Rules enjoin the courts to employ the approach that will do substantial justice between the parties.

APPLICATION TO SET ASIDE FOR IRREGULARITY

Order 7 R. 2 Lagos and O. 5 r. 2 Abuja states as follows:

2. (1) An application to set aside any step taken in the course of any proceeding for irregularity may be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity. (2) An application under this rule may be made by motion and the grounds of objection shall be stated in the motion.

See *Harkness v. Bell's Asbestos and Engineering Limited* (1967) 2.Q.B. 729 at 735

- 1) **Applications should be made within a reasonable time:**
Reynolds v. Coleman (1887)36 Ch. D453. *CA. Pontin v. Wood* (1962) I.Q.B. 594.

- 2) Before the party applying has taken any fresh step. Rein v. Stein (1892) I.Q.B. 753; Josebson Industries Co. v R. Lauwers Import-Export (1988) 7 SCNJ 93 at 112. Boyle v Sacker (1888) 39 Ch.D. 249 Firth and Sons v Delas Rivas (1893) I.Q.B. 768 Hunt v Worsfold (1896) 2 Ch. D 224. Kigo (Nig.)Ltd v Holman Brothers (Nig) Ltd (1980) N.S.C. 251. Alhaji Saude v Abdullahi (1989) 3 N.S.C.C. 177.
- 3) What constitutes a Waiver? Rendell v. Grundy (1895) 1 Q.B. 16 CA. Ezomo v. Oyakhire (1985) 2 S.C. 260; Adegoke Motors v. Adesanya (1989) 3 NWLR 250; Nwabueze v. Obi Okoye (1988) 4 NWLR 664; Onyia v Oniah (1988) 2 S.C.N.J. 136; Attorney General of Eastern Nigeria v. A. G Federation (1964) 1 All N. L. R. 224; Ariori v Elemo (1983) 1 SC 13 *supra*
- 4) The ground of objection must be stated in the summons or notice of motion. Cole v. Agu LD/295/69 of 25th August 1969 by Taylor C.J. Adenrele Adejumo v Government of Lagos State (1970) 1 ALL N.L.R 183

A defendant before entering an unconditional appearance or on entering a conditional appearance shall be at liberty to take out a summons to set aside the service upon him of the writ or other process, or to discharge the order authorizing such service. The summons must state the ground of the application and be supported by an affidavit. The following are some grounds on which such an application might be made:

1. That the case is one in which leave to issue the writ was required, and the plaintiff took no steps to obtain leave.
2. That the writ contains none, or no sufficient endorsement of claim.
3. That the writ does not state in what division of the High Court the action is being brought.
4. That the defendant was fraudulently induced to come within the jurisdiction for the sole purpose of serving him with a writ.

5. That the service of the writ was defective e.g. that the defendant asked to be shown the original writ and his request was not complied with, or that writ was "served" by affixing it to the land without the leave of the court having been obtained.

From these examples it will be seen that the objections made at this stage are often ones of a purely technical kind. In such cases, it may be thought courteous (if time allows) to write to the claimant suggesting that he should correct the irregularity, and only apply to set aside the writ or service if this informal approach is unproductive. For, if the application to set aside succeeds, the plaintiff will very

probably issue a new writ or re-serve the original one. Once an unconditional appearance has been entered, it would be too late to make technical objections to the writ or service. The most effective remedy of the defendant is not to enter appearance and to use the non-compliance as a ground for setting aside the service of the writ of summons. This was the procedure adopted by the defendant and endorsed by the Supreme Court of Nigeria in National Bank (Nig) Limited v. Shoyoye (supra) (1977) 5 S.C. 181; and Sken Consult v. Sekondy Ukey (1981) ISC. 6 or (1981) NSSC I (supra). If the defence wants to challenge the jurisdiction of the court in the matter he has one of the three options:

- i. He can file a conditional appearance and bring an application to have the writ or service set aside. See Kigo (Nig.)Ltd v. Holman Brothers (Nig) Ltd (1980) N.S.C. 251
- ii. He can instead of filing a conditional appearance bring an application by way of motion or summons to have the case set aside Sken Consult v. Sekondy Ukey (1981) ISC. 6 or (1981) NSCC 1. See National Bank (Nig) Limited v. Shoyoye (supra) (1977) 5 S.C. 181 supra.
- iii. He can proceed with the case but while the case is still pending bring an application to have the case set aside because of lack of jurisdiction. Attorney General of Eastern Nigeria v. A. G Federation (1964) 1 All N. L. R. 224. A defence served after expiration of the prescribed time but

before judgment has been given cannot be disregarded and will generally prevent the claimant from getting judgment even though it is not served until after the claimant has served his notice for judgment. An application for extension of time within which to file and serve the statement of defence and the accompanying processes will be required. Or 19 r. 7 (4) R. S.C. England. Gibbings v Strong (1984)26 CH. D. 66.The Supreme Court of Nigeria adopted the position under the English Law in the case of Adjarho v Aghoghowvia [1985] 1 NSCC 376. UBA Limited & 3 Ors v Dike Nwora (1978) 11-12 SC 1

NOTE: Most High Court Civil Procedure Rules provides that "where a matter arises in respect of which no provisions or no adequate provisions are made in the rules, the court shall adopt such procedure as may in its view, do substantial justice between the parties concerned".

WHEN IS AN ACTION COMMENCED?

An action is commenced when the claimant has done all that is required of him to do in law to commence the action (i.e. Filing the writ and paying the requisite fees). What is left to be done is a domestic affair of the court and its staff. See Alawode v Semoh (1959) 4 FSC 29; Nicholls v General Manager Nig. Railway Corporation (1938) 14 NLR 87 where, by NRC Ordinance, action must be commenced within 6 months of the cause of action and counsel had filed and paid within time but the court clerk was delayed while conveying it from Abeokuta to Ibadan. Action held to have commenced at payment.

SERVICE OF PROCESSES

See O. 9 Lagos and O. 7 Abuja Both Rule talk about originating process simpliciter to be served by Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other officer of the court. The CJ may also appoint and register any Law Chambers, Courier Company or any other person to serve court processes and such person shall be called process server. The Abuja rule has added

that it may also be served by electronic means mutually agreed Note that in Ramon v Jinadu (1986) 5 NWLR (pt. 39) 100, it was held that “other officer of the court” includes a legal practitioner. By O.9 r. 1(3) Lagos and O. 7 r. 1(3) Abuja, where a party is represented by a Legal Practitioner, service of court processes of which personal service is not required, may be made on such Legal Practitioner or a person under his control.

PERSONAL SERVICE

Originating process shall be served by delivering the document to the person to be served. That is the person named in the process. This is called personal service, the document being duly certified. Personal service of an originating process will not be required where the Defendant has in writing authorised his Legal Practitioner to accept service and such Legal Practitioner enters appearance O. 9 r. 3 Lagos and Abuja. The Lagos Rules however adds “provided that such written authority shall be attached to the Memorandum of Appearance filed by such Legal Practitioner.” In all other circumstances where personal service is not expressly required by the rules, processes shall be sufficiently served by leaving it with an adult person in the address for service or any other means as the court may order.

SUBSTITUTED SERVICE

Where however, prompt personal service cannot be effected, a claimant, upon application supported by affidavit setting forth the grounds upon which the application is brought can obtain an order of substituted service. See Order 9r.5 Lagos High Court Rules 2019. Under Order 7 Rule 11 (2) Abuja rules, the court may order substituted service if it appears to the court (either after or without an attempt at personal service) that for any reason, personal service cannot be conveniently effected.

SERVICE OUTSIDE JURISDICTION (THE STATE OF ISSUE)

In FCT and Lagos, there is no requirement for leave to issue a writ to be served outside jurisdiction. The earlier rules of court which contained this requirement have been omitted.

Accordingly, all previous decisions relating to this should be read with caution. Order 9 rule 16 of the Lagos Rules however, provide that subject to the provisions of the Sheriff and Civil Process Act, Cap S6, Laws of the Federation, 2004 if an originating process issued in a state is to be served upon a defendant outside the state, the process shall be endorsed with the following notice:

"This writ of summons (or as the case may be) is to be served out of Lagos State of Nigeria and in theState".

The service of originating process outside the state of issue is a matter on exclusive legislative list and is accordingly covered by the provisions of the Sheriffs and Civil Process Act (SCPA). By section 96 of the SCPA, leave is not required to serve originating process outside jurisdiction. However by section 97 and 99 of the Act a writ of summons (defined to include all originating processes) for service out of the state in which it was issued shall, in addition to any other endorsement or notice required by the law of such state, have endorsed thereon, a notice stating the state it was issued in and also the state it is to be served in and that the defendant to be served has not less than thirty days within which to enter appearance. See generally sections 96-103 SCPA. Note that there are conflicting decisions of the Supreme Court on the effect of non compliance with these provisions. In summary note the following two positions: One position is that non compliance renders the writ and/or service of it voidable and the defendant who complains of such non-compliance is entitled *ex debitio justiae* to have the writ/service set aside provided he has not taken fresh steps in the matter which will amount to a waiver of the irregularity complained of Odu'a Investment Co. Ltd v Talabi (1997) 10 NWLR (Pt. 523) 1. The other position is that failure to comply is not a mere irregularity but a fundamental defect that renders the writ incompetent and goes to the root of the jurisdiction and affects the competence of the court. Owners of MV 'Arabella' v Nigeria Agricultural Insurance Corp (2008) 11 NWLR (Pt 1097) 182. The position in Odu'a is preferable because the provisions are for the benefit of the defendant and it

should be possible for the defendant to be able to waive the requirement upon being served with the writ. Note also that similar requirement in the rules of court are treated as mere irregularity. But note the following judicial decisions in respect of these provisions of the SCPA. The Supreme Court held in *Nwabueze v. Obi Okoye* (1988) 4 NWL R 664 that failure to comply with the provisions of the Sheriff and Civil Process Act as to service is a matter which goes to the very root of the service. The service but not the writ can upon application be set aside. See *Ezomo v. Oyakhire* (1985) 1 NWLR 195. *Adegoke Motors v. Adesanya* (1989) 3 NWLR 250. *Sken Consult v. Sekondy Ukey* (1981) I SC 6 or (1981) N.S.S.C.I. (1981) 1 SC 6. See the Australian, case, of *Wilson Electric Transfer Men Co. Ltd v. Electricity Commission of New South Wales* 1968 VR. 880. On section 99 SCPA see *Sken Consult v. Sekondy Ukey* (1981) ISC. 6 or (1981) N.S.S.C.I. (supra) and *Ezomo v. Oyakhire* (1985) 1 NWLR 195. supra.. Any defendant who intends to object to non compliance with the above requirements (i.e. failure to obtain leave before issue of writ for service outside state of issue, or failure to give 30 days notice under section 99 or non compliance with the provisions of section 97 must make preliminary objection before trial by motion on notice. See *Ezomo v. Oyakhire* (1985) 1 NWLR 195. (supra), if not, he will be deemed to have waived his right to object and as the Supreme Court noted in *Ariori v. Elemo* (1983) 1 SC 1 3 "a person who is under no legal disability and having full knowledge of his rights or interest, conferred on him by law, and who intentionally decides to give them (or some of them up) cannot be heard to complain that he has not been permitted the exercise of those rights that he has been denied the enjoyments of those interests". See *Adegoke Motors v. Adesanya* (1989) 3 NWLR 250, See also *Alhaji Saude v. Abdullahi* (1989) 3 N.S.C.C. 177See also the case of *Odua Investment Co. Ltd v. Talabi* (1997) 10 NWLR (Pt 523) 1 at 52, Ogundare JSC (leading) held that: "Non - compliance with section 97 and or Section 99 of the Sheriff and Civil Process Act and the rule of Court requiring leave of the Court or a Judge for a writ to be served out of jurisdiction renders the writ and or service of it voidable and the defendant who complains of such

non - compliance is entitled ex-debito justitiae to have same set aside as was done in Sken Consult v. Sekondy Ukey (1981) ISC. 6 or (1981) N.S.S.C.1 (Supra), Nwabueze v. Obi Okoye (1988) 4 NWLR 664. (Supra), provided he has not taken fresh steps in the matter which will amount to a waiver of the irregularity complained of.

PROOF OF SERVICE

By O.7 r. 13 (Abuja), the process server shall after service promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgement of service. Proof of service by email shall be evidenced by affidavit with a printout of an email notifier attached thereto. The affidavit shall be prima facie proof of service. The Lagos Rules under O. 9 r. 15 only talks about recording of service in a register designated for that purpose, stating the method of service, mode of service, and the manner used to ascertain that the right person was served.

DAYS OF SERVICE

Service is to be effected between the hours of 6 am and 6 pm. Abuja Rule however added that if service is effected after 6 pm the same shall be deemed to have been effected on the next service day. Service shall be done on every day except Sundays and public holidays save in exceptional circumstances as may be authorized by the court. See O. 7 r. 15 Abuja and O. 9 r. 14 Lagos.

MODES OF SERVICE

- a) Persons Under Disability see O.7 r 5 Abuja and O.9 r.6 Lagos.
- b) Prisoner or Detainee, see O.7 r 6 Abuja and O.9 r.7 Lagos.
- c) Partners see O.7 r 7 Abuja and O.9 r.8 Lagos.

- d) Service on corporation or company see O.7 r 8 Abuja and O.9 r.9 Lagos
- e) Service on foreign corporation or company see O.7 r 9 Abuja and O.9 r.10 Lagos
- f) Service to a local Agent of a principal outside jurisdiction see O.7 r 10 Abuja and O.9 r.11 Lagos
- g) Service Outside Nigeria and
- h) Service of Foreign Process see O.8 Abuja and O.10 Lagos

Note:

Endorsement: S. 97, Sheriff & Civil process

Return Date: S. 99 -- 30 days

AFFIDAVIT OF SERVICE

IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN IN ABUJA

SUIT NO.

BETWEEN

A.B

TOGUN.....
.....CLAIMANT

AND

C.D KPOTOS.....
.....DEFENDANT

I.....Make oath and state
as follows:

1. I did on the day
of20.....at(state where)

personally serve C.D KPOTOS, the above named defendant(s) (or one of the above named defendants) with a true copy of the Writ of Summons in this action which appeared to me to have been regularly issued out of the High Court Registry of theJudicial Division of the High Court of the Federal Capital Territory, Abuja ,against the above named defendant (or defendants) at the suit of the above named claimant(or claimants) which was dated the.....day of20.....

2. At the time of the said service, the said Writ and the copy thereof were subscribed (and endorsed) in the manner and form prescribed by the Rules of the High Court

3. I did on theday of20..... endorsed on the said Writ the day of the month and the week of the said service on the defendant..... (jurat)

4. This Affidavit is filed on behalf of the claimant.

.....
Signature of Deponent

FORMS AND PRECEDENTS
A. CIVIL COURT FORMS IN THE MAGISTRATES COURTS

**CIVIL CIVIL FORM 1
ORDINARY SUMMONS**

Order 1, Rule 4

IN THEMAGISTRATES" COURT
Claim No

Between

.....Claimant And

.....Defendant

The Claimant"s claims —

₦ k Debt or Damages (particulars are attached)

Court Fee

.....Other
Disbursements.....Costs

.....
Total.....₦

You are hereby summoned to appear at Magistrates' Court (Address of Court) on the day of , 20 at o'clock in the noon when the claim will be heard.

To the Defendant.

Dated this day of
....., 20
.....

Registrar's Note – Form 4A is attached. You are advised to read it carefully and to complete it and return it to the registrar of the Court if you have a counterclaim or a defence or wish to admit the claim and thus save

costs. Your attention is also called to Order 2 Rules 1, 5 and 6 of the Magistrates' Court (Civil Procedure) Rules.

CIVIL FORM 4
SUMMARY SUMMONS
Order 3, Rule 1
IN THE**MAGISTRATES'**
COURT OF LAGOS

(Title as in Form 1) TO THE DEFENDANT

The Claimant claims – ₦ k Debt (particulars are attached) Court Fees
..... Other Disbursements
.....

Costs Total

..... ₦ Judgment may be obtained against you and enforced without further notice unless within ten days of the service of this summons inclusive of the day of service you: Pay the total amount of the claim and costs into court or Send to the Court an Admission, Defence or Counterclaim for which the attached form should be used.

DATED this day of, 20
..... Registrar

INSTRUCTIONS

- (1) If you admit the claim or any part of it, pay the amount admitted and costs into court within ten days after service of this summons, inclusive of the day of service. If you require longer time for payment complete the form of ADMISSION attached.
- (2) If you dispute the claim or any part of it, complete the form of DEFENCE attached.
- (3) If you have a claim against the claimant, complete the form of COUNTERCLAIM attached.
- (4) After completing and signing the form, deliver it to the registrar of the Court not later than ten days after service of this summons inclusive of the day of service. Unless you make an admission and proposal for payment which is accepted, you will receive notice from the Court

of a day on which you will have an opportunity of being heard on your proposal for payment, defence or counterclaim.

(5) Delay in payment or in returning the form may add to the costs.

(6) You can obtain help in completing the form at any Magistrates' Court office.

(7) Payment otherwise than in cash to the registrar of the Court is made at the payer's risk.

ORIGINATING APPLICATION ORDER 2 Rule 11

This is used when facts are not in dispute. The procedure is usually for interpretation of documents.

HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES FORM 1

General Form of Writ of Summons (Order 5 R. 2)

20

In the High Court of Lagos State

In theJudicial Division

Between:

AB.....

..... Claimant

And

CD.....

..... Defendant

To C.D ofin

the of

.....

You are hereby commanded that within 42 (forty-two) 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 in an action at the suit A. B. 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

.....
Signature of Registrar.

Memorandum to be subscribed on the writ

N.B:

This writ is to be served within 6 (six) calendar months from the date thereof, or, if renewed, within three calendar months from the date of the last renewal, including the day of such date, and not afterwards. The defendant may enter appearance personally or by Legal Practitioner either by handing in the appropriate forms, duly completed, at the Registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post or by electronic means.

Endorsements to be made on the writ before issue thereof

The claimant's claim is for, etc.

(b)

...

This writ was issued by G. H. of
whose email, phone number and address for service (c)
isa
gent for of
Legal Practitioner for the said claimant who resides at
(d)(mention
the city, town or district and also the name of the street
and number of the house of the claimant's residence if
any)

Endorsement of email, phone number and address for
service of Legal Practitioner to be made on the copy of
the writ.

This writ was served by me

on the Defendant accompanied by A Statement of Claim;
A list of witnesses to be called at the trial;
Written statement on oath of the witnesses except
witnesses on subpoena;
A list and copies of all document to be relied on at
the trial;
Pre-action Protocol Form 01

(here insert mode of service) on
the.....day of..... 20.....
Indorsed the.....day of

.....
(Signed)

.....
(Address)

Note

a) Heading and Title - if the action is for administration the writ must be headed "In the matter of the Estate of deceased". If it is a debenture holder's action the writ must be headed in the matter of the company, and in a probate action. "In the Estate of A. B., deceased. A writ of summons claiming administration of a trust or settlement may be instituted "In the matter of the (Trust or settlement)".

b) Endorsement of Claim- If the claimant sues or defendant is sued in a representative capacity, the endorsement must state in what capacity the claimant sues or the defendant is sued. See Order 6 R. 2. If the claim is for a debt or liquidated demand only, the Endorsement, even though not special, must strictly comply with the provisions of Order 6 R. 4, including a claim for four days' cost.

- c) Probate Actions - In these actions the endorsement of claim must show the nature of the claimant's interest, under which he claims (Order 6 r. 3), and the alleged interest of the defendant.
- d) Address for Service - see Order 6 R. 6. The address must be within the jurisdiction.
- e) Address of Claimant -In the case of a company in liquidation the claimant's address should read "..... claimants, who is a company in liquidation. The liquidator is (name of liquidator) of (address of liquidator)". In the case of a foreign corporation within the meaning of part II of the Companies and Allied Matters Act the Claimants address should read (Claimants): a foreign corporation within the meaning of the Companies and Allied Matters Act. The registered name and address of the person to be served are (here add registered name and address)"
- f) Endorsement of Service - See O. 9 r. 13.

Before the writ is issued the following certificate must be indorsed on it: The Registry, High Court of Lagos State.

In theJudicial Division.

A sufficient affidavit in verification of the endorsement on this writ to authorize the sealing thereof has been produced to me thisDay of.....
20.....

.....
Signature

FORM 2

Writ For Service Out Of The Jurisdiction
(Order 5, r. 3)

To C. D.

of

...

You are hereby commanded that within (here insert the number of days directed by the Court or Judge ordering the service or notice) 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 in the.....Judicial Division of the High Court of Lagos State in an action at the suit of A. B.: and take notice, that in default of your so doing the plaintiff may proceed herein, and judgment may be given in your absence.

Dated this day of 20

By order of the court.

.....
Signature of Registrar

Memorandum to be subscribed on the writ

N. B: This writ is to be served within three calendar months from the date there of, or if renewed within three calendar months from the date of the last renewal, including the day of such date and not afterwards.

The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by Legal Practitioner at the Registry of the Judicial Division in which the writ is issued. This writ was served (as in Form No. 1) Endorsement to be made on the writ before the issue thereof:

This writ is to be used where the defendant or all the defendants or one or more defendants is or are out of the jurisdiction.

Note:

The above endorsement "N.B." must be on every writ or concurrent writ for service out of the jurisdiction. The endorsement "N.B" need not be made on a writ against defendants domiciled abroad, but whom it is intended to serve within the jurisdiction.

Endorsement: - if the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provisions of Order 6 R. 4 (1), including a claim for costs.

See also notes to Form No.1, supra.

FORM 3
General Form of Originating Summons
(Order 5 r.5(1))

In the High Court of Lagos State
In the.....Judicial Division
Suit No... Note:

(Heading and Title- if the action is for Probate or Administration, the Originating Summons must be headed:

“In the Matter of the Estate of..... AB deceased.

If the action is in respect of administration of a Trust or settlement, it must be headed

“In the Matter of the Trust or Settlement.”

Between:

A.B.....Claimant

and

C.D and

E.F.....Defendants

Let of in within 21 (forty-two) days after the service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this

summons which is issued upon the application ofwhose email, phone number and address are.....

....and who claims (state the nature of the claim), for the determination of the following questions: (state the questions).

DATED the day of 20.....

This summons was taken out by.....Legal Practitioners for the above-named

.....
.....

Indorsement of email, phone number and address of Legal Practitioner. See Order 6 Rule 6

FORM 4

**Originating Summons for taxation of Costs and
Arbitral Award etc under
(Order 5 R 5 (1))**

In the High Court of Lagos State
In the

Judicial.....Division
Suit No.....

In the matter of A. B., a Legal Practitioner (Re Taxation of costs, etc.) (or as may be).

Let A. B. of attend the Court, (or Chief registrar's Office) HIGH COURT LAGOS, on the day of 20..... at 9 O'clock in the forenoon (on the hearing of an application on the part of). (State relief sought).

(If for leave to endorse award under the Arbitration Law, ap. Add, "And that the respondent do pay the costs of this application to be taxed."

DATED the day of 20.....

This summons was taken out
byLegal Practitioner for
the
above named indorsement of email, phone number and
address of Legal Practitioner to be made on the copy of
the summons or forthwith after service.

Note:

It will not be necessary for you to enter an appearance
in the HIGH COURT REGISTRY, but if you do not
attend either in person or by your Legal Practitioner, at the
time and place above mentioned (or at the time mentioned
in the endorsement thereon), such order will be made
and proceedings taken as the Judge may think just
and expedient.

FORM 5

Form of ex-parte Originating Summons (Order 5 R. 5(1))

In the High Court of Lagos State

In the.....Judicial Division
Suit No.....

In the matter of A. B. an infant (or as may be).

Let all parties concerned attend before the Judge or
(Chief Registrar's Office). High Court, Lagos State, on
the day of
20..... at.....in the forenoon or so
soon thereafter as Counsel may be heard on the above
application on the part of the above named A. B., an
infant, by C. D. his next friend, that (state the nature of
claim and relief sought)

This summons was taken out by.
of email, phone number
and address.....agents.....
..... of email, phone number and
address..... Legal

Practitioner for the Applicant

NOTE: Specimen forms must be confirmed from the statute to avoid mistakes

CHAPTER FIVE **INTERLOCUTORY APPLICATIONS**

Interlocutory applications are applications made to court in the course of pending proceedings. The need for an interlocutory application may arise following the occurrence or threatened occurrence of an event while substantive proceedings are still pending in court. The application may either be made to Court i.e. to the Judge sitting in open court or to the Judge sitting in chambers, i.e. a Judge in chambers.

An interlocutory application is required under the Rules to be made to the open court, or Judge in chambers, by motion.

MOTIONS

A motion is an application made to court for the grant of a relief prayed for. Therefore, another name for a motion is an application. It is usually in writing and may be brought during the pendency of an action. Where an action has already been commenced and is pending in court at the time the motion is filed, such a motion is called an interlocutory motion. If a motion is brought in the absence of a pending action or as a means of commencing an action, it is not an interlocutory motion must be in relation to the substantive suit. See *Gombe v PW. (Nig) Ltd.* (1995) 7 SCNJ 19. An interlocutory order terminates with the substantive suit or appeal as the case may be. See *Okafor v AG (Anambra)* (1992) 2 SCNJ 219. If the applicant intends his order to be effective after the determination of the substantive suit, he cannot come by way of an interlocutory application. He must claim such relief as a perpetual order in his writ or other originating process. There are two types of motions, viz: motion *ex parte* and motion on notice.

MOTION EX PARTE

A motion *ex parte* is one heard in the absence of the other

party i.e. the other party is not put on notice. In *Leedo Presidential Motel Ltd. v. Bank of the North*, (1998) 7 SCNJ 328 at 353, the Supreme Court laid down two circumstances under which an application may be brought *ex parte*:

1. When, from the nature of the application, the interest of the adverse party will not be affected.
2. When time is of the essence of the application, i.e., in situations of urgency.

It should however be noted that a motion *ex parte* is a mandatory originating process in certain proceedings like enforcement of habeas corpus, certiorari and other prerogative orders etc. See O. 47 r. 2(2) (Abuja, 2018).

A motion *ex parte* for injunction shall not be heard unless a motion on notice in respect of it has been filed. See O. 43 r. 3(1) (Abuja, 2018)

In Lagos, the *ex parte* order abates after 7 days unless extended by the Court. In Abuja an order of injunction made *ex parte* shall lapse after 7 days but upon application the court may extend it if it is satisfied that the motion on notice has been served and that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. See O. 43 r. 3 (2) & (3) (Abuja, 2018)

In an *ex parte* motion, only the applicant is heard. Even if the other party is present in court, he will not be heard. See 7-Up Bottling Co. Ltd. V Abiola & Sons Ltd (1989) 4 NWLR 229

MOTION ON NOTICE

A motion on notice, like the name implies puts the other party on notice of the application before court, i.e., the other party is mandatorily served with it. The other party called the respondent is expected to appear in court on the hearing date to oppose the motion. He may not oppose it if his interest will not be adversely affected by the order being sought in the motion. Except directed by the court, there should be at least two clear days between the service

of the motion on notice and the date of hearing. In *Loxroy (Nig) Ltd v Triana Ltd* (1989) 12 NWLR (Pt. 577) 252 at 256. It was held that a motion on notice that was filed and moved on the same day was not ripe for hearing; and the order made thereon was set aside.

CONTENTS OF MOTION

- i. A motion shall be in the prescribed form and should contain the heading of the court in which it is brought as well as the parties, indicating which of the parties is Applicant or Respondent.
- ii. It shall state whether it is *ex parte* or on notice.
- iii. It may state the Law or rule of court under which it is brought. But some Rules of court make it mandatory that a motion shall state the rule of court or enactment under which the application is brought. This requirement is specifically provided for under O. 43 r. 1 of the Abuja Rules 2018 but in other jurisdictions using the Uniform Rules, it has been a matter of practice to state the rule or Law under which the application is brought. Notwithstanding the use of the mandatory word shall in some Rules of Court, the Supreme Court has held in *Uchendu v. Ogboni* (1999) 4 SCNJ 64 at 76 that failure to state the rule or law under which an application is brought is not sufficient to make the application incompetent or the order made thereunder, invalid, so long as there is a rule or law vesting the court with jurisdiction to make the order. See also the related decisions of the court in *Eboigbe v. Nigerian Airways* (1985) 1 QLRN 22; *Maja v. Samouris* (2002) 9 NSCQR 546.
- iv. It shall contain the prayers or reliefs sought.

- v. It shall be dated and signed by the Applicant or his counsel if he acts by one.
- vi. It shall contain the Respondent's address for service.

AFFIDAVIT TO ACCOMPANY MOTIONS

Every motion to court shall be supported by an affidavit setting out the facts on which the Applicant intends to rely. See O. 43 r. 1 (Abuja, 2018); O. 43 r. 1(1) (Lagos, 2019)

CONFLICT IN AFFIDAVITS

Where there is a conflict on material facts deposed to by the parties, it is imperative for the court to take oral evidence in order to be able to resolve the conflict and make a finding of fact. See *Falobi v. Falobi* (1976) 1 NMLR 169

However, where there is documentary evidence that can resolve the conflict, the court may dispense with oral evidence. See *EIMSKIP Ltd. v. Exquisite Industries (Nig) Ltd.*, (2003) 105 LRCN 485

ORDER OF HEARING MOTIONS

Where there are two motions, one seeking to terminate the proceedings on ground of irregularity; and the other seeking to regularize the irregularity, the latter one is to be heard first. See *NALSA & Team Associates v. NNPC* (1991) 11 SCNJ 51.

INTERPLEADER

Where a person is in possession of property or money claimed by two or more persons, and the person in possession is uncertain as to who is the rightful owner, the person in possession may apply to court for relief by way of interpleader to compel the contending claimants to interplead; i.e. to take proceedings between themselves in order to determine who is entitled to the subject matter. This is provided for under the Rules in both Abuja and

Lagos. See O. 48 (Abuja, 2018); O. 47 (Lagos, 2019) There are two types of interpleaders, namely, the Sheriff's interpleader and the stakeholder's interpleader. The Sheriff's interpleader is used in circumstances where a sheriff in execution of a judgment attaches property, which is claimed by a third party who is not the judgment debtor. Stakeholder's interpleader is one by any other person not being a sheriff.

PROCEDURE FOR INTERPLEADER

The application for interpleader is made by summons (O. 47 r. 2 Lagos, O. 48 r.5 Abuja). The application shall be supported by an affidavit stating (a) that the applicant claims no interest in the subject matter of the dispute except charges for costs, (b) that the applicant does not collude with any of the claimants, and (c) that the applicant is willing to pay or transfer the subject matter into court, or dispose of it as the court or judge may direct - Order 47 rule 2 Lagos; Order 48, rule 2 Abuja.

The application shall be supported by an affidavit stating *inter alia*:

- 1) that the applicant claims no interest in the subject-matter in dispute other than charges for costs;
- 2) that the applicant does not collude with any of the claimants; and
- 3) that the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court or judge in chambers may direct. O. 48 r 2 (Abuja); O. 47 r 2 (2) (Lagos)

See generally, O. 48 (Abuja, 2018), and O. 47 (Lagos, 2019)

INJUNCTIONS

An injunction is an order of court restraining the Respondent from doing an act. An injunction is an equitable remedy. So, it is at the discretion of the court.

However, the court is expected to exercise its discretion judiciously and judicially. See *Ayorinde v. AG (Oyo State)* (1996) 2 SCNJ 198. Injunctions could either be interim or interlocutory. For distinction between the two, see *Kotoye v CBN* [1989] 1 NWLR (Pt. 98) 419 at 441 and 442

INTERIM INJUNCTION

An interim injunction is one granted to preserve the status quo until a named date or until further order or until an application on notice can be heard. It is granted in situations of extreme urgency and normally on *ex parte* application. The affidavit in support of the application must disclose the urgency otherwise it will not be granted. It is granted to maintain the *status quo ante* till when the Respondent can be heard, and it is usually for a shorter duration. See *Kotoye v CBN* supra, O. 7 r. 8 (Abuja).

INTERLOCUTORY INJUNCTION

As has been said above, an interlocutory injunction is granted after all parties have been heard, and it lasts during the pendency of the suit.

PRINCIPLES FOR GRANT OF AN INJUNCTION

The principles guiding the grant or refusal of an injunction are the same in interim and interlocutory injunctions except for the requirement of a situation of real urgency for an interim injunction. They were stated in the case of *Obeya Memorial Hospital v. Attorney-General of the Federation & Anor* (1987) 7 SC (Pt. 1) 52 as follows:

- 1) Legal Right: There must be an existing legal right capable of being protected.
- 2) Substantial issue to be tried.
- 3) Balance of convenience. Irreparable damage or injury. The Applicant must show that he will suffer irreparable damage or loss not capable of being compensated in damages.

- 4) Conduct of the parties.
- 5) Undertaking as to damages.

See also *American Cyanamid Co. v. Ethicon Ltd.* (1975) 1 All ER 504

MAREVA INJUNCTION

This is an injunction restraining a Defendant who is not within the country or jurisdiction but has assets in the country or jurisdiction from removing his assets within the jurisdiction, or disposing of them. See *Mareva Compania Naveira S.A. v. International Bulk Carrier Ltd.* (1975) Lloyd's Rep 509; *Sotiminu v. Ocean Steamship* (1992) 5 SCNJ 1

ANTON PILLER INJUNCTION

This is an injunction normally made *ex parte* and *in camera*, permitting the Applicant to enter into the premises of the Respondent to search and seize, detain and preserve goods or articles in possession of the Respondent. This is normally granted in cases of infringement of copyrights, trademarks or patents. See *Anton Piller K.G.*

v. Manufacturing Processes Ltd. (1976) 1 All ER 779.

There is now a statutory provision for making an *Anton Piller* order in Nigeria under Section 25(1) of the Copyright Act Cap C28 LFN 2004; formerly Section 22 Cap 68 LFN 1990.

CHAPTER SIX

SUMMARY JUDGMENTS

Summary Judgment is a judgment given in favour of the Plaintiff/Claimant summarily without going through a full trial. To enter summary judgment the only things the court will consider is the Writ of summons, pleadings of the parties, application for summary judgment, affidavit in support of the application, counter affidavit and/or documents to be relied upon and written address where necessary.

Summary judgments are usually given where the Plaintiff/Claimant has established that the defendant does not have a good defence to the action. They are usually given on the merit as final judgments and can only be set aside on appeal.

On the other hand default judgments are also judgments given summarily in default of a party failing or neglecting to enter an appearance or file a defence to an action commenced in court against such party. See Order 10 rule 2 and Order 21 Abuja High Court rules 2018; Order 12 rule 1 and Order 22 High Court of Lagos State rules 2019 respectively for judgment in default of appearance and defence. However in the case of judgment entered in default it can be set aside upon an application that is brought before the court timeously in such respect.

There are various types of summary judgment procedures under the rules of court namely:- Summary Judgment under Order 13 of Lagos Rules 2019 and Order 11 of Abuja Rules 2018, Summary Judgment under the Undefended List Procedure under Order 35 of Abuja High Court rules, Summary Judgment based on admission of facts and documents, Summary judgment on application for accounts and Consent Judgment.

However for the purpose of our study under this topic we will only be discussing the Summary Judgment procedures under Order 13 of Lagos State Order 11 of Abuja and the Undefended List Procedure under Order 35 of Abuja.

SUMMARY JUDGMENT UNDER THE UNDEFENDED LIST UNDER THE FCT ABUJA RULES

Order 35 rule 1(1) of the High Court of the Federal Capital Territory, Abuja provides that:

“Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an affidavit stating the grounds on which the claim is based, and stating that in the deponent's belief there is no defence to it, the Judge in chambers shall enter the suit for hearing in what shall be called the "Undefended List".

A writ of summons for a suit in the undefended list shall contain the return date of the writ. Order 35 rule 1(2) Abuja rules. The Claimant shall deliver to the Registrar on the issue of the writ of summons, as many copies of the supporting affidavit as there are parties against whom relief is sought for service. Order 35 rule 2 Abuja rules.

A party who intends to defend the suit shall deliver to the Registrar before 5 days to the day fixed for hearing, a notice in writing that he intends to defend, together with an affidavit disclosing a defence on the merit and the court may give him leave to defend upon such terms as it may think just, Order 35 rule 3(1) Abuja rules.

Where leave to defend the suit has been granted the defendant, the suit shall then be removed from the Undefended List and placed on the ordinary cause list and

the court may order pleadings or proceed to hearing without further pleadings. Order 35 rule 3(2) Abuja rules. If a defendant does not deliver a notice of defence and an affidavit or is not given leave to defend, the suit shall be heard as an undefended list and judgment given accordingly. See Order 35 rule 4 Abuja rules.

A court may call for hearing or require for oral evidence where it feels so compelled at any stage of the proceedings under Rule 4. See Order 35 rule 5 Abuja rules.

Any judgment obtained under the undefended list is a judgment on the merit.

See Leventis Motors Limited v GCS Mbonu (1962) NMLR 19, U.A.C. (Technical) Limited v Anglo Canadian Cement Ltd (1966) N. M. L. R. 349

If a defendant does not within time deliver a notice of intention to defend and an affidavit required by the rules but before judgment applies to the court by motion on notice supported by affidavit disclosing a defence on the merits and satisfactorily explaining his neglect, the court may allow him to defend the matter on terms as it deems just. The court may also grant an adjournment to a party who merely files a notice of intention to defend, to enable him take the proper steps e.g. filing an affidavit disclosing a defence. See John Holt and (Liverpool) Ltd v. Fajemirokun (1961) ALL NLR 402.

Most States in the Federation have this undefended list procedure in their High Court Rules. See Order 23 Uniform Rules (Kano Rules), Order 23, Oyo; Order 24, Anambra, Order 11, Rivers etc. The procedure is also obtainable in the Federal High Court.

NOTE that the Lagos High Court Civil Procedure Rules, 2019 do not contain this procedure. What is obtainable in Lagos is Summary Judgment under Order 13. Previously Order 21 procedure (Abuja) rules 2004 now Order 35 (2018) rules Abuja and Order 23 Uniform rules had its equivalent in Order 60 of the old Lagos High Court Civil Procedure Rules of 1994. However the current Lagos Rules 2019 do not contain it.

SUMMARY JUDGMENT UNDER ORDER 11 ABUJA HIGH COURT RULES 2018 AND ORDER 13 HIGH COURT OF LAGOS RULES 2019.

Order 11 of the Abuja High Court (Civil Procedure) Rules 2019 provides that

“Where a claimant believes that there is no defence to his claim, he shall file with his Originating Process, the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application be supported by an affidavit stating the grounds for his belief and a written brief in support of the application.”

Order 13 rule 1 of the Lagos High Court rules also has a similar provision to the above although the rules require for the filing of “list and copies of documents to be relied upon.”

A claimant shall deliver to the Registrar as many copies of all these processes and documents for the use of the court and for service on the defendants. See Order 11 rule 2 Abuja rules and Order 13 R. 2 Lagos rules. Furthermore service of all the processes and documents shall be effected on the defendant(s) personally in the manner provided under Order 7 of the Abuja rules and Order 8 of the Lagos Rules respectively. See Order 11 rule 3 Abuja rules and Order 13 rule 3 Lagos rules.

A party who intends to defend the suit shall file the following:

- (a) Statement of defence;
- (b) Depositions of his witnesses;
- (c) Exhibits to be used in his defence;
- (d) Counter affidavit; and
- (e) A written brief in reply to the application for summary judgment.

NOTE that these documents are to be filed not later than the time prescribed for defence. See Order 11 r. 4 Abuja rules and Order 13 r. 4 Lagos rules.

Where it appears to the Judge that the defendant has a good defence and ought to be permitted to defend the claim, he may be granted leave to defend. However, where it appears to the Judge that the defendant has no good defence, the Judge may thereupon enter judgment for the claimant. On the other hand where it appears to the Judge that the defendant has a good defence to only part of the claim and no defence to the other part of the claim, the Judge may enter judgment for that part of the claim for which there is no defence and grant leave to defend that part to which there is a defence. See O. 11 r. 5 Abuja rules and O. 13 r. 5 Lagos rules.

Where there are several defendants and it appears to the court that some of them have good defence and ought to be permitted to defend and the others do not have good defence and ought not to be permitted to defend, those with good defence may be permitted to defend and the Judge shall enter judgment against those who have no good defence. See Order 11 rule 6 Abuja rules and Order 13 rule 6 Lagos rules.

Note that parties are at liberty to expatriate their written briefs by advancing oral submissions before the Judges. See Order 11 R. 7 Abuja rules.

Note: also that this procedure was only obtainable under the Lagos rules under Order 11 Lagos rules 2012 and not provided for in Abuja 2004 rules but is now provided for under both the Abuja rules 2018 and Lagos rules 2019.

Note: Compare the provisions of the Undefended List procedure under Order 35 Abuja rules with the Summary Judgment procedure under Order 11 Abuja rules 2018 Rules and Order 13 Lagos rules 2019.

OTHER TYPES OF SUMMARY JUDGMENT PROCEDURE

The following are other types of summary judgment available under the rules:

1. Order 12 Abuja and Order 14 Lagos - Summary judgment on application for accounts.
2. Order 20 Abuja and Order 21 Lagos - Summary Judgment on admission of facts and documents.
3. Order 39 rules 6 & 7 Abuja and Lagos – Entry of Summary Judgment.
4. Order 60 Abuja and Order 57 Lagos - Summary proceedings for possession of landed property occupied by squatters or without the owner's consent.
5. Order 10 rule 2 and Order 21, Abuja 2018 and Order 12 rule 1 and Order 22 Lagos 2019. These provisions deal with Judgment in default of appearance and pleadings which though not strictly summary judgment procedures because they are not judgments on the merits, are however judgments given in favour of a party without a trial. Note Order 4 rule 4(1) Abuja 2018 and Order 6 Rule 4(1) Lagos Rules 2019 which provides: "where the claim is for

debt or liquidated demand only, the originating process shall state the amount claimed for debt or in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the claimant's Legal Practitioner within the time allowed for appearance and that upon such payment the proceeding shall terminate".

APPLICATION FOR JUDGMENT AND FOR THE ENTRY OF JUDGMENTS:

Both the FCT Abuja rules and Lagos State High Court rules make provisions for application for judgment and for the entry of judgment after delivery, See Order 39 Abuja and Lagos rules.

CHAPTER SEVEN

PLEADINGS

Pleadings, strictly speaking are written statements of facts filed by parties in an action and served between the opposing parties stating concisely the facts upon which the parties base their case. Pleadings are filed in cases commenced by Writ of summons in the High Court. Examples of pleadings are statements of claim, statement of defence, reply, counter claims, set-off, further and better particulars etc.

The various rules of court make provisions for pleadings. In Abuja, the provisions are in Order 15- 18 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, while in Lagos, the provisions are in Order 17 – 22 of the High Court of Lagos State (Civil Procedure) Rules 2019.

FUNCTIONS OF PLEADINGS

1. **Pleadings help to ascertain with as much certainty as possible the various matters actually in dispute among the parties and those in which there is agreement between them:** *Morinatu and Oduka v. Kasumu and Another* (1966) N.M.L.R. 28 at 31; *Adesoji Aderemi v. Joshua Adedire* (1966) NMLR 398; *Atolagbe v. Shorun* (1985) 1 NWLR (Pt. 2) 360 at 365

A Pleading must be sufficient, comprehensive and accurate: *Ayoola James v. Mid-Motors Nigeria Co. Limited* (1978) 11 and 12 S.C 31 at 63.

Parties are bound by their pleadings: *Ambrosini v. Tinko* (1929) N.L.R. 8; *North Brewery Ltd v. Mohammed* (1972) N. N. L. R. 133; *G.U.O. Okeke & Sons Ltd v. Usifor* (2008) 1 All FWLR p. 280.

Note that a party will only be permitted to call evidence to support his pleadings and if evidence is in fact adduced contrary to his pleadings such evidence must be expunged when the judge is considering the case: National Investment Properties v. Thompson Org. Ltd (1969)1 ALL NLR.

2. **Pleadings help to avoid springing of surprises.** The rule of natural justice – *audi alteram partem*- demands not only that both parties be heard but also that neither of them be allowed to surprise the other by raising unforeseen issues: Ita & Anor v. Ekpenyong & Ors (1963) E. N. L. R. 21, George and Others v. Dominion Flour Mills Limited (1963)1 All N. L. R. at 72; Okoye v. Nwankwo (2014) 15 NWLR (Pt. 1429) 93 at 125. It is the duty of counsel to raise objection to the admission of evidence to an issue not pleaded. But if he fails to take this objection at the trial and such evidence is wrongly admitted, he may raise the point on appeal: Minister of Lands v. Azikiwe (1969) 1 All NLR 490. ; Abowaba v. Adesina (1946)12 W. A. C. A. 18; Owoniyi v. Omotosho(1961)All N.L.R. 304; (1962) WNL.R. Lloyd v. West Midlands Gas Board (1971) LW.L.R.749; (1971) 2 All E.R. 1240. A plaintiff or claimant however, is allowed to lead evidence on any matter raised in the defendant's pleading, Adenuga v. L. T.C., Igbedin and Others v Ovianke(1967) 9 - 10 S.C. 179 at 191.

Evidence in respect of matters not pleaded really goes to no issue as the Court should not allow such evidence to be led; Woluchem and Ors v. Gudi and Ors(1981) 5SC 291 at 320, (1981) NSCC. 214 at 227.

In National Investment Properties v. Thompson Org. Ltd (supra) the Supreme Court held as follows:

"A plaintiff must call evidence in support of his pleadings and evidence which is in fact adduced, which is contrary to

his pleadings should never be admitted. It makes no difference that the other side did not object to the evidence or that the judge did not reject it. It is of course the duty of Counsel to object to inadmissible evidence. And the duty of the trial court anyway is to refuse to admit inadmissible evidence. But if notwithstanding this, evidence is still through an oversight or otherwise admitted, then, it is the duty of the court when it comes to give judgments to treat the inadmissible evidence as if it had never been admitted.”

Similarly, there is no issue between the parties in respect of matters expressly admitted on the pleadings and therefore no evidence is required in reference to those matters as facts admitted needs no further proof. See section 123 Evidence Act 2011. See also *The British India Insurance Company (Nigeria) Limited v Thawroles* (1978) 35. S C. 143

3. Pleadings serve as guide to the court as to the precise matters it is called upon to decide between the parties.

The court is bound by the pleadings of the parties and is not to determine issues or award reliefs not raised or sought by the parties. OGIEMIEN V. OGIEMIEN (1967) NMLR 245.

Any judgment that does not answer or determine the issues raised as being in controversy between the parties is in error and bound to be set aside on appeal.

4. Pleadings constitute permanent records of the issues and questions raised and determined between the parties.

This constitutes a public record for posterity and prevents re-litigation of the issues as a plea of *res judicata* can be raised on such issues.

5. **Pleadings show on whom the burden of proof lies on the respective issues raised.** See Sections 131(1), 132 and 133 of the Evidence Act 2011. See also S.B. BAKARE V. ACB LTD. (1986) 5 SC 48.
6. **The nature of pleadings served on the parties will determine the proper approach to be adopted in meeting the opponent's case.** For example, whether to ask for further and better particulars or to take out proceedings in lieu of demurrer or for non-disclosure of a reasonable cause of action, ask for judgment on admission, apply for consolidation of actions and so on.

SUMMARY OF ADVANTAGE OF PLEADINGS

- a) Before the actual hearing of the case, a party knows the case of his opponent and can thus prepare his own to meet it. This prevents unnecessary waste of time and consequently costs. It may be that in some cases there is no dispute as to any facts of the case whatsoever, in which case only legal points will be argued thus reducing the time spent in hearing the case and therefore costs; See Akintola v. Solano(1986) 2 N. W. L. R. 598.
- b) It may also happen that through the pleadings the parties get to know that there is really nothing to fight about in which case the plaintiff or claimant may withdraw part of or all his claims or the defendant may submit to judgment in respect of some or all of the claims against him.
- c) Determination of issues of fact or points of law in the case based on the pleadings will form the basis of the plea of *res judicata* in any subsequent proceedings.

SUMMARY OF CONTENTS OF PLEADINGS

- a) Every pleading must contain only material facts. – O17 R2 Lagos; O 15 R2 Abuja.

- b) It must contain only material facts, but not law or legal argument or conclusion
- c) It must not state the evidence by which the facts are to be proved; and
- d) It must contain the reliefs being sought by the parties. – O18 R 1(1) or O15 R1 Abuja.

MATTERS WHICH MUST BE SPECIFICALLY PLEADED

- a) Allegation of fraud or the commission of crimes or any fact showing illegality: *Adeoye v. Jinadu (1975) 5 S.C 102*; *Onyuike v Okeke (1976) NSCC 146*; *Fabunmi v. Agbe (1985) 5 SC*
- b) In a matrimonial or other causes based upon adultery, the particulars of the alleged acts of adultery must be 'specifically pleaded including the times and places of each act of adultery as well as particulars of the person with whom the adultery is allegedly committed: *Ikoku v. Oli (1962) 1 All N. L. R 194 at 199-200*.
- c) In libel cases the particulars of the alleged libel have to be pleaded in order to make it easily identifiable. The precise words have to be set out. If the words do not specifically refer to the plaintiff or claimant, he must plead those facts from which he wants the Court to infer that the libel refers to him; *Bruce v. Oldham Press Ltd (1939) I.K.B. (697)*; *Okafor v. Ikeayi(1979) 3 and 4 S.C 99*. In slander cases the precise words used and the names of the persons to whom they were uttered must be pleaded: *Bradbury v. Cooper (1884) 12 Q. B. D. 94*, particulars of the times and the place where the words were uttered should be pleaded. If the libel or slander is in a

foreign language, the actual words allegedly written or spoken must be set out in the foreign language, followed by a literal translation thereof: Sowole v. Erewunmi (1961) All N.L.R.712. Also in a case of defamation, if the defence is that of qualified privilege or fair comment, this must be specially pleaded: Simonds v. Dunne (1871) and the Court may not permit an amendment raising the plea after the close of evidence: Stallworthy v. Geddis (1909) 28 N. Z. L. R.366.

- d) If special damages are claimed, the details of those must be specially pleaded: Mukete v. N.B. C. and Another (1961) All N. L.R. 482; Otaru & Sons v. Idris (1999) 68 LRCN 823.
- e) Estoppel must be specially pleaded: Owoniyi v. Omotosho (1951) All. N.L.R. 304(1962) W. N. L. R. 1: Obanye v. Okwunwa Ijoma (1930) 10 N.L.R. 8.
- f) A purchaser of legal estate, subject to a prior equitable mortgage must specially plead that he is a purchaser for value without notice. Failure to plead that defence or call evidence to establish lack of notice, raises a presumption that the purchaser had notice of the prior mortgage. Barclays Bank D. C.O. v. Olofintuyi and Anor: (1961) All N.L.R. 799
- g) Unenforceability of a document must always be pleaded: N M Jebara v. Mercury Assurance Co. Ltd (1972) 2 U.L.L.R. 498; and where a party fails to plead the facts which renders a document unenforceable against him, it is not open to the Court to consider it. See also the dictum of Charles J In Barclays Bank D. C. O. v. Memunatu Hassan N. L. R. 837.

- h) Where a contract is not *ex facie* illegal and the question of illegality depends on the circumstances, as a general rule, the Court will not entertain arguments on the question of illegality unless it was raised by the pleading: *George and Others v. Dominion Flour Mills Limited* (1963)1 All N. L. R. at 72.
- i) A statutory exception to a general statutory immunity from liability must be specially pleaded by the party. *Wada v. Kebbi*(1962) 2 All N L. R. 73; *Moore v. News of the World Ltd and Another* (1972) I. Q. B. 441 at 448. Therefore, where the law prohibits the institution of the proceedings, or prescribes a notice of intention to institute the proceedings, i.e. a pre-action notice, defendant who intends to rely on the absence of such notice as a defence must raise it in his pleadings - *Katsina Local Authority v. AlhajiBarmoMakudawa*(1969) N. N. L. R. 62 (1971) N.M. L. R. 100.
- j) Facts relied upon for bringing a particular transaction within the ambit of particular Act, e.g. Money Lenders Act (Cap) 124 should be specially pleaded: *Banwo v. A. G Leventis and Co. Limited* (1960) L. L. R. 78; *Katsina Local Authority v. Alhaji Barmo Makudawa* (supra). An allegation that a failure of a condition precedent to found the plaintiffs claim exists must be specially pleaded by the defence: *Yassin v. Barclays Bank D. C. O.* (1968) NMLR 380, OR (1968) NMLR 46. See also the *Lion of Africa Insurance Co. Ltd v. Stella Anuluoha* (1972)1 All N. L. R. (pt.2)32.

- k) A written agreement must be pleaded, however, where it is not pleaded and the pleadings of the plaintiff or claimant is not in conflict with it, or it was admitted by consent, a court of appeal will not allow an appeal against a judgment founded on the agreement; *Mandila s and Karaberis Ltd v. Yesufu Otokiti* (1963)1 All N. N. L. R. 84.
- l) In a claim for declaration of title to land based upon inheritance from ancestors, the claimants must plead the names or the histories of the several ancestors.
- m) The defence of laches, acquiescence and undue influence must be specially pleaded: *Adeoyev. Jinadu* (1975) 5 S. C. 102; *Gbadebo and Another v. Fadioria and AnO.* (unreported) W.S. CAN/33/68 June 6, 1969. Similarly, Waiver of a condition of an agreement must be pleaded: *Wada Darma v. Lion of Africa Insurance Co.* (1970) N. N. L. R. 84. Where the basis of an action is *res ipsa loquitor*; this must also be specifically pleaded either by specific reference to that maxim or by pleading facts which justify the application of it: *Adebisi & Ors v. Oke*(1967) N.M.L.R. 64.
- n) Items of loss alleged to constitute special damages have to be particularized in the plaintiffs pleading: *Odumosu v. A. C. B. Ltd* (1976) 1. S.C. 55, 69: See also *Perestrello Ltd v. United Paint Co. Ltd, Same v. Same* (1969). W. L. R. 579, (1969) 3 All E. R. 479.

FORMAL REQUIREMENTS OF PLEADINGS

1. The pleadings must be headed in the title of the court in which the action is commenced.

2. It must have a suit number.
3. The names of the parties must be set out on the pleading (together with the capacity in which they are suing or defending where this is necessary).
4. A pleading must bear its own heading i. e. statement of claim or statement of defence as the case may be.
5. It must be arranged in paragraphs and numbered consecutively.
6. It must state facts in a chronological order, that is, in the sequence in which they occurred.
7. It must state facts positively, precisely, distinctly, briefly and in the active voice.
8. Pronouns should be avoided as they may create ambiguity and there must be consistency in nomenclature.
9. Dates and numbers are to be written in figures but may also be expressed in words. Order 15 R. 2 Abuja Rules
10. Pleading must be dated and signed by a legal practitioner or by the party if he sues or defends in person.
11. It must contain the address of the counsel that settles it.
12. It must contain the address for service on the other party.
13. It is also important that the paper on which it is written must be good and of durable quality.

SPECIFIC PLEADINGS

STATEMENT OF CLAIM

The statement of claim is an elucidation and amplification of the claim of the plaintiff as summarily endorsed on the

writ. It is a kind of elaboration of what you have on the writ.

It is the first pleading and it is usually contained in a separate document from the writ and filed simultaneously with the writ. The writ merely states the nature of the claim and the relief claimed while the statement of claim give details of the claim and alleges facts on which it is based.

A statement of claim has 3 important parts viz.

1. The introductory averments
2. The body
3. The prayer or relief

When the statement of claim is filed, it supersedes the writ.

See *Elf (Nig.) Ltd. V. Sillo [1994] 7 – 8 SCNJ 119;*

Enigbokan v. AIICO (Nig.) Ltd. (1994) 6 SCNJ 168;
Udechukwu v. Okwuka (1956) 1 FSC 70. This means that any matter which is stated in the writ but omitted in the statement of claim is deemed to have been abandoned. However, it must be noted that although the statement of claim supersedes the writ, nevertheless, it must confine itself to the cause of action indorsed upon the writ of summons.

STATEMENT OF DEFENCE

This is the pleading filed by the Defendant in response to the allegations of fact in the Claimant's statement of claim. It may, therefore, respond to allegations in the statement of claim in the following ways:

1. Admission
2. Traverse
3. Confession and avoidance
4. Objection on point of law
5. Set off and
6. Counterclaim.

As with the statement of claim, a statement of defence needs to conform to the formal requirement of pleadings. The defence should deal with the claimant's allegation in the order in which they are set out in the statement of claim. It may be convenient to deal with facts to be admitted followed by facts that elaborate or explain such admissions.

Then, facts denied followed by facts elaborating on them, after which confession, avoidance, objections on points of law set-off and counterclaim would be taken. The order chosen must depend on the facts presented and how it may have been dealt with in the statement of claim.

TRaverse

In simple terms, to traverse means to deny the allegations in the statement of claim. Any allegation not traversed is deemed to be admitted. By common practice a general traverse in the following form is accepted and when it is employed; it puts the opponent to the proof of the facts stated or alleged in the statement of claim. It is employed where a legal practitioner has no instructions on particular allegation and it is usually put at the beginning of the pleading. It is stated thus:

Save and except as is hereinafter expressly admitted the defendant denies each and every allegation of fact contained in the Statement of Claim as if same were set out herein and traversed seriatim.

See Mandilas and Karaberis Ltd v. Lamidi Apena (1969) N.M.L.R. 199; Wanner v. Sampson (1959) 1 Q. B. 297, 310; Ace Jimona Ltd v. The Nigeria Electrical Contracting Co. Limited S.C.

589/64- May 1966, *Edward Attah and Others*
versus *Chukwurah Nnacho and Ors* (1965) N.M.L.R. 28.

TRAVERSE MUST NOT BE EVASIVE

One of the essential rules of pleadings is that defendant's pleading shall deny all material averments in the statement of claim as the defendant intends to deny at the hearing. Every allegation of fact which is not specifically denied or stated not to be admitted shall be taken as established. Denial should therefore not be evasive. It should meet the pointed-out instances pleaded in the statement of claim and where any allegation of fact in the statement of claim has not been specifically denied or by implication, the plaintiff is not even obliged to establish it by evidence. See *Economides v. Thomopolus and Co. Limited* (1956) 1 F. C. 7 at 10. The law and rules of pleadings do allow a general traverse the only effect of which is to cast on the plaintiff the burden of proving the allegation thus generally denied. See *Ace Jimona Ltd v. The Nigeria Electrical Contracting Co. Limited* S. C. 589/64- delivered in May 1966. It must be noted that a general traverse is not enough to controvert material and essentially important averments in the statement of claim. See *Akintola v. Solano* (1986) 2 N. W. L. R. 598. Therefore, in answer to an allegation that the defendant offered a bribe of N 1000.00 Naira, it is not sufficient to say that the defendant denies that allegation but it should be stated that the "defendant never offered a bribe of N1,000.00 Naira or any other sum". Similarly, it is not sufficient for the defendant in an answer to the plaintiff's allegation that he had been paid sum of N500.00 Naira, to say that "defendant was never paid the sum of N500.00 Naira". He must go further to say that he had not been paid the sum of N 500.00 Naira or any other sum. If it is the case that he had been paid some sum of money, he should state the actual sum he had been paid. In an action for slander it is not sufficient for the defendant to deny that

he spoke the words alleged to be defamatory but must go further to say that he never uttered any words to be of like effect". Similarly, where a petitioner in divorce proceeding alleges that the parties are domiciled in this country it is defective pleading merely to deny that fact without at the same time alleging what the respondent considers to be the domicile of the parties. See *Udoh v. Udoh* (Unreported) Civil Suit NO.1/1 86/68 September 10, 1970.

Where a defendant states "The defendant is not in a position to admit or deny the allegation contained in paragraph 6 of the statement of claim", it has been held that such traverse is not a proper traverse and amounts to no denial at all. See Lewis & Peat (NRI) Ltd. V. Akhimien (1976) 7 SC 157; Akintola v. Solano (1986) 2 N. W. L. R. 598. But in Aja v. Okoro (1991) 9-10 SCNJ 1 at 18, it was held that in circumstances where the facts are only known to the Plaintiff, it would constitute a proper traverse. In Ugochukwu v. CCB (1996) 7 SCNJ 22, it was held that the court should look at other paragraphs of the statement of defence in order to determine whether it amounts to an admission or denial.

SET-OFF AND COUNTER CLAIM

See generally O. 15 r. 1 Abuja and O. 17 r. 1 (2) & (3) Lagos

A set –off is a monetary claim set up as defence, to a claim contained in the statement of claim whilst a counterclaim is in fact a claim by defendant against the plaintiff or claimant in *the* same proceedings. The life of a set-off revolves around the claimant"s claim. If the claimant"s claim is terminated, the set-off abates. Whilst therefore the claimant need not make a reply to a set–off he must set out in his reply a defence to a counter-claim. A counter-claim from the point of view of pleading is like statement of claim and is governed by the same rules of pleading.

A counter-claim should for all practical purposes be regarded and treated as an independent action. Therefore, whether the original action is stayed, discontinued or dismissed the counter-claim may proceed to trial. See O. 17 r. 11 Lagos. The usual practice is to separate the facts relied upon to sustain a counter-claim from the remaining part of the statement of defence and to arrange them in numbered paragraphs under the heading "Counter-claim".

REPLY

This is used by the plaintiff to answer new issues raised in the statement of defence such as in cases of confession and avoidance. It is not necessary to file a reply if its only purpose is to deny the allegations made in the statement of defence because of the principle of implied joinder of issues. Facts may be traversed in the reply as follows:

"The plaintiff joins issues with the defendant on paragraph X of his defence".

The plaintiff is not allowed to raise a new cause of action or allege facts inconsistent with the statement of claim in the reply. This can only be done by amendment of the statement of claim.

TIME FOR FILING PLEADINGS

Under the Lagos Rules, a statement of claim must accompany the writ as well as list of witnesses, witness statement on oath, copies of documents to rely on at the trial and pre-action protocol Form 01. See Order 5 Rule 2. A defendant shall file his statement of defence, set off or counterclaim, if any, not later than 42 days after service on him of the claimant's originating process and accompanying documents. See O. 17 r. 1(2) High Court Rules, 2019, Lagos. A claimant shall within 14 days of service of the statement of defence and counterclaim, if

any, file his reply, if any, to such defence or counterclaim – O. 17 r. 1(4) and O. 20 r. 1 Lagos

Under the Abuja Rules, O. 2 r. 2(2) requires a claimant to serve a statement of claim, list of witnesses, witness' statement on oath, copies of document to be relied on at the trial and certificate of pre-action counselling Form 6 along with the writ of summons. The defendant who enters appearance in and intends to defend an action, shall within 21 days after the service of the statement of claim and the writ of summons on him, serve a statement of defence on the claimant, along with copies of documents mentioned in the statement of defence to be used in evidence, witnesses statement on oath and a certificate of pre-action counseling. Claimant has 14 days to reply, if there is no reply, there is implied joinder of issue. O. 15 r. 2 and 3 Abuja.

EXTENSION OF TIME TO FILE PLEADINGS

Where a party is out of time to file pleadings, he may apply for extension of time to do so. The application is by motion on notice supported by affidavit which must disclose reasons for failing to file pleadings within time. The application also be supported by a written address. See O. 48 r. 4 Lagos and O. 49 r. 4 Abuja.

(SPECIMEN OF STATEMENT OF CLAIM)

**IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS**

Suit No. LD/123/92

BETWEEN:

**KOLATAWIN FINANCE CO. LTDCLAIMANT
AND**

**1. KATAKARA NIGERIA LIMITED
2. ISIAKA ALOWOASANDEFENDANT**

STATEMENT OF CLAIM

1. The claimant is a limited liability Finance and Securities House with registered address at LSDPC House, 11th Floor, Nnamdi Azikiwe Street, Lagos within the jurisdiction of this Honourable Court.
2. 1st Defendant is a general trading and merchandising company incorporated under the Companies Act 1990 with its business address at NO.100 Malu Road, Ajegunle, Apapa within the jurisdiction of this Honourable Court.
3. The 2nd Defendant is the Managing Director of the 1st Defendant Company and has personally guaranteed the payment of a loan facility of N60, 000.00 Naira granted the 1st Defendant by the Plaintiff and resides at No 5 Mopol Road, Apapa within the jurisdiction of this Honourable Court.
4. On 20th August, 2004, the claimant advanced a loan facility of N60, 000.00 Naira to the 1st Defendant and it was agreed between the parties as follows:-
 - a. That the principal sum of N60, 000.00 Naira together with management fee of N18,000

were to be paid by the 1st Defendant on or before the 17th November, 2004.

- b. That in the event of default the 1st Defendant shall pay N500. 00 per day as penalty.
5. The claimant avers that despite several reminders served on the Defendants to honour their obligation, they have persisted in their default to date.
6. The claimant's Solicitor has also made a formal demand on the defendants without any response from them.
7. The claimant will rely at the trial on the following:-
 - a. 1st Defendant's letter of application for loan dated 16th August, 2004.
 - b. The claimant's letter of offer to the 1st Defendant dated 31st of August, 2004 and the written acceptance slip signed by the 1st Defendant.
 - c. The claimant's letter dated 20th August, 2004 to the 1st Defendant formally disbursing the loan facility.
 - d. The claimant's letter to the 1st Defendant dated 16th April 2005 and 2nd December, 2005.
 - e. 2nd Defendant's hand written note to the Plaintiff dated 27th February, 2005.
 - f. The Guarantee executed by the 2nd Defendant.
 - g. The claimant's solicitors letter to the Defendants dated 20th December 2005.
8. WHEREFORE the claimant claims as follows:

- a. The sum of N60,000.00 being the principal loan
- b. The sum of N18,000.00 being the management fee
- c. The sum N100,000.00 general damages for breach of contract
- d. The cost of this action

Dated this day of 2015

.....

Barista O. Loya Esq.
Barista, Barista & Associates
(Claimant's Counsel)
No. 1 Tutu Mayo Street
Obalende,
Lagos State.

Email: lawyers@baristaandassociates.com.ng

Tel: 070722269945, 0805802277

FOR SERVICE ON:

The 1st Defendant
100 Malu Road, Ajegunle
Lagos.

The 2nd Defendant
No. 100 Malu Road
Ajegunle Lagos.

(SPECIMEN OF STATEMENT OF DEFENCE)
IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
Suit No. LD/5432/74

BETWEEN:
CHUKWUKA AYOTUNDE - CLAIMANT
AND
UMARU EFFIONG - DEFENDANT

STATEMENT OF DEFENCE

1. Save and except as are herein expressly and specifically admitted the Defendant denies each and every allegation contained in the claimant's Statement of Claim as if each of such allegations were herein set out and traversed seriatim.

The Defendant never wrote or printed or published any of the words set out in paragraph 6 of the Statement of claim.

The Defendant avers that none of the said words of the alleged publication contained in paragraph 6 of the statement referred to was understood to refer or is capable of referring or of being understood to refer to the claimant as alleged or at all.

The Defendant says that the said words do not bear, nor understood to bear nor are they capable of bearing any of the meanings alleged in the statement of Claim.

The Defendant avers that the said words are not defamatory.

The claimant has not suffered the alleged or any loss or damage.

The Defendant will contend at the trial of this action that the claimant is not competent to bring this action.

Whereof the Defendant say that the claimant is not entitled to claim as per his Writ of summons and that this claim be dismissed with substantial costs.

Dated this day of 2005

Babasoki Akuna Esq
Babasoki & Co.
No. 4, Babasoki Street
Ajegunle, Lagos State
E – mail: lawyers@baristaandassociates.com.ng
Tel: 070722269945, 0805802277

FOR SERVICE ON:

The Claimants
C/O Their Counsel
Fair Weather Chambers
No. 2, Abokina Crescent
Igbogbo Okobo
Ikorodu
Lagos.

NOTE:

Under O. 19 r. 1 of the Lagos Rules, the statement of defence shall be a statement in summary form and shall be supported by list and copies of all documents and a list of witnesses and their deposition.

NOTE ALSO:

Order 17 rule 1 (2) Lagos which provides that a defendant shall file his statement of defence, set-off or counterclaim,

if any, not later than 42 days after service on him of the claimants originating process and accompanying documents.

Order 17 R. 1 (4) & (5) Lagos provides that a claimant shall within 14 days of service of the statement of defence and counterclaim if any, file his reply, if any, to such defence or counterclaim provided that if such claim in the counterclaim ought to be in an independent proceeding, a Judge may order that the counterclaim be excluded.

Under the Abuja Rules 2018, it is provided in Order 15 Rule 1(2) and Order 17 Rule 1 to the effect that a defendant who enters appearance in, and intends to defend an action shall, within 21 days after the service of the statement of claim and the writ of summons on him, serve a statement of defence on the plaintiff, along with copies of documentary evidence, list of witnesses and their written statement on oath.

A claimant shall within 14 days of service of the statement of defence and counterclaim if any file his reply and defence if any to such defence or counterclaim – O. 15 r. 1(3) (Abuja)

CHAPTER EIGHT **PRE-TRIAL AND PROCEEDINGS**

PROCEEDINGS IN LIEU OF DEMURRER

The term demurrer was derived from the Latin word "demorare" which means to "wait" or "stay". See *Bambo v. Aderinola* (1977) 1 SC 1 at p 6. It is a common law procedure that was contained in some of the old rules of procedure in Nigerian courts. A party may make a demurrer application to challenge his opponent's pleading on a point of law, while he refrains from pleading, until the determination of the demurrer. This procedure has been abolished in virtually all the rules of procedure. See Order 23 Rule 1 of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018; Order 24 Rule 1, of the High Court of Lagos State (Civil Procedure) Rules, 2019 subsequently referred to as the Abuja Rules 2018 and the Lagos Rules 2019 respectively. In its place, most rules now contain provisions for proceedings in lieu of demurrer.

Under the new procedure, any party may raise by his pleading any point of law, and any point so raised may be disposed of by the trial Judge prior to, at or after the trial. See Order 23 Rule 2 (1) and 24 Rule 2 (1) Abuja and Lagos Rules 2018 and 2019 respectively. Under the Abuja Rules, if the Court or Judge is of the opinion that the decision of such point of law substantially disposes of the whole action, or any distinct cause of action, ground of defence, set off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other Order therein as may be just. See Order 23 Rule 2 (2) of the Abuja Rules, 2018. While, under the Lagos Rules, if in the opinion of the judge, the decision on such point of law substantially disposes of the whole proceedings or any part of it, the judge may make such decision as may be just. See Order 24 Rule 2 (2) of the Lagos Rules 2019.

An application under this procedure, if brought before the hearing of the suit, must be made by motion on notice setting out the point of law for determination. See Order 43 Rule 1 Abuja Rules 2018 and Lagos Rules 2019. Such application may also be made orally provided all the parties are in court and consent thereto. See *Olabiyi v. Abiona* (1955-56) WRNLR 126. An application can only be made in lieu of demurrer after the defendant has joined issues with the claimant by filing a statement of defence. This distinguishes the proceedings in lieu of demurrer from a demurrer procedure. See Order 23, Rule 2 (1) and 24 Rule 2 (1) Abuja and Lagos Rules 2018 and 2019 respectively. See also, *Fadare v.A.G Oyo State* (1982) 4 SC 1

STRIKING OUT PLEADING FOR NON DISCLOSURE OF REASONABLE CAUSE OF ACTION OR DEFENCE

The Court or judge may order any pleading to be struck out for non-disclosure of reasonable cause of action or answer, and where a pleading is shown to be frivolous or vexatious may consequently order the action to be stayed or dismissed or judgment to be entered accordingly as may be just. See. Order 23 Rule 3 Abuja Rules 2018 and Order 17 Rule 17(1) Lagos Rules 2019. The applicant applies by motion or summons, clearly indicating the particular order sought i. e. dismissal or striking out the pleading being attacked and the ground of the attack. See *Carl Zeiss Shifting v. Rayner & Keeler Ltd* (No. 3) 1970 Ch. 506

PRETRIAL AND CASE MANAGEMENT CONFERENCE AND SCHEDULING

Pre-trial Conference and Scheduling is provided under Order 27 of the Abuja Rules 2018 while Case Management Conference and Scheduling is provided under Order 27 of the Lagos Rules, 2019.

Order 27 Rule 10 of the Abuja Rules 2018, provides that within 7 days after close of pleadings, the claimant shall apply for the issuance of a Pretrial Conference Notice as in Form 19 and the Court shall cause to be issued to the parties and their legal practitioners (if any) a Pre-trial Conference Notice as in Form 19 accompanied by a Pre-trial Information sheet as in Form 20. On the hand, Order 27 Rule 1 of the Lagos Rules, 2019, provides that within 14 days after close of pleadings the claimant shall apply for the issuance of a Case Management Conference Notice as in Form 17 and the judge shall cause to be issued to the parties and their legal practitioners, where applicable, a Case Management Conference Notice as in Form 17 accompanied by a Case Management Information Sheet in Form 18.

The purposes of the Pre-trial and Case Management Conference and Scheduling are:

- a) disposal of matters which must or can be dealt with on interlocutory application.
- b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal.
- c) promoting amicable settlement of the case or adoption of alternative dispute resolution.
- d) Fix trial dates. This fourth purpose is only provided under the Abuja Rules. See Order 27 Rule 10 (2) Abuja Rules 2018 and 27 Rule 1(2) Lagos Rules 2019. If the claimant does not make the application for Pretrial or Case Management Conference, the defendant may do so or apply for an order to dismiss the action. Order 27 Rule 10 (3) Abuja Rules 2018 and 27 Rule 1 (3) Lagos Rules 2019.

At the Pre-trial or Case Management Conference, the Judge may make an order for:

- a) Formulation and settlement of issues
- b) Amending pleadings and further and better particulars;
- c) The admission of facts and other evidence by consent of the parties;
- d) Controlling and scheduling of discovery, inspection and production of documents, etc. For further details. See Order 27 Rule 10 (13) Abuja Rules 2018 and 27 Rule 2 Lagos Rules 2019

For sanction on failure to attend Pre-trial or Case Management Conference, see Order 27 Rule 16 of Abuja Rules 2018 and 27 Rule 5 of Lagos Rules 2019. After the Pre-trial or Case Management Conference the Judge issues a report. See Order 27 Rule 15 of Abuja Rules 2018 and 27 Rule 4 of Lagos Rules 2019.

DISCOVERY AND INSPECTION

Discovery may be of facts otherwise called interrogatories and of documents (inspection)

PARTIES TO DISCOVERY Discovery whether of facts or documents is available to any party to the proceedings and as long as there is a question for decision between them in that proceedings. There must be an issue to be determined between the parties. Discovery is not limited to adversarial parties, i.e. the claimant and defendant. Even two co-defendants can apply for discovery, once there is an issue to be determined between such parties. The court may also order discovery to be made between a claimant and a third party.

DISCOVERY OF FACTS (INTERROGATORIES)

This is a procedure whereby a party obtains admissions from his opponent by asking questions in the form of what are known as interrogatories.

Object of Interrogatories:

- a) To support the case of the interrogating party.
- b) To weaken the case of the party being interrogated.
- c) To ascertain to some extent the case of the opponent and the facts he is going to rely on at the trial.
- d) By answering interrogatories, the party interrogated will be placing facts on record from which he cannot resile.

PROCEDURE:

Discovery of facts is made by delivery of interrogatories as in Form 21 under the Abuja Rules 2018 and Form 19 under the Lagos Rules 2019. The interrogatories shall be delivered within 7 days of the close of pleadings and shall form part of the pre-trial or case management conference as the case may be. See, Order 28 Rule I and 2 Abuja Rules 2018 and 29 Rule 1 (1) (3) Lagos Rules 2019

ADMISSIBLE AND INADMISSIBLE

INTERROGATORIES

A. ADMISSIBLE INTERROGATORIES:

1. Facts directly in issue and any fact the existence or non-existence of which is relevant to the existence or non-existence of the facts directly in issue.
2. Interrogatories, the answer to which will support the case of the party interrogating or to destroy that of his opponent.
3. In considering the admissibility of interrogatories, the pleadings are of vital importance, since

pleadings determine matters in dispute between the parties.

B. INADMISSIBLE INTERROGATORIES

1. Questions as to Credit.
2. Interrogatories as evidence which the interrogating party intends to adduce on the proof of facts which he alleges.
3. Contents of documents.
4. Fishing Interrogatories e.g. matters outside the pleadings.
5. Oppressive interrogatories.

See, *Abubakar v Yar' Adua* (2008) 4 NWLR (Pt.1078)465 , *Famuyide v Irving & Co. Limited* (1992)9 SCNJ 63

OBJECTIONS

1. Scandalous questions.
2. Irrelevant or inadmissible questions or questions not made *bonafide*

See: Order 28 Rule 4 Abuja Rules 2018 and 29 Rule 3 Lagos Rules 2019

ANSWER TO INTERROGATORIES

Interrogatories are answered by affidavit as in Form 22 under the Abuja Rules and Form 20 under the Lagos Rules to be filed within 7 days or such other time as the Judge may allow. Two copies of the affidavit in answer shall be delivered to the registrar. The answers are in the form of depositions in anaffidavit. Where there is any objection to answering the interrogatories, this should be stated in the affidavit. Order 28 Rule 5 and 6 Abuja Rules 2018 and 29 Rule 4 (1) (2) Lagos Rules 2019. Where the party interrogated intends to answer, he should deal with each

question individually. Further answer to interrogatories may be required.

USING ANSWER TO INTERROGATORIES AT TRIAL

1. A party may use one or more of the answers or any part of the answers of the party interrogated at the trial. NOTE the duty of court on the use of answers to interrogatories.
2. Admissions made in a reply to interrogatories are conclusive of the facts admitted.

NON-COMPLIANCE WITH ORDER FOR INTERROGATORIES

1. It could constitute contempt of court. Order 28 Rule 11 Abuja Rules 2018 (equivalent to Order 29 Rule 9 Lagos Rules 2019) provides thus:

An order for interrogatories or discovery or inspection made against any party if served on his legal practitioner shall be sufficient service to grant an application for cost against a party for disobedience of the order.

See also Order 28 Rule 12 Abuja Rules 2018 and 29 Rule 10 Lagos Rules 2019.

2. If any person interrogated omits to answer or answers insufficiently, the pre-trial or case management judge shall on application issue an order requiring him to answer or to answer further as the case may be. Order 28 Rule 7 Abuja Rules 2018 and 29 Rule 10 Lagos Rules 2019.

DISCOVERY OF DOCUMENT (INSPECTION)

This is a procedure whereby a party can cause his opponent

to make available to him before the trial material documents in the opponent's possession for him to use in the trial of the case. Usually the party making the discovery is relying on the document, but does not have either the primary or the secondary evidence of the documents.

PROCEDURE:

Discovery of document is made by a writing request to any other party in an action to make discovery on oath of the documents that are or have been in his possession, custody, power or control, relating to a matter in question in the case. Request for discovery shall be served within 7 days of close of pleadings and shall form part of the agenda of pre-trial conference or case management conference. The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within such other time as the court may allow and shall be dealt with at the pretrial or case management conference. Under the Abuja Rules 2018, the answer shall be in Form 23 and under the Lagos Rules 2019, the answer shall be in Form 21. See Order 28 Rule 8 Abuja Rules 2018 and 29 Rule 6 Lagos Rules, 2019

DOCUMENTS FOR DISCOVERY WHICH THE COURT CAN ORDER

These are documents, which are:

- a) related to any matter in question in the suit
- b) which are or have been in the possession or power of the party ordered to make the discovery. See Order 28 Rule 8 Abuja Rules 2018 and Order 29 Rule 6 (1) Lagos 2019

NOTE: Documents privileged from production e.g. incriminating documents, documents the production of which is against public interest, documents containing confidential information between a legal practitioner and his client etc.

See section 184-196 Evidence Act, 2011

SETTLEMENT OF ISSUES

This is a further process at narrowing the issues after pleadings have been filed by parties. Parties isolate issues for the determination by the court. The issues are in the form of questions which go to the merit of the case. Issues can be formulated by either party to a case or by the court *suo motu*. All the civil procedure rules provide for settlement of issues. It is now a pre-trial requirement in Abuja and Lagos Rules to settle issues. See Order 27 Abuja Rules 2018 and 30 Lagos Rules, 2019

PROCEDURE

Under the Abuja Rules within 7 days after conclusion of pleadings parties are required to submit in writing to the registrar the material facts in controversy between them in the form of issues which shall be noted by the court and set down for trial. Order 27 Rule 1 Abuja Rules 2018. Under the Lagos Rules, issues of facts in dispute in any proceedings shall be defined by each party and filed within 14 days after close of pleadings. Order 30 Rule 1(1) Lagos Rules 2019.

PURPOSE OF SETTLEMENT OF ISSUES

The Court of Appeal stated the rationale behind settlement of issues in the case of *Mrs. Ebere Okoroafor v. Owerri Municipal Council*: (2014) LPELR-22847(CA)

The settlement of issue by the parties clearly and precisely defines the issue for trial. The essence of the issue settled is that if the court found after the trial of the only issue, incidence of armed robbery is, expressly or impliedly, excluded from condition for liabilities by the Appellant the Respondent's claim fails and would be liable to dismissal otherwise the Appellant loses and the Respondent would be entitled to all the reliefs sought in his claim. The nature of

the issue settled does not admit of further investigation of other issues the parties having so agreed.

Per Ekpe, J.C.A. (Pp.12-13, paras. C-B) citing the court's decision in *Maximum Insurance Company Ltd v. Owoniyi* (1994) 3 NWLR (pt. 331) 178 at 194

See On amendment of issues and *Maximum Insurance Company Ltd v. Owoniyi* (supra)

NOTE: Under the Abuja Rules where a party fails to submit issues for trial, the court may proceed to set down the matter for hearing upon the issues submitted by the other party. Order 27 Rule 2 Abuja Rules, 2018. Under both the Abuja and Lagos Rules, where parties differ on the issues the pretrial or case management judge may settle the issues. Order 27 Rule 3 Abuja Rules, 2018 and 30 Rule 1(2) Lagos Rules, 2019. Under the Abuja Rules, if neither party submits issues for trial, the court shall give notice to them to attend settlement of issues. Order 27 Rule 4 Abuja Rules 2018. Issues may be settled without any previous notice at any stage of the proceedings, at which all parties are actually present or at the hearing. Order 27 Rule 5 Abuja Rules, 2018. The court may amend the issues or frame additional issues at any time before judgment if it shall appear necessary for the purpose of determining the real question or controversy between the parties. Order 27 Rule 6 Abuja Rules 2018. The court also directs parties to settle all documentary evidence which the parties intend to rely on at the trial. Order 27 Rule 7 Abuja Rules 2018. Where it appears to the court, that the decision of any question or issues arising in a matter when determined separately from the matter substantially disposes of the cause or matter or renders the trial of the matter unnecessary, it may dismiss the matter or make such other order or give such judgment as may be just. Order 27 Rule 8 Abuja Rules, 2018.

CHAPTER NINE **TRIAL PREPARATION/EVIDENCE/TRIAL**

CASE ANALYSIS/ THEORY OF CASE/ TRIAL PLAN

Counsel should analyse facts received from clients/witnesses during briefing/ interviews, in order to formulate a case theory and appropriately develop a trial plan.

The case theory of a party to a court action should, as much as possible, reveal the party's version of the case. It should be able to provide an insight into the facts and the applicable law in support of the version of the case for the party that propounds the theory. A case theory should be terse and not verbose- it has been suggested that it should not exceed a paragraph (S. Lubet: Modern Trial Advocacy, 4th Edition, NITA, p.7-8)

A trial plan should provide a bird's eye view of the entire cause of action/case/trial, including (i) the elements/ingredients of such cause of action that would be required to be proved by the claimant or disproved by the opposing party, (ii) the available evidence and the witnesses through whom such evidence would be proved at the impending trial. The trial plan is drawn up in a tabular form.

EVIDENCE

Although there are several modes of classification or categorization of evidence, the basic means of proof of facts- evidence- during any trial are: (1) oral evidence (2) real evidence, and, (3) documentary evidence (which is inclusive of the computer-generated evidence).

ORAL EVIDENCE

As a general rule, oral evidence must be given on oath or made upon affirmation of witness- section 205 EA.

Oral evidence must be direct: s. 126 EA. It must not run contrary to the rule against hearsay – s. 37 & 38 Evidence Act; *Shivero v State*; *Arogundade v State (2009) LPELR - 559 SC*; *Utteh v State (1992) LPELR - 7818*.

REAL EVIDENCE

See S 127 EA

Where a “material thing” referred to in oral evidence is movable, it is produced in court and tendered through the relevant witness. If it is admitted it becomes an exhibit.

If such object is immovable, for instance a piece of land, the court may proceed to the *locus in quo*. The court may conduct or even conclude the trial at the *locus*. Alternatively, the court may adjourn a trial and proceed to conduct an inspection at the *locus in quo*, with witnesses pointing at or identifying the relevant objects, things or places. At the resumption of such trial in the court room, witnesses shall give evidence of the objects inspected at the *locus in quo*.

DOCUMENTARY EVIDENCE

It must not be hearsay evidence. See sections 37, 38, 83, & 126 EA The conditions for admissibility of documentary evidence are:

(1) the maker of the statement in a document must have had personal knowledge of the facts in the statement, or, he must have made the statement in the performance of a duty to record information supplied to him by a person who had such personal knowledge of the facts – s. 83 EA

(2) the maker of the statement must be called as a witness in the proceedings- s.83 EA

Note the exceptions to the above requirement, as the maker of a documentary statement may not be called as a court witness- s. 83 (1) & (2) EA

(3) Note that a statement made in a document will be rendered inadmissible if – (i) it is made by a person interested and (ii) at a time when proceedings were pending or anticipated over a dispute on any fact that such statement might tend to establish. s. 83(3) EA. For a definition of a “person interested” see s. 258 EA.

Documents may be classified as (a) public documents or (b) private documents- s.102 EA

Contents of a public document may be proved by primary evidence, i.e, the original document, or, in lieu of such primary evidence by the production of a certified copy or certified true copy (CTC) of the document – s. 85 – s. 91 & s. 114 EA; *Udo v State* (2016) 12 NWLR (Pt. 1525) 1

See the conditions/criteria for the admissibility of a certified true copy of a public document in section 104 EA

- i payment of the prescribed fee
- ii it must be certified as a true copy
- iii the certificate must be dated and subscribed to by the relevant public officer having the custody of the original.
- iv It shall be sealed, if the public officer is authorized to use the seal.

A certified true copy of a public document may be produced from the bar: *Ogbuayiya v Obi-okudo*. (1979) 6-9 SC 32

Proof of contents of any private document is generally by primary evidence. Secondary evidence may however be adduced in lieu of the primary evidence of a private document after an appropriate foundation is laid for its admissibility. This is done by providing an explanation for the whereabouts of the primary evidence.- S, 85-91 EA

COMPUTER GENERATED EVIDENCE

For procedure in tendering computer generated evidence:

see the Supreme Court decision in Dr. Imoro Kubor & Anor v. Hon. Seriake Henry Dickson & Ors. (2012) LPELR-9817(Sc); Dickson v Silva (2017) LPELR – 41257 SC

See s. 84 Evidence Act

A party seeking to tender any computer-generated evidence must show by oral evidence or through a certificate issued pursuant to section 84 (4) of the Evidence Act that: the document containing the statement was produced by the computer within a time when the computer was regularly used for the storage or processing of information for the regular activities of any individual or corporate entity involved; That, as a matter of course, the computer has been regularly supplied with (a) information similar to that which is contained in the statement in the document, or (b) information of the kind of which the information in the document is derived from; at all time material to the production of the document , the computer operated properly or if it did not, that the improper operation did not affect the production of the document, or its accuracy; the information in the statement in the document is a reproduction of, or, is a derivation of information supplied to the computer in the ordinary course of business.

The certificate may be given and signed by a person who either occupies a responsible position in relation to the operation of the relevant device or in the management of the relevant activities- section 84 (4) EA; Kubor v Dickson *supra*

TRIAL

1ST STAGE- EXAMINATION-IN-CHIEF

Section 214 EA –It is the examination by a party of his own witness. It is an opportunity for the claimant to state his

own case; and for the defendant to state his own defence
NB- Leading questions are not allowed – except with permission of court in respect of (i) introductory matters /undisputed matters/ matters which have, in the opinion of the court, been sufficiently proved. See section 221 EA.

(ii) a hostile witness may – with leave of court sought orally – be asked leading questions/ cross-examined by the party that called him under the circumstances in section 230 EA.

PROCEDURE

1. The witness enters the witness box and he is sworn or affirmed by the registrar/ clerk or any officer of court that he is going to state or tell the truth and nothing but the truth.
2. The witness is then guided by counsel asks him questions on introductory matters about his name, address, and occupation
3. The witness will then be guided to adopt his witness statement by asking him:
 - a. if he can remember making any witness statement
 - b. And if he sees the statement how can he identify it
 - c. The witness then is presented with the statement and upon confirming that it is his statement he would be asked what he wants the court to do/deal with the statement. The witness informs the court of his desire to adopt the statement on oath as his evidence in the court proceedings.
 - d. After that the counsel applies that the statement be adopted as witness testimony in

the case

- e. NB (In the past, before frontloading procedure was introduced, counsel led each witness to give his entire testimony orally, in an orderly manner)
 - f. If there is any disputed document (not agreed upon at the case management conference) that is sought to be tendered through the witness, counsel will refer him to the relevant paragraph in the statement or any of the pleadings.
 - g. Questions are asked from the witness to enable the document to be tendered through him accordingly; he is asked if he can identify the document, and by what means; if he identifies that document, he is further asked what he wishes the court to do with the document; the witness indicates his desire to have the document admitted in evidence in the proceedings.
 - h. Note that where numerous documents are tendered in bulk, evidence must be given by the party tendering, linking the documents to his case. *Andrews v INEC(2018)*
4. The witness may thereafter be cross-examined and re-examined before leaving the witness box.

2ND STAGE-

CROSS EXAMINATION

THE BASIS

Note as follows:

- a) Section 36(6) (d) CFRN. OKEREKE V IBE (2010) ALL FWLR (Pt. 516) 516 CA – denial, is breach of fair hearing.

- b) Section 215(1) EA – cross examination is the second step/ stage in the examination of a witness. It is however conducted at the option of any party that opposes the party who called the witness. It is not mandatory.
- c) Section 214(2) EA – is definition/ scope of cross examination.
- d) Either of the parties to an action cross examines a witness called by the opposing party.
- e) A party can also cross-examine his own hostile witness – s. 230 EA.

REASONS FOR CROSS EXAMINATION

- 1. To establish and advance the case for the party that conducts the cross examination.
- 2. To attack the other side's case. This is done by:
 - a) destroying material facts testified in chief;
 - b) discrediting the witness---- to show that his evidence is unworthy of belief by reason of bias, interest or his lack of honesty or lack of knowledge of the events to which he testified;
 - c) If an expert – to destroy/raise doubt over his qualification.

Note that indecent, scandalous, insulting and annoying questions are not allowed in cross examination. S.227, 228 Evidence Act. Questions that affect the credit of a witness should not be asked without any reasonable ground(s) therefore. Section 225 EA.

3RD STAGE-RE-EXAMINATION

This is the examination of a witness after he has been cross-examined. However, it is also optional to re-examine a witness - except where ambiguities arose from cross examination which call for explanation, there may be no need for re-examination.

See section 215(1)(3) EA

Note that fresh matters cannot be raised except with leave of court. BUT the other party must be allowed to cross examine on the witness on such fresh matters. S. 215(3)
EA

See CHIGBU V TONIMAS (NIG) LTD (1996) 3 NWLR Pt. 593, 115 CA

CHAPTER TEN

JUDGMENTS AND ENFORCEMENT

JUDGMENT

This refers to a reasoned decision of the court which is delivered at the end of a trial after hearing the parties to the suit. At the conclusion of the evidence and final addresses, the Court delivers its judgment. Judgment may be delivered at once or the court may adjourn the delivery of the judgment to a definite date or reserve the judgment *sine die*.

GENERAL PRINCIPLES

1. The judgment of the Court shall be in writing. The Court has no power to deliver an oral judgment to be reduced to writing later on. S. 294(1) Constitution of the Federal Republic of Nigeria, 1999, *Unakalamba v. C.O.P* (1958) 3 F.S.C. 7: *Okoruwa v. The State* (1975) 5 S.C. 23 at 26.
2. A consent judgment may be entered but has to be exactly agreed by the parties.
3. Once a trial judge delivers his judgment in a suit, he becomes *functus officio* i.e. he ceases to be seized of the matter and he may not re-open it for any purpose whatsoever except in the following circumstances:
 - (a) To correct clerical error or mistakes.
 - (b) To set aside a default judgment obtained in absence of one party or in default of pleadings.
 - (c) To set aside a judgment obtained by fraud.
 - (d) Where the judgment is a nullity.

See *Omotunde v. Omotunde* (2001) 9 NWLR (Pt. 718)252. See also *Commissioner for Lands Mid-Western State v. Osagie and Others* (1973) 6 S.C 155. But he can make ancillary orders e.g. order for stay of execution of the judgment or for payment of the judgment debt by installment for which there are statutory provisions.

4. A Court cannot directly or indirectly set aside a previous order made by a court of competent and concurrent jurisdiction: *Uku v. Okumagba and Others* (1974) 3. S.C. 35. *Grace Amanabu v. Alexander Okafor* (1966)1 All N.L.R. 205 at 207. Only the Court that gave judgment has jurisdiction to set it aside for fraud.

Note that where a judge made an order which is a nullity, that judge or another judge of Co-ordinate jurisdiction can set the order aside. See *Sken Consult v. Sekondy Ukey* (1981) 1 SC. 6 or (1981) N.S.S.C.I. (Supra) *Obimonure v. Erinoshio* (1966)1 All N.L.R. 250.

A Court has inherent jurisdiction to vary its order so as to carry its own meaning or in cases where the language used is doubtful, in order to clarify the position or correct a clerical error: *Orukumpor v. Itebu and Ors* 15 W.A. C.A

39. But this does not entitle the Court to give a different effect to the order. *Orukumpor v. Itebu* (supra).

5. Section 294(1) of the Constitution of the Federal Republic of Nigeria 1999 states that every Court established under the Constitution shall deliver judgment not later than 90 days after conclusion of evidence and final addresses.

See also the following cases:

Chief Dominic Onuorah Ifezue v. Livinus Mbadugha and Another (1984) 5 S.C.79. *Odi v. Osafule*(1985)1 N.W.L.R. 17. *Sodipo v. Lemminkainen* (1985) 2 N.W.L.R. Part 8 page 1. *Samson Awoyale v. Ogunbiyi* (1987) 2 N.S.C.C. 1063.

The effect of the foregoing cases is that a judgment delivered after 90 days from the conclusion of final addresses is a nullity being a judgment delivered without jurisdiction of the court. Where however the judge adjourns

before the expiration of the 90 days for further address the date will start to run from the conclusion of the last address. In *Chukwuogor*'s case the Supreme Court held that final addresses within the context of Section 258 (1) of the 1979 constitution, (now Section 294 (1) of 1999 Constitution) must be the last in the series of addresses after which judgment is delivered there and then or is reserved for delivery at a future date.

Note however Section 294 (5) 1999 Constitution of the federal republic of Nigeria 1999 is to the effect that a judgment is not a nullity for the simple reason that it is given after the expiration of three months (90 days) from the conclusion of final addresses unless it has occasioned a substantial miscarriage of justice. See *Ojokolobo v. Alamu* (1987) 2 N.S.C.C. 991

DISTINCTION BETWEEN FINAL AND INTERLOCUTORY DECISIONS

NOTE: Also the distinction between final and interlocutory decisions. See the case of *Omonuwa v. Napoleon Oshodi* [1985] 1 NSCC 147 and *Akinsanya. V. U.B.A. Ltd (1986) 4 N.W.L.R. 173* where *Omonuwa v. Napoleon Oshodi [1985] 1 NSCC 147* was explained.

From the decision, a final judgment is a judgment that has determined all the rights and liabilities of the parties. In the case of *Ex-parte Moore*, a test was laid down to the following effect: When a decision is given and there is no cause for the parties to go back to the same court that gave the decision (if it were right), then it is a final decision. But even If the decisions were right, and the parties still have to continue with their case before the same court that gave the decision, such decision is interlocutory decision. It is in this respect that the courts have held that when a judge decides that it has jurisdiction over a case, such decision is a final judgment, see *Akinsanya.v. U.B.A. Ltd (1986) 4 N.W.L.R. 173*(supra).

Note also the importance of the distinction between final decision and interlocutory decisions with respect to how an appeal may lie against each of them and the time limit within which to file such appeals. For a final decision, an appellant has three months within which to appeal. But in case of interlocutory decision, he has 14 days within which to appeal. See Section 25 (2) (ii), Court of Appeal Act of 1976. Also, where a decision is final, an appeal lies as of right (that is, there is no need to obtain the leave of the court), and if the decision is interlocutory (and the appeal is not on ground of law) the leave of the court should be obtained. See Section 220 (1) (a) (b) 1979 Constitution. Section 241 (1) (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999. See also *Aqua Ltd v. Ondo State Sports Council* (1988) 4 NWLR 622.

FURTHER READINGS

ON MEANING OF SUBJECT MATTER

See

- (a) Blacks Law Dictionary (6th Ed.) (1881-1991) 841-842.
- (b) Nwadiago. F. - Civil Procedure in Nigeria (2nd Ed.) Unilag Press Publication (2000) 704.
- (c) Efevwerhan, D.I. Principles of Civil Procedure in Nigeria (3rd Ed.) Snaap Press Ltd (2013) P. 346

ON CHARACTERISTICS OF A VALID JUDGMENT

- (a) Delivery in Writing - See Section 294 of the Constitution of the Federal Republic of Nigeria 1999.
- (b) Delivery in Open Court- See Order 39 and 35 of the high court of the Federal Capital Territory Abuja and Lagos (Civil Procedure) Rules 2018 and 2019 respectively. See also Lord Denning (MR) Metropolitan Property Ltd v. Lannou(1969)1 QB 572.
- (c) Proper Evaluation of Evidence - See *Mogaji v. Odofin*(1978) 4 SC 91

Woluchemand Ors v. Gudiand Ors(1981) 5SC 291 at 320, (1981) NSCC. 214 at 227.

Vincent Bello v. Magnus Ewek(1981) 1 SC 101

Uchendu v. Ogboni(1999) 4 SCNJ 64 at 76

(d) Confinement of Judgment to Issues raised and Claims Sought -

See *Abiodun Adelaja v. Yusufu Alade* (1999) 4 SCNJ 225.

Jatauv. Mailafiya (1998) 1 NWLR (Pt. 535) P. 682

Ikeanyi v. A C B Ltd (1997) 2 SCNJ 93.

(e) Delivery of Judgment within time - See Section 294 (1) 1999 Constitution of the Federal Republic of Nigeria 1999.

Note however - Section 294 (5) of the Constitution.

METHOD/APPROACH TO WRITING JUDGMENTS

See *Nwankpa Lawrence v. Dennis Ewulu* (1995) 7 SCNJ 197

Oro v. Falade (1995) 5 SCNJ 10 - *Nkado v. Obiano* (1997) 5 SCNJ 33. In *Adeyeye v. Ajiboye* (1987) 7 SCNJ I at 22, Opata JSC, laid down the proper form of writing judgments thus:

The proper approach for any trial court is to first set the claim(s); then the issues arising from those pleadings. Having decided on the issues in dispute, the trial judge will then consider the evidence in proof of each issue; then decide on which side to believe and this has got to be a belief based on preponderance of credible evidence and the probabilities of the case. After this the trial judge will record his logical and consequential finding of facts. It is after such findings that a trial court can then discuss the applicable law against the background of his findings of facts.

TYPES OF JUDGMENT

(a) **Consent judgment** - See Section 241(2) Constitution of the Federal Republic of Nigeria; *Woluchem v. Wokoma*

(1974)3 SC 153. *Jozebson Ind. Ltd v. Lauwer Import and Exp. Limited*
(1988) 7 SCNJ 93.

(b) **Default Judgment** - See Orders 14 and 22 of the High Court of the FCT Abuja and Lagos (Civil Procedure) Rules 2018 & 2019 respectively; *Mohammed v. Husseini* (1998)12 SCNJ 136 at 137; *Williams v. Hope-Rising and Voluntary Funds Society* (1982)2 SC 145-657; *Osadebey v. AG (Bendel State)* (1991) I NWLR (Pt. 169) 525 at 563

(c) **Interlocutory and Final Judgment** - See Section 241
(1) Constitution of the Federal Republic of Nigeria 1999; Section 25 Court of Appeal Act; *Omonuwa v. Napoleon Oshodin* (1985) 2 NWLR 925 – *Blay v. Solomon* (1947) 12 WACA 175.

(d) **Orders of Non-suit and Dismissal**- See *Okpala v. Iheme* (1989) 2 NWLR (Pt. 102) 208 at 213-214 *Olapayo v. Ajegungbada* (1990) 5 SCNJ at 17; Order 38 the high court of the federal capital territory Abuja (Civil Procedure) Rules 2018

DELIVERY OF JUDGMENTS BY APPELLATE COURTS

See Section 294(2) 1999 Constitution - Section 11 Court of Appeal Act.

Alh.Aminu Ishola v. Societe Generale Bank (Nig) Limited (1997) 2SCNJ at 6 Note that S. 285(8) of the 1999 Constitution as amended (by S. 9 of the Second alteration Act 2010) now permits courts in all final appeals arising from an election tribunal or court to adopt the practice of first delivering judgments orally and giving reasons thereof at a later date. However, the Supreme court in *ANPP v. Goni* (2012) 7 NWLR held that this will only be applicable to a final court, which decision is final and not an appellate court, which decision will be subject to further appeal. For instance, the Court of Appeal can only indulge in this practice, while sitting as a court of final resort in respect of appeals arising from election petitions and no more.

EXECUTION AND ENFORCEMENT OF JUDGMENTS

Enforcement is the last stage of the judicial process after the legal right, claim or interest has ended in a judgment or order which remains to be enforced. It is the process whereby a judgment or order of court is enforced or to which it is made effective according to law.

Most judgments require compliance with their terms. It is only in the case of a declaratory judgment which merely declares what the right of a party is, without imposing any sanction on a defendant or directing either of the parties to do anything that execution is not called for or levied.

Also, execution will be unnecessary where there is voluntary compliance with the judgments and orders of the courts. The problem of enforcement arises where the judgment debtor refuses or neglects to comply with the terms of the judgment. The judgment debtor will then be compelled through enforcement or execution of the judgment to comply with the court's judgment. Note that enforcement is not limited to judgments but includes orders of court. See Section 19 (1) Sheriffs and Civil Process Act.

THE NEED FOR THE COURT TO GUARD ITS OWN JUDGMENT JEALOUSLY BY ENFORCING SAME

See Oforma v. IBWA. (1993) 4NWLR (Pt. 285)86 at 88

See NWADIALO (Supra) at 965

LAWS REGULATING EXECUTION OF JUDGMENTS

See the Sheriffs and Civil Process Act. (Cap. S6) Laws of Nigeria (2004).

Sheriffs and Civil Process Laws of the States and the Judgments (Enforcement) Rules made there under.

PARTIES TO EXECUTION

Note that there are two parties to the enforcement of judgment - the Judgment Creditor and Judgment Debtor i.e. the Successful and unsuccessful parties. Where the Judgment Creditor resorts to garnishee proceedings to enforce a judgment, there are usually three parties, the judgment creditor becomes the Garnishor, the Judgment Debtor and a third party against whom the proceedings are taken, called the Garnishee. See. Section 19(1) Sheriffs and Civil Process Act. (Cap. S6) Laws of Nigeria (2004).

Adebutu v. City Engineer (1968) I NMLR 133

Ekinwumife v. Wayne (W.A.) Limited (1989) 5 NWLR422 at 446.

TIME WITHIN WHICH TO COMPLY WITH COURT JUDGMENTS

Judgment of a court of competent jurisdiction is to be complied with immediately. See Order 39 of both the High Court of the FCT Abuja and Lagos State (Civil Procedure) Rules 2018 and 2019 respectively which admits of certain exceptions.

INSTALMENTAL PAYMENT OF JUDGMENT DEBT

When any judgment or order directs the payment of money, the court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest. The order may be made at the time of giving judgment, or at any time afterwards and may be rescinded upon sufficient cause at any time. See Order 39 of both the High Court of the FCT Abuja and Lagos State (Civil Procedure) Rules 2018 and 2019 respectively; See *A C B LTD v. Dominico Builders Co. Ltd* (1992) 2 NWLR (Pt. 223) 296

MODE OF ENFORCEMENT

The method of enforcing a particular judgment will depend on the type of judgment whether it is a money judgment,

land judgment or other judgments. Thus, the Supreme Court in the case of Tukur v. Governor of Gongola State (1988) 1 NWLR (Pt 68) p. 39 itemized the methods of enforcing different kinds of judgment as follows:

1. A judgment or order for the payment of money may be enforced by a writ of *fieri facias*, garnishee proceedings, a charging order, a writ of sequestration or an order for committal on judgment debtor summons.
2. A judgment for possession of land may be enforced by a writ of possession, a writ of sequestration or committal order.
3. A judgment for delivery of goods may be enforced by a writ of specific delivery or restitution of their value, a writ of sequestration or a writ of Committal.
4. A judgment ordering or restraining the doing of an act may be enforced by an order of committal or a writ of sequestration against the property of the disobedient person.

All these methods of execution are contained in the Sheriffs and Civil Process Act and Laws.

WRIT OF FIERI FACIAS

The writ of *fieri facias* also known as writ of execution (Form 3, 1st schedule to the SCPA) is issued first against the moveable properties of the Judgment debtor (J.D.) But wearing apparels, bedding of the J.D. or his family or his implements of trade to the value of ten naira are exempted. See S. 25(a) SCPA. If no moveable property of the JD can with reasonable diligence be found or such is insufficient to satisfy the judgment debt, the Judgment creditor(JC) shall

by a motion on notice apply for a writ of execution against the immoveable properties of the JD. See S.44 SCPA

GARNISHEE PROCEEDINGS

Garnishee proceeding is brought by the JC making an *ex parte* application supported by an affidavit and a written address. The affidavit is as in form in the Schedule to the SCPA. It shall state:

- a) Names, addresses and occupation of the judgment creditor, the judgment debtor and the garnishee
- b) The fact that judgment has been given and what date
- c) The fact that judgment has been recovered and is still unsatisfied,
- d) The amount of the judgment that remains unsatisfied
- e) The fact that a third party (the garnishee) who is within the State is indebted to the JD.

In *Zenith Bank Plc v Omenaka & Anor* (2016) LPELR-40327 (CA) the Court held that the judgment debtor is a mere passive or nominal party in a garnishee proceedings overruling *Nigerian Breweries Plc v Chief Worhi Dumuje & Anor* (2015) LPELR -25583(CA)

The court upon the hearing of the application may make an order *nisi* asking the Garnishee to come and show cause why he should not pay the amount. The order *nisi* must be served on the garnishee and the JD at least 14 days before the hearing. See S.83 (2) SCPA. The order *nisi* becomes absolute if the court is not satisfied with the explanation of the Garnishee. NB service of the order nisi on the Garnishee attaches the debt.

An order nisi shall not be made where the money sought to be attached is in the hands of a public officer in his official capacity except consent to such attachment is first obtained from the Attorney General of the Federation or Attorney

General of State. See S.84 SCPA However see *Purification Techniques Nig Ltd v A.G of Lagos State* (2004) 9 NWLR Pt. 879, 665.

ENFORCEMENT OF JUDGMENTS – INTRA-STATE AND INTER-STATE

INTRA – STATE JUDGMENTS

A judgment delivered in a court may be enforced in another judicial division or district in the same state. This is possible where for example; the judgment debtor has property in another judicial division or district but not in the judicial division or district where the judgment was delivered. The registrar of the court that issues the writ of execution, called the “home court” sends the process for execution to his counterpart in the division or district where the process is to be executed, called the “foreign court”. The process is accompanied by a warrant in Form 11 to the Act, requesting and authorizing execution in the foreign court. The registrar of the foreign court acts on the process on receipt, as if it were issued in his court.

INTER-STATE JUDGMENTS

This applies in circumstances where judgment given in one State is to be executed in another state where the judgment debtor resides or has his property. To achieve this, the judgment creditor applies to the registrar of the court that gave the judgment to issue him with a certificate of judgment. The judgment creditor shall then take the certificate of judgment which must be signed and sealed by the registrar, to the state of execution and register the certificate with the registrar of a court of similar jurisdiction in that state. The registrar of the enforcing court shall enter the particulars of the certificate in a book called “the Nigerian Register of Judgments”. However, before the judgment can be enforced on registration, the judgment creditor must depose to an affidavit stating:

- (a) That the amount in the process has become due but unpaid; or
- (b) That the act ordered to be done remains undone;
- (c) That the person ordered to forbear from doing an act has disobeyed the order.

ENFORCEMENT OF FOREIGN JUDGMENTS

In Nigeria, enforcement of judgments of the court of a foreign country by a Nigerian court is achievable by either action at common law or reciprocity or reciprocal enforcement.

Action at Common Law:

At common law, a judgment of the court of one country may be enforced in a foreign country by way of an action commenced in the court of the foreign country, with the judgment as the cause of action. The judgment creditor must then institute an action in a Nigerian court claiming the reliefs granted him in the foreign court. The judgment then shall be the cause of action and the action need not go through the pith and hog of a substantive trial.

Generally speaking, only the judgments of a superior court of a foreign country will be enforced in Nigeria and this can only be done by a High Court in Nigeria. In other words, it must be a court of an equivalent status with a Nigerian High Court or more. Such a judgment may be enforced in a Nigerian High Court irrespective of whether or not the foreign court would reciprocally enforce judgments of Nigerian courts. For the enforcement action to be successful, the foreign judgment must meet the following requirements:

- (a) The judgment must be final and conclusive;
- (b) The judgment must have been delivered by a competent court in terms of jurisdiction;

- (c) The judgment must be for a definite sum of money, provided that it is not money recoverable as tax, fine or penalty;
- (d) If the judgment is for a res other than money, the res must have been situate at the jurisdiction of the foreign court that gave the judgment as at the time of delivery.

By Reciprocal Enforcement:

Enforcement of foreign judgment under this process is done on the basis of reciprocity, i.e. the foreign country whose court delivered the judgment, must also be ready to enforce judgments of Nigerian courts in its courts. Such countries that render reciprocal enforcements to Nigeria are those to be listed in an order made by the Minister of Justice under Part 1 of the Foreign Judgments (Reciprocal Enforcement) Act. Currently, no country has been listed. But judgments from commonwealth countries can be registered under the Reciprocal Enforcement of Judgment Act CAP 175 LFN 1958. See Grosvenor Casinos Ltd v Ghassan Halaou (2009) 10 NWLR pt 1149, 309

JUDGMENT CERTIFICATE

Section 104 Sheriffs and Civil Process Act. (Cap. S6) Laws of Nigeria (2004).

REGISTRATION OF JUDGMENT CERTIFICATE

Section 105 Sheriffs and Civil Process Act. (Cap. S6) Laws of Nigeria (2004). .

COSTS OF PROCEEDINGS AND EXECUTION

See Section 106 Sheriffs and Civil Process Act. (Cap. S6) Laws of Nigeria (2004), Section 107 Sheriffs and Civil Process Act. (Cap. S6) Laws of Nigeria (2004). Section 108 S and Sheriffs and Civil Process Act. (Cap. S6) Laws of Nigeria (2004).

PENAL CONSEQUENCES OF NON-COMPLIANCE WITH COURT JUDGMENT

- a. Judgment Summons
- b. Committal to Prison -Sections 55, 58, 60 and 65 S and Sheriffs and Civil Process Act. (Cap. 56) Laws of the Federation of Nigeria (2004).

DISOBEDIENCE TO COURT ORDERS, DECREE OR JUDGMENT

Government of Lagos State and Others v. Chief Emeka Odumegwu Ojukwu and Others (1986)1 N.W.L.R Part 18 at page 621

CHAPTER ELEVEN

APPLICATIONS PENDING APPEALS

STAY OF EXECUTION:

By an order for stay of execution a successful party in the lower court is restrained from enforcing the judgment given in his favour pending the determination of an appeal against that judgment or stay of Execution pending Appeal. See generally Order 58 High Court Lagos (Civil Procedure) Rules 2019 and Order 61 High Court Civil Procedure Rules of the Federal Capital Territory and the case of *Lijadu v Lijadu* (1991) 1 NWLR (pt. 169) 627 at 644. Ordinarily, without an order of stay of execution, a successful party at the lower court will go ahead to enforce the judgment obtained. But as happen in most cases, the judgment debtor may be dissatisfied with the judgment of the lower court and may seek to appeal against it. In this situation, if the judgment debtor files his notice of appeal without more, the judgment creditor will still be able to enforce that judgment because an appeal alone does not operate to stay the enforcement of the judgment. See S. 17 of the Court of Appeal Act Cap C36, Laws of the Federation of Nigeria 2004 and the case of *Vaswani v Savalakh* (1972) All NLR 922.

In order to preserve the res and maintain the status quo ante, the judgment debtor seeking to prevent the enforcement of the judgment of the lower court must in addition to filing his notice of appeal, bring an application for stay of execution pending the determination of the appeal so filed without which irretrievable or irreparable damage may be done to the subject matter of the appeal and render the judgment of the appellate court nugatory should the appellant succeed at the court of appeal. The statutory provisions for appeals, in the circumstance, become meaningless. It is to avoid this kind of state of affairs that

the court upon the application of the judgment debtor, grants an order for stay of execution pending appeal.

However, this order is not granted for the asking. It can only be granted in respect of executory, judgment and upon the fulfilment by the applicant of conditions set out in the case of *Lijadu v Lijadu* (*supra*) restated in *National Pension Commission v F.G.P Ltd* (2014) 2 NWLR (pt. 1391) 346 ratio 2 as follows:

- a) The ground of appeal must raise substantial legal issues in an area of law that is novel or recondite;
- b) The application must disclose special circumstances why the application should be granted;
- c) The application must disclose why matters should be put in status quo or preserve the res so as not to render the appeal nugatory

See *Aboseldehyde Laboratories Plc v Union Merchant Bank Ltd* (2013) 13 NWLR (pt. 1370) 91

For meaning of recondite see *NNPC v Fama Oil Ltd* (2009) 12 NWLR (pt. 1156) 462; *Balogun v. Balogun* (1969) 1 ALL NLR 349

Recondite point of law needs to co-exist with special circumstance to warrant grant of stay of execution. The special circumstances envisaged for the grant of this order are:

- a) Where the subject matter of the dispute will be destroyed if stay is not granted;
- b) Where a situation of helplessness will be foisted on the court especially an appellate court;
- c) Where execution will paralyse a party's right of appeal;
- d) Where the order of court will be rendered nugatory; and

- e) Where execution will prevent a return to status quo if the appeal succeeds.

See Ndaba (Nig) Ltd v U.B.N Plc (2007) 9 NWLR (pt. 1040) 439; SPDC (Nig) Ltd v Amadi (2011) 14 NWLR (pt. 1266) 157.

STAY OF PROCEEDINGS PENDING APPEAL

Just like stay of execution and injunction pending appeal, stay of proceedings is also aimed at preserving the res to maintain the status quo. An order of stay of proceedings suspends the proceeding in the lower court until an appeal on an issue arising there from is determined by the appellate court. Such an appeal is generally an interlocutory one. After the decision of the appellate court, the proceedings in the lower court resumes, subject to the decision. See United Spinners Ltd v Chattered Bank Ltd (2001) 14 NWLR (pt. 732) 195.

The power for making these orders are either statutory, inherent or both and are exercisable by either the trial court or the appellate court. See S. 6 (6)(C) CFRN

An application is however first made in the lower court in keeping with the provision which stipulates that where it is provided in the Rules that an application may be made to the court below or to the court of Appeal the application should be made first in the court below and if refused may now be brought before the Court of Appeal within 15 days of the refusal. Order 6 rule 3 & 4 Court of Appeal Rules 2016 The applicant must in this case annex to the application the following documents.

- i. Certified true copy of the notice of appeal
- ii. The ruling against which the appeal is being brought
- iii. The ruling of the lower court refusing the application

- iv. The application at the lower court with the supporting affidavit without which the application is incompetent.

Order 6 rule 7 Court of Appeal rules 2016; *Ojosipe v. lkabala* 1973 1, ALL N. L. R Part I at Page 128.

INJUNCTION PENDING APPEAL

To ensure that the status quo of the subject matter of an appeal before the judgment in trial court is maintained till the appellate court hands down its own decision, an unsuccessful plaintiff may apply to the court for an injunction against the defendant preventing him from disturbing that status quo during the same period.

For the purpose of maintaining the status quo pending the determination of an appeal, recourse may also be had to an order of injunction.

A defendant unless he counterclaims cannot have a judgment to execute for he has not asked the court for any relief or remedy. A judgment is executed against the defendant. He is therefore the party who asks for a stay. However, if the plaintiff's claim or action is dismissed and he appeals against the decision, while the appeal is pending it is necessary that the res in the suit be preserved so that if the appeal court finds in his favour the appeal would not have been rendered nugatory. How can he get the status quo undisturbed and the res preserved? He cannot apply for stay of execution for there is no judgment to execute. However, he can apply for an injunction.

In *Shodeinde and Others v. Registered Board of Trustees of the Ahmadiya Movement in Islam* - (1980) 1-2 SC 163 the Plaintiffs action was dismissed but he was granted injunction to restrain the defendant from the jurat until determination of appeal. It was argued in the Supreme

court that since the High court had dismissed the application it lacked the jurisdiction to entertain the application for injunction. IDIGBE J. SC Held: That the Court that dismissed the action can still preserve the res i.e. the subject matter of litigation should it become necessary to do so: *Polini v. Gray (1979) 12 CHD. 438.*

Plaintiff's claim was for a share in an intestate estate as next-of-kin of the deceased. After commencing the action he got an order of injunction restraining any dealing with the fund into which part of the estate had been converted. The trial court dismissed the action but continued the injunction.

On Appeal to the Court of Appeal the decision of the lower court was affirmed.

As the plaintiff was about to further appeal to the House of Lords, she applied to the Court of Appeal to have the injunction continued pending that appeal. In granting the application, the Court of Appeal held that since if the plaintiff ultimately succeeded in the House of Lords, her success would be useless unless the fund was protected in the meantime, the injunction ought to be continued pending the appeal.

Okafor v. A . G Anambra State (1988) 2 N.W.L.R. 736.

After the plaintiff had filed his statement of claim, the action was dismissed upon an objection raised by the defendants.

The plaintiff appealed to the Court of Appeal and also applied to the trial court for a stay of execution of the judgment pending the determination of the appeal. The trial judge refused the application on the ground that he merely dismissed the action and did not make any order which could be stayed.

In the appeal against the refusal, the Court of Appeal granted the application and declared null and void the action of some of the defendants which in effect destroyed the substratum of the dispute while the appeal in the

substantive suit and the application for stay to their knowledge were pending before the Court of Appeal and the High Court respectively. Contrast *Polini v. Gray* (1979) 12 CHD. 438

POWER OF THE COURT TO GRANT INJUNCTION PENDING APPEAL

The High court has an inherent power to grant the application See *Ogunremi v. Dada* (1963) 1 ALL N.L R. 663. In the case of the Court of Appeal the power is also inherent as well as statutory, see S. 17 Court of Appeal Act which inter alia empowers the court to make interim order or grant any injunction. See also Order 4 rule 6 Court of Appeal rules 2016; Akeem & Ors v. University of Ibadan (2002) FWLR (Pt. 85) 221

CONSIDERATION FOR GRANT

If there is an arguable point in the plaintiff's appeal, the Court may grant his application. *Government of Lagos State and Others v. Chief Emeka Odumegwu Ojukwu and Others* (1986) 1 N.W.L.R Part 18 at page 621. See also *Martins v. Nicanner* (1988) 2 N.W.L.R. 75 at 83. and *Vaswani Trading Co. v. Savalakh and Co* (1972) 12 SC. 77.

Supreme Court held that in an application for stay of execution, the following matters would be considered:-

- a) The chances of the applicant on appeal - if the chances are virtually nil, then a stay may be refused.
- b) The nature of the subject matter in dispute, whether maintaining the status quo until a final determination of the appeal in the case will meet the justice of the case.
- c) Whether if the appeal succeeds, the applicant will not be able to reap the benefit of the judgment on appeal.

- d) Where the judgment is in respect of money and costs, whether there is a reasonable probability of recovering these back from respondent if the appeal succeeds. *Union Bank v. Odusote Bookstore* (1994) 3 SCJN 1
- e) Poverty is not a special ground for granting a stay of execution except where the effect will be to deprive the applicant of the means of prosecuting his appeal. See *Uniport v. Kraus Thompson Org. Ltd* (1999) 1 N.W.L.R. (Pt. 625) 93 at 94.

See also, *Intercontractors v. U.A.C.* (1988) 2 N.W.L.R. 303 at 326;

Nwabueze v. Nwosu (1988) 4 N.W.L.R (Pt. 88) 257.

See *Fasel Services Ltd v. NPA* (2001) 11 NWLR (Pt. 723) 36 at 37

Olojode v. Olaleye (2010) 4 NWLR (Pt. 1183) 1 at 43

CHAPTER TWELVE

APPEALS

APPEALS FROM HIGH COURT TO COURT OF APPEAL

The Court of Appeal, a superior court of record is established by Section 237 (1) Constitution of the Federal Republic of Nigeria 1999.

Its jurisdiction is to hear and determine appeals to the exclusion of any other court from the Federal High Court, National Industrial Court, State High Courts, Sharia Court of Appeal and the Customary Court of Appeal Code of Conduct Tribunal and the National States Houses of Assembly Election Tribunals – s.246 CFRN 1999.

COMPOSITION

It is duly constituted by at least three justices of that court for the purpose of hearing of substantive cases. See Section 247 Constitution of the Federal Republic of Nigeria 1999. If an appeal is from the Sharia Court of Appeal, there must not be less than three justices learned in the Islamic personal law sitting and if from Customary Court of Appeal, not less than three justices learned in customary law shall sit. A justice who disagrees with the majority may give a dissenting opinion. See Section 9 Court of Appeal Act. CAP C36, LFN 2004, Note Section 10 of the Act which empowers a single justice to exercise any power vested in the Court of Appeal except that of final determination of the cause or matter.

EXERCISE OF A RIGHT OF APPEAL:

Exercisable (a) at the instance of a party to a case or (b) with the leave of the Court at the instance of any other persons having an interest in the matter. The exercise shall also be in accordance with any law and rules of court

regulating the powers, practice and procedure of the Court of Appeal. See Section 243 CFRN. 1999. Note that in exercising the right of appeal, in civil case, it can either be as of right or with the leave of the court. For the exhaustive list, see Section 241 and 242 Constitution of the Federal Republic of Nigeria 1999, Aqua Motors v. Ondo State Sports Council (1986) N.W.L.R (pt. 91), Harriman v. Harriman

(1987) 2 N.S.C.C. 930., Ademola v. Sodipo (1992) 7 SCNJ 417

Where leave is required to appeal, the court usually grants the leave (1) where the question is one of general importance decided for the first time or, (2) where there is rare and substantive complaint which a Trial-Judge, though he may not agree with, considers arguable. See Adamolekun v. Dike 1979 NMLR Where the complaint is frivolous, leave will be refused. Ojora v. Odunsi (1964) 1 ALL NLR 61.

TIME FOR APPEAL

If the decision is an interlocutory decision, the notice of appeal must be filed within 14 (fourteen) days from the date of the decision. If it is a final decision, the notice of appeal must be filled within three months. See Section 24 Court of Appeal Act, CAP C 36 LFN 2004. Where leave is required to appeal, the application for leave must be made first to the High Court except where there are special circumstances which renders it impracticable to do so, in which case the application can be made to the Court of Appeal. It has been decided by case law that the notice of appeal must be filed within the relevant time notwithstanding the fact that leave is first obtained and the computation of time starts from the date the decision is given and not when the leave is obtained. Where therefore because of delay in obtaining leave time has already elapsed, an application must be brought for an extension of time within which to file the notice of appeal. The application can only be entertained by the Court of Appeal.

See Bowaje v. Adediwura (1976) 6 S.C. 143; Amudipe v. Arijori (1978) 9-10 S. C. 27; Lamai v. Orbih (1980) 5-7 S.C. 28;

Odogiyan v. Hispanic Construction Nigeria Limited (1986) 5 NWLR (Pt39)127

PROCEDURE FOR LEAVE TO APPEAL:

The following items must accompany an application for leave to appeal.

- a) Notice of motion for leave to appeal duly completed (FORM 4).
- b) A certified true copy of the judgment of the High Court sought to be appealed against.
- c) A copy of the proposed grounds of appeal. Note that the application for leave to appeal is usually made *ex-parte* to the High Court. It may also be made on Notice. If the application is refused; a similar application can be made to the Court of Appeal within 15 days after the date of the refusal. This latter application however is always on notice to the other party. In this case, a copy of the order of the High Court refusing the application must accompany the application to the Court of Appeal.

Note that an appellant can apply for an extension of time within which to appeal where he had not utilized the time allowed by the law. The application is made to the Court of Appeal, not the High Court. In granting this application, the Court normally considers whether there is a genuine reason for failure to appeal within time which may include inadvertence or negligence on the part of the Counsel or where delay is attributed to the Court. See Bowaje v. Adediwura (supra). The appellant must also show that he has *prima facie* good grounds of appeal. See Yesufu v. Cooperative Bank (1989) 2 N.S.C.C. 489.

NOTE: That where leave is required to appeal and the

applicant is out of time, the proper application to make at the Court of Appeal will be for the TRINITY PRAYERS viz:

- (i) Extension of time to seek leave to appeal
- (ii) Leave to appeal
- (iii) Extension of time within which to file the Notice of Appeal. See Reg Trustees of CA C v. Uffiem (1999) 7 NWLR Pt 610 254; Ibrahim v. Balogun (1997) NWLR Pt 610 254.

NOTICE OF APPEAL

Appeals are brought to the Court of Appeal by Notice of Appeal in FORM 5. The notice must state the following:

(a) The grounds of appeal whether a misdirection or error in law. The particulars of such misdirection and/or errors shall be stated except in case of omnibus grounds or where the ground embody the particulars, if not, the ground shall be struck out. Okorie v. Udom (1960) 5 F. S. C. 162; Osawere v. Ezeruka (1987) 6-7 SC 135.

Note the distinction between misdirection in law and error in law. A ground cannot be both at the same time. See Chidiak v. Laguda 1964 NMLR 123 at 125. No ground of appeal which is vague or general or which discloses no reasonable ground is permitted except the general ground that the judgment is against the weight of evidence. See Awhinawai v. Oteri (1984) 5 S.C. or (1984) N.S.C.C. 299; Atuyeye v. Ashamu (1987)1 N.S.C.C. 117. Where the ground of appeal is that inadmissible evidence was wrongly admitted or admissible evidence was wrongly refused, Section 251 of the Evidence Act should be borne in mind in that such omission will not ipso facto affect the judgment of the court if it did not affect the judgment of the lower court. See Ibuluya v. Dikibo.

(b) The notice of appeal must state whether it is the whole or part of the decision of the court below that is appealed against. If part, the part must be specified.

(c) It must also state the exact nature of the relief sought,

and the names and addresses of the parties directly affected by the appeal.

A notice of appeal if filed without leave or if filed out of time without obtaining leave or an order for extension of time, is invalid.

The appellant cannot be heard in respect of any ground of appeal not contained in the notice of appeal. The court may however allow appellant to amend the grounds of appeal upon paying the necessary fees or upon such terms as it deems fit. See National Investment Properties v. Thompson Org. Ltd (1969)1 ALL NLR.

The Court of Appeal should not allow additional evidence to be adduced unless the fresh evidence could not, by exercise of reasonable diligence, have been obtained for use at the trial court where the evidence was not available.

PROCEDURE FOR FILING APPEAL

The appeal is brought by the filing of the notice of appeal at the registry of the High Court or the court below within the period stipulated by law depending on whether it is a final or interlocutory decision. Where leave is required, such leave must be sought in order to commence the appeal. Where out of time an application for extension needs to be made to the court of appeal.

PROCEDURE AFTER FILING THE NOTICE OF APPEAL

The Registrar of the High court will serve on each party mentioned in the Notice of Appeal, a true copy of the notice of appeal, within fourteen (14) days, the respondent must file 10 hard copies and an electronic copy with the Registrar, notice of the full and sufficient addresses for service according to the number required by the Registrar. A copy will be forwarded to the Registrar of the Court of Appeal and the Appellants as well. The consequence of failure to file the notice of addresses for service is that it would not be necessary to serve on the respondent any

other proceedings in the appeal or any notice of hearing in the appeal.

SETTLEMENT OF RECORD

The Registrar of the High Court writes to the parties to settle the documents to be included in the record of appeal, with certain conditions imposed such as (i) deposit to be paid by the appellant for the estimated cost of compilation and forwarding of the record of appeal. (ii) the deposit of money for entering into bond by the appellant for the due prosecution of the appeal and the payment of the costs of appeal.

RECORD OF APPEAL

The record of appeal will contain the following documents:

- a) Index
- b) A statement by the Registrar of the High Court giving brief particulars of the case and including a schedule of the fees paid.
- c) Copies of the documents by the Registrar of the High Court.
- d) A copy of the notice of appeal and other relevant documents filed in connection with the appeal. With the following documents set out below, the Registrar of the High Court shall transmit the record of appeal to the Registrar of the Court of Appeal.
- e) A certificate of service of the Notice of Appeal.
- f) A certificate that the conditions imposed by the Registrar of the High Court have been fulfilled.
- g) Electronic copy transmitted to the email address of the court of appeal and ten (10) hard copies of the record transmitted to the registry of the Court of Appeal.
- h) Case file in the High Court (electronic or hard copy) containing all papers or documents filed by the parties in connection with the case in High Court. See Order 8 of the Court of Appeal Rules 2021

A notice that the record has been sent to the Court of Appeal shall be sent to those who filed notice of address for service, by the Registrar of the High Court.

Note generally that an appeal does not operate as a stay of proceedings but upon application to it, the Court of Appeal can order a stay either conditionally or unconditionally. To be competent, an appeal from the decision sought to be stayed must have been filed by the party applying for a stay. See *Mobil Oil Nigeria v. Agadaigho* (1988) 4 S.C.N.J. 174

RESPONDENT'S NOTICE AND CROSS APPEAL

Order 9 Rule 1 Note: a respondent who not having appealed from the decision of the High Court, desires to contend on appeal that the decision of the court should be varied either in any event of the appeal being allowed in whole or part must file a respondent's notice - Appeal Form 10A to the effect specifying the portion of the judgment to be varied. Where a Respondent intends to urge the Court of Appeal to affirm the judgment of the lower court on grounds other than those relied on by the trial Judge, he shall do so by filing a Respondent's Notice in form 10B. Note however that a respondent seeking to set aside a finding which is crucial and fundamental to the case can only do so through a substantial cross appeal. See *Adekeye v. Akin Olugbade* (1987) 6 S.C.N.J. 137; *Williams v. Daily Times* (1990) 1 N.S.C.J. 15.

A respondent's notice given under Order 9 Rule 1 must be served on all the parties. In case of an appeal against an interlocutory order, the service must be within 15 days, in any other case, it must be within one month after the service of notice of Appeal on the respondent.

PRELIMINARY OBJECTION

A respondent intending to rely upon preliminary objection

to the hearing of the appeal shall give the appellant three clear days' notice thereof before the hearing setting out the grounds of objection and shall file such notice together with twenty copies thereof with the Registrar of the Court of Appeal within the same time. It must be in accordance with Form 11. See Order 10 Rule 1 CAR 2016

BRIEFS OF ARGUMENT

An appellant is required to file in the Court of Appeal a brief of argument within forty five (45) days of the receipt of the Record of Appeal. See Western Steel Works Ltd v. Iron and Steel Workers Union (1986) 3 NWLR Pt. 30 Pg. 617. The respondent is required to file his own brief within thirty (30) days of service of the appellant's brief on him. Where an appellant fails to file his brief, he will not be heard in oral argument except by leave of the court.

Where new points are raised in the respondent's brief of argument, the appellant may within 14 days of the service of the respondent's brief but not later than three clear days before the date set down for the hearing of the appeal, file a reply to the brief which should deal with the new points so raised. Failure of the appellant to file the reply within the specified time, will be taken as an admission of the new points or issues arising from the respondent's brief

A good brief as a general rule should be brief, (not exceeding 35 pages O. 19 R. 3(6) (a) Court of Appeal Rules 2021) containing an address for service, what are in appellant's view, the issues arising in the appeal as well as any point taken in the court below which the appellant wishes to argue and any point not taken in the High Court below which he seeks the leave of the court to argue. See O. 19 r. 3(1)-(6) generally for the content of brief of argument.

In formulating the issues, Counsel should note the distinction between issues for determination and grounds of appeal. The grounds of appeal filed accentuate the defects

in the judgment sought to be set aside, while the issues for determination accentuate the crux of the reason encompassing one or more grounds of appeal for the determination of the appeal. The issues for determination flow from the grounds of appeal. Where they do not, they go to no issue. They must be fundamental in order to be entertained by the court.

BRIEF WRITING

Brief writing was first introduced into the practice and procedure in our superior courts by the Supreme Court Rules of 1977, which was revoked and re-enacted by the Supreme Court Rules of 1985. Brief writing was only recently introduced at the Court of Appeal level by Court of Appeal (Amendment) Rules 1984. Presently Order 19 CAR 2021 governs the settling of briefs.

Before 1977, appellants Counsel at the Supreme Court had to prepare his case and appear to argue orally before the bench. The oral argument had to be written down by the Justice and all references to the rules of law and evidence would be read in open court and important points also written down by the justice in their own hands.

A brief is referred to in both Order 19 r.2 of the Court of Appeal Rules 2021 and Order 6, Rule 5 of the Supreme Court Rule as "A succinct statement of his argument in the appeal". The Appellant is required within 45 days of the receipt of the records of appeal to file in the court and serve on the respondent a written brief. The brief may be settled by Counsel and must contain, what in the view of the appellant are the issues arising in the appeal.

Upon receipt of the appellant's brief the respondent is required to file and serve on the appellant within 30 days a respondents brief. The appellant may himself, if necessary, also within 14 days after service of the respondent's brief, file and serve on the respondent a reply brief. For details of

what must appear on the respondent briefs, please see Order 19 Rules 3 (1)-(5).

It should be noted, however, that except with the leave of the court no oral argument would be allowed in support of any argument raised in the brief on behalf of any party for whom no brief has been filed. Great pains must be taken to set down in accordance with the rules of procedure, well thought out argument on the case of your client either as appellant or respondent.

It is important for Counsel to properly formulate the issues for determination, which must be based on the grounds of appeal. Many practitioners have lost their appeals in spite of apparently well written briefs. The first lesson is that the question to be submitted for determination must have been an issue submitted to the lower court for determination. In the case of *Balarabe Musa v. The State, Oputa J S. C.*, stated:

Learned Counsel for the appellants should be well advised to know that they can only urge on appeal, points arising from a decision of a trial court on an issue submitted to it for determination. If no such question has been submitted it cannot form the basis of a ground of appeal or, an issue for determination in a brief.

The second lesson is that an appeal court can only "determine issues which have been submitted to it for determination". Stressing the need to raise issues for determination in briefs, Justice Uwaifo J. C. A. in the case of *Echo Enterprises Ltd v. Standard Bank of Nigeria Limited* (1989) stated:

I wish to remark that in none of these briefs of argument filed were any issues for determination raised. There is need to always comply with rules of briefs writing in order that relevant issues may be considered as a guide.

The third lesson is that issues for determination in a brief must relate to the grounds of appeal. Counsel is advised to

read very carefully the decision in the case of Atanda v. Ajani (1989) 2 N. S. C. C. 511 and some of the cases referred to in that case. On the whole, fifty-four Nigerian cases and five foreign cases were referred to.

Commenting on the necessity to relate issues for determination to grounds of appeal the Supreme Court held (per NNAEMEKA - AGU, J.S.C.) -

Indeed none of the four issues for determination as formulated by the respondent has any relevance to the grounds of appeal before the court. This court has stated a number of times that a respondent's primary duty is to support the judgment appealed against by showing that the contentions of the appellants as to the grounds of error are without merit. Also if they have cross-appealed, they cannot formulate issues as it were, "in nubibus" - hanging in the skies.

Again, in the case of Ikemson v. State (1989) N.S.C.C. 471. Karibi-Whyte, J.S.C. observed:

Both counsel have not appreciated the fact that the issue for determination must necessarily arise from the grounds of appeal filed, and could not have an independent existence. Counsel should learn, as a fourth lesson, that issues for determination in an appeal are not the same as the grounds of appeal filed. Karibi- Whyte, J.S.C., in the same judgment stated that:

Whereas the grounds of appeal filed accentuate the defects in the judgment sought to be set aside, the issues for determination accentuate the crux of the reasons encompassing one or more grounds of appeal for the determination of the appeal.

OUTLINE OF A BRIEF

1. Introduction or Preliminary Statement
2. Statement of facts.

3. Questions or issues for determination.
4. The Argument.
5. Summary and Conclusion.
6. List of Legal Authorities.
7. Addresses for service

HEARING OF THE APPEAL

Hearing of the appeal is by adoption of the briefs of arguments. Each party has fifteen (15) minutes to adopt his brief. Where briefs have been duly filed but a party is not present on the date fixed for hearing and there is proof of service of hearing notice on the parties, the brief of the absent party shall be deemed adopted. See Order 19 rule 9 CAR 2021. Hearing may be virtual pursuant to order 21 of the CAR 2021.

Note the introduction of electronic filing of processes at the Court of Appeal by Order 20 CAR`` 2021.

FORMS
CIVIL FORM 3
IN THE COURT OF APPEAL
NOTICE OF APPEAL
(Order 6, Rule 1)

BETWEEN

AB APPELLANT

And

BC RESPONDENT

TAKE NOTICE that the Plaintiff/defendant being dissatisfied with the decision/ that part of the decision/that part of the decision more particularly stated in paragraph 2*^{*} of the Court contained in the judgment/order of.....doth hereby appeal to the Court of Appeal upon the grounds out set 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. Part of decision of the lower court complained of...

3. Grounds of appeal;

1)

2

3) etc.

4. *Relief sought from the Court of Appeal:*

5. Persons directly affected by the appeal

Name	Address
------	---------

1)

2)

3 , etc.

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

Appellant,

Whose address for service

CIVIL FORM 4
IN THE COURT OF APPEAL
NOTICE OF MOTION FOR LEAVE TO APPEAL
(Order 6, Rule 7)

Between..... **APPELLANT**

And

..... **RESPONDENT**
TAKE NOTICE that the Court of Appeal will be moved on
..... at in the forenoon or as soon thereafter as
Counsel can be heard on the hearing of an application for
leave to appeal against the decision of the
Court on the Day of 20.....

AND further take notice that the grounds of this application
are –

AND further take notice that the following documents are
exhibited in this application

DATED this Day of 20.....

Applicant or his legal representative,

To:

THE REGISTRAR,
COURT OF APPEAL
AND

CIVIL FORM 10A
IN THE COURT OF APPEAL
NOTICE BY RESPONDENT OF INTENTION TO
CONTEND THAT DECISION OF COURT BELOW
BE VARIED
Order 9 Rule 1

Between

ABAppellant
and

BCRespondent

TAKE NOTICE that upon hearing the above appeal the respondent herein intends to contend that the decision of the court below dated the day of 20..... shall be varied as follows-

- 1.
- 2.
- 3.

DATED this Day of 20.....

.....
Respondent

On Notice to –

State the variation which will be asked for.

CIVIL FORM 10B
IN THE COURT OF APPEAL
NOTICE OF INTENTION TO CONTEND THAT
JUDGMENT SHOULD BE AFFIRMED ON
GROUNDS OTHER THAN THOSE RELIED ON
BY THE COURT BELOW
Order 9, Rule 2

Between..... Appellant(s)
and

..... Respondent(s)

TAKE NOTICE that upon the hearing of the above appeal
the respondent intends to contend that the decision of the
court below dated theday of 20..... shall be
affirmed on grounds other than those relied on by the court
below

AND TAKE NOTICE that the grounds on which the
Respondent intends to rely are as follows—

- 1.
- 2.
3. etc.

DATED this Day of 20.....

.....
Respondent

On Notice to –

.....
.....
.....

Plaintiff/Defendant/Respondent

CHAPTER THIRTEEN

RECOVERY OF POSSESSION OF PREMISES

INTRODUCTION

In order to regulate the relationship between Landlords and Tenants and prevent arbitrary increment of rents, unlawful ejection of the tenants and illegal holding over by tenants, laws have been enacted by the Governments of this country. Today, every state of the federation and the Federal Capital Territory, Abuja, has its own laws regulating recovery of possession of premises. However, the procedure is virtually the same across the country with minor variations.

The Recovery of Premises Act, Cap. 544, Laws of The Federal Capital Territory of Nigeria (Abuja) 2007 regulates the recovery of both residential and non-residential Premises in the Federal Capital Territory, Abuja. Although this Act was made by the National Assembly, its application is limited to the Federal Capital Territory, Abuja. See S. 299 of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

There are corresponding laws in the states. The provisions of these laws are similar. In Lagos State, the Lagos State Tenancy Law 2011, the Recovery of Premises Law Cap.118 Laws of Lagos State 1973 and the Magistrates' Court Law of Lagos State No.16 2009 regulate the recovery of possession of premises. While the Lagos State Tenancy Law 2011 applies to both residential and non-residential premises (except Ikeja GRA, Victoria Island, Ikoyi, Apapa), the Recovery of Premises Law, 1973 applies to only business premises (presumably in the areas not covered by the 2011 Tenancy Law). It should be noted that the Rent Control and Recovery of Residential Premises Law 1997 has not been formally abrogated. However, the

law appears to be dormant with the enactment of Tenancy Law 2011.

WHO IS A "TENANT"?

Under section 47 of the Tenancy Law "tenant" is defined as follows "In this law, unless the context otherwise requires "tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise but does not include a person occupying premises under a *bonafide* claim to be the owner of the premises". The Supreme Court, pronouncing on the meaning of tenant under Section 40 (1) of the Rent Control and Recovery of Residential Premises Edict No. 6 of Lagos State 1997 which is essentially the same as section 47 above, held that the only requirement for one to fall under this definition of a statutory tenant is lawful occupation of the premises. The distinction between a tenant and a licensee (under the common law principles) is not a good guide on deciding who qualified as a tenant under the edict and thus entitled to the statutory notice. See *Ibiyemi Oduye v. Nigerian Airways* (1987) 2 NWLR; (1987) Vo1.18 N. S. C. C. 521 Interpreting a similar provision under the Recovery of Premises Ordinance (Cap 193) Laws of Nigeria, the court in *Enigbokan v. Akinoshio* 22 NLR 88 per Hubbard, Ag. F. J. said "If my view of the evidence is correct, it is material whether the appellant was a servant or a licensee".
(Shifted backward)

COURTS WITH JURISDICTION IN RECOVERY OF PREMISES CASES

Jurisdiction on this matter lies with the Magistrates Courts (District Courts in the F.C.T) and the High Court. See Sections 2 of the Recovery of Premises Act, Abuja and the Tenancy Law of Law, 2011. In Abuja the monetary jurisdiction of the District Court is now limited to a maximum of N5 Million Naira, depending on the grade of the Court. See the District Court (Increase of Jurisdiction of

District Court Judges) Order, 2014. In Lagos, the jurisdiction of the Magistrates Courts is limited only to a maximum of N10 Million Naira for all Magistrates Courts. See S. 28(1)(b) of the Magistrate Court Law No. 16, Lagos, 2009. However, once the annual rental value of the premises falls within the above amounts, the Courts will have jurisdiction notwithstanding that the amounts claimed as arrears of rent and mesne profit are above those amounts. See for instance the Proviso to S.28(1)(b), Magistrate Court Law, No. 16, Lagos, 2009.

PROCEDURE FOR RECOVERY OF PREMISES

Procedure for Recovery of Premises is precisely the same in all the jurisdictions, it is highly technical and a strict compliance with the provisions and Rules is essential. If not, the whole proceedings will result in nullity.

The procedure involves four basic stages:

- a) Obtaining letter of authority where necessary;
- b) Termination of tenancy by notice where necessary;
- c) Service of 7 days“ notice of owner“s intention to recover possession;
- d) Commencement of proceedings before the appropriate court.

LETTER OF AUTHORITY

Statutory notices may be issued by the landlord or by his agent. Where a Landlord's agent, whether a solicitor or a layman is employed to serve statutory notices under the recovery of premises laws, he must have been specially authorized in writing by the landlord. See the cases of *Ayiwoh v. Akorede* (1951)20 N. L. R. 4, *Coker v. Adetayo* (1992) 6 N.W.L.R. (Pt 249)612 at 652. In *Balogun*

v. *L.E.D.B.* (1963) 2 All N.L.R. 80, it was held that a Solicitor unless specially authorized in writing by the landlord should not sign the statutory notice required by

Section 7 of the Recovery of Premises Act, and that such notice (to quit) if signed by unauthorized agent cannot be subsequently ratified.

NOTICE TO QUIT

Except where a tenancy expires by effluxion of time as in the case of tenancy for a fixed period or where the tenancy expires by operation of law as in the case of failure of a monthly or quarterly tenant to pay rent for a prescribed period in Lagos, a tenancy must be terminated by appropriate notice as a condition precedent to recovery of possession by action.

LENGTH OF NOTICE TO QUIT

Where there is no express stipulation as to the length of notice to be given by either party to the tenancy agreement to determine the tenancy, the following period of time shall be given:

- a) In the case of tenancy at will or a weekly tenancy, a week's notice;
- b) In the case of a monthly tenancy a month's notice;
- c) In the case of a quarterly tenancy, 3 months"notice,
- d) In the case of half-yearly tenancy, 3 months"notice
- e) In the case of yearly tenancy, 6 months"notice

It should be noted that half-yearly tenancy is only provided for under the Lagos State Tenancy Law, 2011. The nature of the tenancy for the purpose of determining the proper notice to terminate a tenancy shall, in the absence of any evidence to the contrary, be determined by reference to the mode of payments of rent. See sections 8 and 13 of the Recovery of Premises Act, Abuja and Lagos State Tenancy Law, 2011 respectively.

Parties are bound by their tenancy agreement. Where there is an agreement regarding notice to be given for termination of tenancy relationship, then that agreement

will prevail. It is only in the absence of such agreement that the statutory provisions as set out above will apply. See sections 8 of the Recovery of Premises Act, Abuja and section 13 of the Lagos State Tenancy Law, 2011.

EXPIRY OF NOTICE TO QUIT

Notice to quit mentioned above may be given at any time before the date of termination of the current term of tenancy, but they shall not be effective if the time between the giving of the notice and the time when the tenancy is to be determined is less than those respectively set out above (Section 9 of the Recovery of Premises Act, Abuja)

For example, if a yearly tenancy is to end on the 31st of December, 2019, for a quit notice to be effective, it must be for a duration of six months i.e. six calendar months within the period of the calendar year ending on the 31st of December 2019, or the six calendar months" notice terminating exactly on the 31st of December, 2019. *Lateef Aminu (Attorney for Alhaji Waziri Ibrahim v. Amade* (1977) IOCCHJ 273 *Awobiyi and Sons v. Igbalaiye Brothers* (1965) 4 N.S.C.C. 123. The same principle applies to the other categories of tenancies, for example one month's notice i.e. a calendar month"s notice. See *Osewaru v. Ezeiruka* (1978) 6 or, 7 S. C. 135 at 139(11), 1.0-13, *Oyekoya v. G B. Ollivant (Nig) Ltd* (1969) 6 N.S.C.C. 69.; *Owoade v. Texaco Africa Ltd* (1973) 4 N. S. C.C. 61.

However, under the Lagos State Tenancy Law, 2011, for a quarterly tenant, half-yearly tenant and yearly tenant the notice need not terminate on the eve of the anniversary of the tenancy but may terminate on or after the date of expiration of the tenancy. See section 13 (4) of the Lagos State Tenancy Law, 2011.

CONTENTS OF NOTICE TO QUIT

The written notice to quit must state the following:

1. The fact that the tenant should quit and deliver up possession of the premises which must be clearly described.
2. The situation of the premises (the town, or district and number of street).
3. The kind of tenancy (whether at will, weekly, monthly etc.
4. The date the notice to quit is to expire.

The notice is then dated and signed by the person giving the notice (See Form B. C. or D and TL2 or TL3) Schedule to the Recovery of Premises Act, Abuja and Lagos State Tenancy Law, 2011 respectively.

NOTICE OF OWNER'S INTENTION TO APPLY TO RECOVER POSSESSION

If on the expiry of the notice to quit and tenant or any person occupying the premises, or any part thereof shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof, the owner or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served with a written notice signed by the owner or his agent of the owner's intention to proceed to recover possession on a date not less than seven clear days from the date of service of the notice. For example, if notice is served on a Monday, seven clear days will expire at midnight on the following Monday, (Notice is usually served between 6 a.m. and 6 p.m., in any case during day light). Here the landlord is referred to as the owner because the relationship of landlord and tenant has been terminated at expiry of the notice to quit. The notice shall be in (Form E or TL 4) See section 7 and 16 of the Recovery of Premises Act, Abuja and Lagos State Tenancy 2011 respectively. Also, see *Chiwete v. Amissah* (1957) 1. LLR 104.

WRIT OR PLAINT/CLAIM AGAINST PERSON REFUSING TO DELIVER UP POSSESSION

If at the expiration of the time stated in the owner's notice of his intention to apply to recover possession and the tenant or any person holding or claiming through or under him fails, refuses or neglects to quit as demanded, the owner or his agent may file a Writ or a Plaintiff/ Claim depending on whether the action is taken at the High Court, District Court or Magistrates Court. The appropriate Court is that of the district or division where the premises is situated. The originating process shall contain facts to the following effect:

- a) That the Plaintiff is entitled to the possession of the premises, which were let by the plaintiff to the defendant. Brief but accurate description of the said premises.
- b) The period of the tenancy and the rent attached.
- c) The date of expiration or determination of the tenancy under notice to quit.
- d) The fact of the notice in writing of the intention of the plaintiff to apply to recover possession of the premises. A duplicate of the notice in Form E or TL 4 must be attached.
- e) A description of how the service of the notice in Form E or TL 4 was effected.
- f) That in-spite of the notice in Form E or TL 4, the defendant has refused or neglected to deliver up possession of the said premises and still detains same.
- g) Claim for possession, arrears of rent and/ or mesne profit.

N.B. If at the expiration of the notice to quit, the tenant

owes rent, these are called arrears of rent. But from that date until possession is given up, the rent which would have accrued are known as *mesne profit*. *Mesne profit* is payable only by a person holding land illegally: *Oyeledun v. Shomoye* (1960) WNLR 126. For the meaning of *mesne profit*, see *Osawaru v. Ezeriruka* (1978) 6-7, S.C 135 at 139 – 141; *Sobande v. Igboekwe* (2018) ALL FWLR (PT. 919) 32 at 65; *African Petroleum v. Owodunni* (1991) 8 NWLR (PT.210) 391.

When an action is to be filed at the High Court, it will be by Writ as in Form A or TL1; if the action is to be filed before the District Court of the FCT, Abuja, it will be by Plaintiff as in Form F and a Summons will be issued as in Form G and in the Magistrates Court of Lagos State, it will be by Claim as in Form TL6B and a Summon in Form TL6A will be issued. See the Schedule to Recovery of Premises Act, Abuja and the Lagos State Tenancy Law, 2011

SERVICE OF NOTICES AND PROCESSES

In the FCT, service of a notice of determination of tenancy shall be effected in accordance with the provision of the law for the time being in force relating to the service of the civil process of Magistrate Court. i.e. personal service. However, where the defendant cannot be found and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such process personally, a copy of the process shall be pasted on some conspicuous part of the premises sought to be recovered and such pasting shall be deemed good service on the defendant. See section 28 of the Recovery of Premises Act, Abuja.

In Lagos, if it is a residential premises, service is either on the person, adult resident of the premises, by courier or by affixing the notice in a prominent part of the premises. See s.18 TL Lagos. If it is a business premises, service is by delivering the Notice to a person at the business premises or by affixing it in the premise. See s.19 TL.

With respect to summons, warrant or other court process, personal service must be effected on the defendant. See s. 28 Recovery of Premises Act, Abuja, s.22 Tenancy Law 2011, O. 5 r. 1 of the Lagos State Magistrates Court (Civil Procedure) Rules, 2009

TRIAL PROCEDURE

Actions for recovery of premises may be filed at the High Court (both in Lagos and Abuja), Magistrate Court (In Lagos) or District Court (in Abuja) depending on the rental value of the premises. See sections 272 of the 1999 Constitution as amended; 28 of Magistrates Court Law of Lagos State 2009; and section 3 of Recovery of Premises Act, Abuja. It should also be noted that the monetary jurisdiction of the District Court of the Federal Capital Territory has been increased to 7 (Seven) Million by the District Court (Increased in the Jurisdiction of District Court Order 2021).

At the trial, the plaintiff is obliged to prove all the steps taken by him as required by law from tendering the letter of authority (in the case of an agent) to the tendering of:

- (i) Form B,C, or D or TL2 and TL3 whichever is applicable as notice to quit.
- (ii) Form E or TL4 Notice to tenant of owner's intention to apply to recover possession.

The service of the notices, which must be in accordance with the provision of the law must be proved by the plaintiff at the trial. The plaintiff must also discharge the burden of proof that he is the one entitled to possession of the said premises or that he is the owner. Evidence shall be by written deposition or oral examination of witnesses. See section 27 of the Lagos State Tenancy Law, 2011.

Service of Quit Notice as well as Notice of Owners Intention to Recover Possession is a precondition to the institution of proceedings between landlord and tenant for the recovery of premises. Where such notices are

applicable and not served, an action for recovery of premises is incompetent. See *Lasaki v Dabiam* (1959) NRNLR p 12; *Gambari V Gambari* (1990) 5 NWLR (Pt 152) 572.

The same result, however, does not follow if the period between service of Notice of intention and the date of application to court for a summons is less than seven clear days provided the proceedings is not determined before the expiration of the period. In other words, where an action for recovery is filed before the end of 7 clear days after service of notice of owners intention but the matter is not heard by the court until after 7 days, the action will not be invalid. See *Iheanacho v Uzochukwu* (1997) 2 NWLR (pt 487) p 257; *Etchie v. Raji* (1980) FNLR p. 108.

Similarly, where any of the statutory notices is improperly served, such improper service will be cured by issuance of writ for commencement of the action. In other word, such improper service does not render the suit incompetent or affect the jurisdiction of the court to grant possession.

See Pillars Nigeria Limited v Kojo Desbordes & Anor (2021) LPELR-55200(SC); *Imoh-Ita v Animashaun* (2022) LPELR-56554 (CA); *Bankole & Anor v Laditon* (2022) LPELR-56502 (CA)

It is noteworthy that the facts of these cases do not deal with non-service of statutory notice. The decisions must therefore be restricted to their facts.

COUNTER CLAIM

A tenant has a right of action against the landlord in respect of un-exhausted improvement or for any expenses authorized in writing by the landlord in respect of the premises, the subject of the action for recovery of possession. See section 15 of the Recovery of Premises Act, Abuja.

**RECOVERY OF PREMISES FORMS
FORM C**

**Notice To Quit, Given By an Agent or Legal
Practitioner of the Landlord**

To: C.D.

Sir,

I hereby, as agent (Legal Practitioner) of your landlord, and on his behalf give you notice to quit and deliver up possession of the shop and room with the appurtenances situate at in the town of which you hold of him as tenant thereof on the day of 2015.

Dated this day of 2015

Signed:

Agent (or Legal Practitioner) For the above named A B.
By the Landlord see Form B. Also see Form TL2 and TL3
in the Schedule to the Lagos State Tenancy Law 2011.

FORM E

**Notice To Tenant of Owners Intention to Apply To
Recover Possession**

TO:

Sir,

I (Owner, or agent to....., the owner, as the case may be) do hereby give you notice, that unless peaceable possession of the premises (shortly described), situate at....., which were held of me (or of the said....., as the case may be) under a tenancy from year to year(or as the case may be) which expired(or was determined by notice to quit from the said....., (or otherwise as the case may be) on the..... day of, and which premises are now held over and detained from the said..... be given to... (the owner or the agent) on or before the expiration of seven clear days from the service of this notice, I.....shall on.....next, the day of

.....atO'clock of the same day, atapply to court to issue a warrant directing an appropriate person to enter and take possession of the said premises, and to eject any person therefrom.

Dated this day of19

Signed..... (Owner or Agent)

Also, see Form TL4 in the Schedule to the Lagos State Tenancy 2011

Also see Form A, F, TL6A and TL6B in the Schedule to the Recovery of Premises Act, Abuja and the Lagos State Tenancy Law, 2011.

NOTE: All forms must be confirmed from the statutes

CHAPTER FOURTEEN

ELECTION PETITION

INTRODUCTION

Actions instituted for purposes of challenging the validity of an election or disputing the due return of a candidate or claiming the return of a candidate are commenced by petition. Election petition is a special proceeding guided by a particular electoral law made specifically for the conduct of an election to a certain office. In Nigeria today, the 1999 Constitution as amended, Electoral Act, 2022 regulate the conduct of elections.

Every petition filed is decided by the tribunal on the basis of the electoral law under which the election was held, the electoral law will prescribe the court/tribunal where the petition shall be filed, the parties, grounds for presentation, and the conduct of the entire proceedings including the right to appeal.

JURISDICTION OVER ELECTION PETITIONS

Section 285(1) of 1999 Constitution provides for the establishment of National and State Houses of Assembly Election Tribunal. Section 285(2) provides for Governorship Election Tribunal while Section 285(7) of the Constitution provides that the Court of Appeal shall have original jurisdiction over petitions relating to election to the office of President or Vice President.

NATURE OF ELECTION PETITIONS

Election petitions are *sui generis*. See *Buhari v. INEC* (2008) 4 NWLR (Pt 1078) 546. They are peculiar, distinct, and of a different character to normal civil proceedings. See *Nwobodo v. C.C. Onoh* (1984) 1S.C 1. Election petitions are special proceedings completely divorced and separate from civil proceedings.

PRESENTATION OF PETITION

A petition must be presented in the manner prescribed by the Electoral law. A petition is presented when it is filed in the appropriate court or tribunal prescribed by law. That is, the papers are presented to the Court Registrar or Secretary of the Tribunal, payment of the prescribed fees made and receipts issued. See Paragraph 2 and 3 of the First Schedule to the Electoral Act 2010 (as amended). See *Belgore v. Ahmed* (2013) All FWLR (Pt.705) 246 at 286-287 CA; *Idris v ANPP* (2008) 8 NWLR (Pt. 1088) 1 *Ogbolumani v. Okobi* 1959 WNLR. 11; *Ngoh v. Ndoka and Another* (1960) 5 F.S.C. 90 at 92.

Presentation of petition must be done within the time prescribed by the Electoral law (21 days after the declaration of the result of the election) Section 285 (5) OF THE CFRN 1999 (as amended) provides that an election petition shall be filed within 21 days after the date of the declaration of result of the election. Note that the times prescribed by the Electoral Act for taking particular steps are generally sacrosanct. See *Oke v Mimiko* (2013) All FWLR (Pt 693) 1853

An election petition may be presented by one or more of the following persons:

- (a) A candidate at an election
- (b) A political party which participated at the election. (See Section 133 (1) & (2) of the Electoral Act, 2022).

The person whose election is complained of shall be the Respondent. If the petitioner complains of the conduct of an Electoral Officer, a Presiding Officer or Returning Officer, it shall not be necessary to join such officers or person notwithstanding the nature of the complaint and the Commission shall, in this instance, be made a respondent; and deemed to be defending the petition itself and on

behalf of its officers or such other persons. See Section 133 (3) of the Electoral Act 2022.

A petition must be filed in the appropriate registry prescribed by the Electoral law. If a petition is filed in a wrong registry, it cannot be transferred to another or proper registry. If the electoral law states that presentation of a petition shall be made by the petitioner in person, this means the petitioner must be physically present at the time of the presentation of the petition. See Paragraphs (2), (3), and (4) of the First Schedule to the Electoral Act 2022. The petition shall be signed by the Petitioner or all the Petitioners or by the Solicitor if any, named at the foot of the election petition. See Paragraph 4 (3) (b) First Schedule to the Electoral Act 2022.

ACTION BY THE SECRETARY TO THE TRIBUNAL ON THE PRESENTATION

Paragraph 7 of the 1st Schedule to the Electoral Act provides that upon presentation and payment of necessary fees, the Secretary shall forthwith-

- a) Cause notice of presentation of the petition to be served on each respondent;
- b) Post on the tribunal notice board a certified copy of the election petition; and
- c) Set aside a certified copy for onward transmission to the person or persons required by law to adjudicate and determine the petition.
- d) *Para. 7 (2) in the notice of presentation of the petition, the secretary shall state a time, not being less than 5 days but not more than 7 days after the date of service of the notice, within which each respondent shall enter appearance.*

CONTENTS OF A PETITION

The contents of a petition must conform to the electoral law in force and the Civil Procedure Rules adopted by the electoral law. The petition must contain the following:

PARTIES

There are two parties to a petition i.e. the Petitioner and the Respondent. The Petitioner is any person claiming to have a right to be returned at the election or a candidate at the election or a Political Party which participated at the election. The Respondent to such petition shall be: the successful candidate at the polls, the Independent National Electoral Commission (INEC) as it will have to carry out the orders the court may give. If the petitioner complains of the conduct of an electoral officer, a presiding or Returning officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the commission shall in this instance be made respondent and be deemed to be defending the petition for itself and on behalf of its officers or such other persons. See Section 133(3) Electoral Act.

Although INEC as a Respondent obviates the need to join its ad-hoc staff, it can still be argued that with respect to non-statutory respondents where allegations are made against them, it is imperative that they be joined as respondents. This assumes a constitutional dimension because a person is entitled to be heard in all cases which affect the determination of his rights. Where for instance allegations of commission of criminal offences is made against an individual, it will amount to the breach of the person's fundamental right to fair hearing if determinations are made without the person's participation. See Obasanjo v. Buhari (2003) 17 NWLR (Part 850) 510 at 576 to 577; Ayogu v. Nnamani (2006) 8 NWLR (Part 981) 160 at 195;

HOLDING AND RESULT OF ELECTION: The petition shall state the date and result of the election being challenged, i.e. the votes scored by the candidate and the name of the candidate returned elected. It shall also state the place where the election was conducted.

GROUNDS OF THE PETITION: The petition must state the grounds on which the election is being challenged and the facts relied on.

The main ground is a complaint of undue election or undue return. See Section 134 of the Electoral Act 2022. The specifics of undue election or return are prescribed by Section 134(1) of the Act which provides that an election may be questioned on any of the following grounds:

- a) That the person whose election is questioned was, at the time of the election, not qualified to contest the election. On the issue of qualification see Sections 65, 106, 131, 137(1)(b), 177, 182(1)(b) of the 1999 constitution as amended. Note also the amendment to the age qualification by Sections 2,3,4,5, and 6 of the Constitution Alteration Act 2016 commonly known as the Not Too Young to Run Act ;
- b) That the election was invalid by reason of corrupt practices or non- compliance with the provisions of this Act;
- c) That the respondent was not duly elected by majority of lawful votes cast at the election, or
- d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.
- e) That the person whose election is questioned had submitted to the Commission affidavit containing

false information of a fundamental nature in aid of his qualification for the election.

PRAVERS

A petition filed must be accompanied with a prayer or reliefs sought as for instance, that the Petitioner or one of the Petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared null and void, as the case may be.

Note: By Section 285(13) of the 1999 Constitution amended by Section 2 of the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act, 2017, an election tribunal or court shall not declare any person a winner at an election in which such a person has not fully participated in all stages of the election

DOCUMENTS THAT SHALL BE FRONTLOADED WITH THE PETITION

The election petition shall be accompanied by-

- a) A list of the witnesses that the petitioner intends to call in proof of the petition;
- b) Written statements on oath of the witnesses; and
- c) Copies or list of every document to be relied on at the hearing of the petition. see Paragraph 4(5) of the First Schedule to the Electoral Act 2022 See also *A.C.N v Lamido & Ors* (2012)All FWLR (Pt 630) 1316 SC

SERVICE: The petition must contain an address for service within jurisdiction to enable the processes of the tribunal is served on the parties. The address for service is usually contained at the foot of the petition.

AMENDMENT OF PETITION: The Electoral Act contains provisions relating to amendment of petition and replies. A time is usually prescribed within which such an amendment can be made (21 days from the date of the declaration of the result of the election. See *Oke v Mimiko* (2013) All FWLR (Pt 693) 1853. Note that the provisions for amendment are not the same with that of High Court which states that amendment of the pleadings can be made at any stage before judgment. Usually, the Electoral Act may not allow amendment in the following areas:

- a) To introduce any fresh prayer to the petition.
- b) To effect any alteration of substance in the prayer.
- c) To effect any substantial or material alteration to the statement of facts and grounds. See Paragraph 14(2) of the First Schedule to the Electoral Act 2022.

However, if amendment is only to correct typographical error on the petition, it may be allowed.

See Bola Ige v. Dr Victor Omololu Olunloyo (1984)1 SCNLR, 158 or (1984)1 Sc. 258; Oke v Mimiko

FILING OF REPLY TO THE PETITION

The respondent shall within 14 days of service of the petition file a reply.

The reply shall specify which facts in the petition he does not admit and which he denies, and shall set out the facts on which he relies in opposition to the election petition.

Paragraph 12 (2), where the petition complains of undue return and claiming the seat or office for the petitioner and the respondent intends to prove that the claim is incorrect or false, he shall in his reply SET OUT THE FACTS AND FIGURES CLEARLY AND DISTINCTLY disproving the claim of the petitioner.

The reply may be signed by the respondent or solicitor representing him, if any and shall include the name and

address of the solicitor at which subsequent processes shall be served.

DOCUMENTS THAT SHALL BE FRONTLOADED WITH THE REPLY TO THE PETITION.

The Reply to the election petition shall be accompanied by-

- a) A list of the witnesses
- b) Written statements on oath of the witnesses; and
- c) Copies of documentary evidence .See Paragraph 12(3) of the First Schedule to the Electoral Act 2022.

PETITIONER'S REPLY

If a person in his reply to the petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, within 5 days from the receipt of the respondent's reply, a petitioner's reply in answer to the new issues of fact. See Paragraph 16 of the First Schedule to the Electoral Act 2022.

PRE-HEARING SESSION AND SCHEDULING

A pre-trial session is a condition precedent before a tribunal or court can proceed to entertain any election petition or matters relating thereto. See *Okereke v. Musa Yaradua SC*. 246/2007; See *Gebi v. Dahiru* (2012) 1 NWLR (1282) 560; *Awojobi v. INEC* (2012) 8 NWLR (Pt 1303) 528; *Ugba v PDP* (2013) All FWLR (Pt 686) 544

Within 7 days after the filing of the petitioner's reply on the respondent or 7 days after the service of the respondent's reply, the petitioner shall apply for the issuance of a pre-hearing information sheet as in Form TF 008. The application can be by a simple letter or by a motion on notice or motion ex parte. See *Gebi v Dahiru & Ors* (2012) 1 NWLR(Pt 1282) 560.

PROCEEDINGS AT THE PRE-HEARING SESSION

At the pre-hearing session, the tribunal or court shall enter a scheduling order for-

1. Joining other parties to the petition;
2. Amending the petition or reply or any other processes;
3. Filing and adoption of written addresses on all interlocutory applications;
4. Additional pre-hearing sessions;
5. Order of witnesses and tendering of documents that will be necessary for the expeditious disposal of the petition; and
6. Any other matters that will promote quick disposal of the petition in the circumstances.

An application for pre-hearing notice may be by simple application by way of letter. It need not necessarily be by way of a motion ex parte or on notice.

HEARING OF THE PETITION

The hearing of the petition shall be in open court. Hearing shall continue from day to day and no formal adjournment shall be necessary but the hearing shall be deemed adjourned and may continue from day to day. Hearing may continue on a Saturday or public holiday as circumstances dictates.

Each party shall have 14 days to prove their case. A party that fails to utilize its 14 days well to prove its case cannot complain of denial of fair hearing. See A.C.N v. Lamido (2012) 8 NWLR (Pt 1303) 560.

PERIOD OF LIMITATION FOR CONCLUSION OF HEARING OF PETITION UP TO JUDGMENT

An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition. See Section 285 (6) CFRN 1999 (as amended) See.

Marwa v. Nyako (2012) 6 NWLR (Pt 1296) 199; *ANPP v. Goni* (2012) 7 NWLR (Pt. 1298) 147

PRE-ELECTION MATTERS

WHAT IS A PRE-ELECTION MATTER?

By Section 285 (14) of the 1999 Constitution amended by the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act, 2017, pre- election matters means any suit by:

- a) An aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for the conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;
- b) An aspirant challenging the actions, decisions or activities of INEC in respect of its participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by INEC in respect of the selection or nomination of candidates and participation in an election; and
- c) A political party challenging the actions, decisions or activities of INEC disqualifying its candidate from participating in an election or complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by INEC in respect of the nomination of candidates of political parties for an election, timetable for the election, registration of voters and other activities of the Commission in respect of preparation for an election.

TIME FOR FILING PRE-ELECTION MATTERS

Every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in a suit. See S 285 (9) 1999 Constitution amended by Section 2 of the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act, 2017.

Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the court in any pre-election matter is heard, the court shall suspend its ruling and deliver it at the stage of final judgment. Section 285 (8) of the 1999 Constitution amended by Section 2 of the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act, 2017.

TIME FOR DETERMINATION OF PRE-ELECTION MATTERS

A court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing the suit. See Section 285 (10) of the 1999 Constitution amended by Section 2 of the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act, 2017. An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against. See Section 285(11) of the 1999 Constitution amended by Section 2 of the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act, 2017.

An appeal from a decision of a court in a pre-election matter shall be heard and disposed of within 60 days from the filing of the appeal. See Section 285(12) of the 1999 Constitution amended by Section 2 of the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act, 2017.

CHAPTER FIFTEEN

MATRIMONIAL CAUSES

In relation to marriage contracted under the Act, the applicable laws are (i) the Matrimonial Causes Act, 1970 (which is the principal legislation), contained in Chapter M7, Vol. 8, Laws of the Federation of Nigeria 2004 (ii) Matrimonial Causes Rules, 1983 (iii) Marriage Act, Cap 115 Laws of the Federation 1958 (now Marriage Act, Chapter M6, Vol. 8, Laws of the Federation of Nigeria 2004). The provision of Section 8 of the Matrimonial Causes Decree 1970 is significant in that the jurisdiction conferred on the court for recognition of foreign rule of private international law still applies. The MCA, 1970 applies to monogamous marriages (See Section 48 of the Marriage Act) and not marriage contracted under native law and customs.

COURTS WITH JURISDICTION:

Jurisdiction under the Matrimonial Causes Act is conferred on the High Court of a State by Section 2. (Within the context of the Federal Capital Territory, the term 'High Court' includes the High Court of the Federal Capital Territory, Abuja). Where however maintenance has been ordered in proceedings in a High Court, a court of summary jurisdiction can enforce payment in a summary manner.

Actions in relation to matrimonial causes can be commenced in any High Court of the State of the Federation so long as the person bringing the action is domiciled in Nigeria. Such person need not be domiciled in the State in which the action is brought and the marriage need not be contracted there. (Section 2 (2) MCA). However, the rule of "forum convenience" is introduced whereby the court is empowered to transfer matrimonial causes to any court in any State if it is in the interest of justice that such matrimonial cause be dealt with in that

other State. See section 9 MCA; *Adegoroye v. Adegoroye* (1996) 4 NWLR (Pt. 433) 712.

BASIS OF THE JURISDICTION

Domicile is the basis of jurisdiction in a matrimonial cause. Once a person is domiciled in any of the States of the Federation, such person is deemed to be domiciled in Nigeria. Section 2 (3) MCA Special provisions however exist which define a wife's domicile. For instance before a deserted wife can be said to be domiciled in Nigeria, she must have been deserted in Nigeria, also a wife who is resident in Nigeria at the date of instituting proceedings under the Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Nigeria at the date (Section 7) MCA.

MATRIMONIAL RELIEF:

A person domiciled in Nigeria can bring an action in the High Court under the Act in respect of any of the following: (a) dissolution of marriage (b) nullity of marriage either on ground that the marriage is void or voidable (c) judicial separation (d) restitution of conjugal rights (e) jactitation of marriage. See Section 2 (2) MCA

VOID MARRIAGE:

A marriage is void where any of the following circumstances exists (i) any of the parties, is at the time of the marriage, lawfully married to some other person. See sections 35, 47, and 48 Marriage Act (ii) the parties are within the prohibited degrees of consanguinity or affinity. Where however parties who are prohibited by affinity wish to marry, they may apply, in writing to a judge for permission, (section 4) (iii) MCA the marriage is not a valid one under the *lex loci* celebrations, by reason of a failure to comply with the requirements of the law of the place with respect to the form of solemnization of marriage

(iv) the consent of one of the parties is not a real consent (a) if it was obtained by duress or fraud or (b) that there is mistake as to identity of the other party or as to the nature of the ceremony performed or (c) that the party is mentally incapable of understanding the nature of the marriage contract. (v) Either or both parties are not of a marriageable age.

VOIDABLE MARRIAGE:

A marriage is voidable, where at the time of the marriage, either party is (i) incapable of consummating the marriage (ii) of unsound mind or mentally defective or subject to recurrent attacks of insanity and epilepsy. (iii) Suffering from a venereal disease in a communicable form or (iv) the wife is pregnant by a person other than the husband (per alios) (See Section 5 MCA).

DISSOLUTION OF MARRIAGE:

A party to a marriage can present a petition for the dissolution of the marriage if the marriage has broken down irretrievably. Marriage is said to have been broken down irretrievably where one or more of the following occur:

- (a) That the respondent has willfully and persistently refused to consummate the marriage.
- (b) That since the marriage, the respondent has committed adultery and that the petitioner finds it intolerable to live with the respondent.
- (c) That since the marriage, the respondent has behaved in such a way that the petitioner cannot be expected to live with him or her.
- (d) That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.
- (e) That the parties to the marriage have lived apart for a continuous period of at least two years immediately

preceding the presentation of the petition and the respondent does not object to a decree being granted..

(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

(g) That the other party to the marriage has for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under the Act.

(h) That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead. S. 164 Evidence Act 2011.

Note that under section 30 (1) MCA a petition for dissolution of marriage cannot be presented within two years after the date of the marriage except by leave of court. The leave shall not ordinarily be granted unless to refuse to grant the leave would impose exceptional hardship on the applicant Akere v. Akere (1962) WNLR 328 Majekodunmi v. Majekodunmi (1966) WNLR 191, see Section 30(3). In the determination of application to grant leave, the court shall consider the interest of any children to the marriage and the probability of the reconciliation between the parties before the expiration of two years after the date of the marriage. Note that where (i) the respondent has willfully and persistently refused to consummate the marriage or (ii) since the marriage, the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent or (iii) since the marriage the respondent has committed rape, sodomy or bestiality, a petition for dissolution of marriage can be brought without the need for leave.

PARTIES TO A PETITION FOR DIVORCE

These are usually the spouses who have contracted the marriage. Under certain circumstances however, there may be a third party, who is the co-respondent and the petitioner

intends to claim damages against the third party- the co-respondent.

The damages will not be awarded where the petitioner has condoned the adultery; where adultery is not a ground for a decree of dissolution of marriage; where adultery is committed more than three years before the date of the petition. (See Section 31 MCA).

Note that where it is alleged that a party to a marriage has committed adultery with a specific person, such person must be joined as a party. (Section 32 MCA).

DISABILITY TO PRESENT A PETITION FOR NULLITY

Under Section 35 MCA, a person who suffers from the disability or disease listed under S.5 (1) MCA of the Act is incapable of presenting a petition for nullity of marriage on the ground that it is voidable by such act.

RECONCILIATION

Under the Act, the court is enjoined to give consideration to the possibility of reconciliation, where, from the nature of the case or attitude of the parties this is possible. For this purpose the court shall adjourn proceedings, and with the consent of the parties, interview them in chambers and nominate a suitable person who can possibly effect reconciliation. If however after fourteen days from the date of adjournment, either of the parties requests that the proceeding should continue, the court shall resume hearing. Note that a judge who has acted as a reconciliator cannot sit upon the case, where the hearing is to continue, except the parties request that he does so. Evidence of anything said on or any admission made in the course of reconciliation is inadmissible in later proceedings. (See Section 11 - 14 of the Act).

COMMENCEMENT OF PROCEEDINGS

A proceeding for a matrimonial cause is commenced by petition. (See S.44 MCA 1970). However, we have seen earlier that before the petition is filed in some cases, the leave of court must be obtained by means of an application (See S.30 MCA 1970).

The application for leave may be made ex-parte (See. Order 4 Rule 1 MC Rules 1983) and must be accompanied by affidavit stating (1) the particulars of hardship that will be imposed on the applicant if application is refused or the depravity on the part of the respondent. (2) The grounds upon which the proposed petition is to be based. (3) Whether or not previous application, had been made and whether it was successful or not. (4) Whether there is a living child of the marriage. If so then the particulars of the child and of the person with whom he/she resides. (5) Whether reconciliation has been attempted and particulars of it. (6) Particulars of any other circumstances that may assist the court in determining whether or not reconciliation from the evidence may succeed before the expiration of two years after the marriage.

PETITION: This is filed by the petitioner and must be in compliance with statutory FORM 6 - See sample as to the form and content.

ANSWER: The respondent or co-respondent (where there is one) must file an answer. Where an answer contains an allegation of fact, such fact, may be denied by filing a reply by the petitioner. The other party may then file a rejoinder.

DISCRETION STATEMENT: This statement is required to be filed where a party to the proceeding has committed adultery. It must be in accordance with Form 30. (See form for the content). The statement must be signed by the party who has made it, otherwise it will be void. It must then be

put in a sealed envelope with the suit No. of the proceeding boldly written on it. The envelope will be signed by the Legal Practitioner. (See Order 11 Rules 28 and 29 Matrimonial Causes Rules 1983).

COMPULSORY CONFERENCES: This is required to be held where a defended suit includes issues relating to the following: maintenance of a party to the proceedings, settlement of property jointly owned, custody or guardianship of an infant child to the marriage, maintenance, welfare or advancement of such child and the parties are not in agreement as to the order that should be made by the court. The conference should also be held where the proceedings relate to nullity of marriage. (See Order 11 Rules 33-37).

SETTING DOWN THE SUIT FOR TRIAL

Counsel for the petitioner is required to make a request to set down the suit for trial. The suit can either be defended or undefended. If the suit is undefended, the request is made by using (FORM 31). The counsel states the number of days he will require for the trial. See Order 11 Rules 39. Where the suit is defended the request is made by using FORM 32 the counsel also states the number of days he will require for trial.

DOCUMENTS TO ACCOMPANY A PETITION

- (a) Notice of Petition: It gives instructions to the respondent as to the steps to be taken by him/her after service of the petition on him/her.
- (b) Marriage certificate. To show the marriage exists.
- (c) Acknowledgement of service: It is by this the respondent or the co-respondent indicates that he is interested in the suit and that he proposes to defend the action. Without this a respondent or co-respondent has no

locus standing in the action, and the action will be considered undefended.

(d) Verifying Affidavit: The purpose of this is to confirm the truthfulness of the matters stated in the petition.

INTERVENTION BY PERSONS NOT PARTIES TO THE PROCEEDINGS

Under Section 62 and 65 MCA 1970, other parties can in appropriate circumstances intervene in the proceedings i.e. the Attorney-General where he feels that matters which ought to be brought to the notice of the court have not been brought. Apart from the Attorney General, other person who may be able to prove facts relevant to the proceedings that ought to be made known to the court can also intervene. (See Form 42 and 43 in the Appendix to the Matrimonial Causes Rules 1973).

DECREE

After the conclusion of the trial for dissolution of marriage, the court may grant a decree nisi which will be made absolute after the expiration of three months. The court may also make any other order depending on what the parties to the proceedings sought before the court. Note however, that in order to enforce a decree against any person, such person must have been served a copy thereof personally and the service shall be:-

TAKE NOTICE that if you fail to carry out the act required of you by the decree or order, within time specified in the decree or order for carrying out those acts, further legal proceedings shall be taken against you for the purpose of carrying out those acts. See Order 17 Rule: 2 Matrimonial Causes Rules 1983.

MODE OF ENFORCEMENT

Where payment of money is involved there are two modes of enforcement of a decree or order of the court i.e.

1. Attachment.
2. Sequestration.

See Order 17 Rule 4 Matrimonial Causes Rules 1983.

In enforcing by these modes leave of the court that made the decree must be sought.

FORMS AND PRECEDENTS

IN THE HIGH COURT OF LAGOS STATE IN THE LAGOS JUDICIAL DIVISION HOLDEN AT LAGOS SUIT NO. WD. 712/84

BETWEEN

MRS OLAJUMOKE BENDEL PETITIONER
AND AKINOLA BENDEL RESPONDENT

TO: The above-named High Court

The Petitioner Mrs Olajumoke Bendel whose address is at 137, Awofeso Drive, Shomolu, Lagos Mainland, and whose occupation is an Account Clerk with Telegram Department, Yaba Branch petitions the Court for a decree of dissolution of the marriage against the respondent Akinola Bendel whose address is at 127, Martins Street, Lagos and whose occupation is an Account Clerk with Kilpatrick Limited, Isolo, Lagos Mainland.

MARRIAGE

1. The Petitioner then a spinster was lawfully married to the respondent then a bachelor at St. Paul's Church, Shomolu, Lagos Mainland on the 1st day of February, 1976.
2. The surname of the Petitioner immediately before

marriage was Miss Tunde.

BIRTH OF PETITIONER AND RESPONDENT

3. The Petitioner was born in 1952 in Lagos and the Respondent was born in 1949 in Oyo State, Nigeria.

DOMICILE OR RESIDENCE

The Petitioner is within the meaning of the Act, domiciled in Nigeria, the facts on which the court will be asked to find that the Petitioner is so domiciled are as follows: Previous to the marriage the Petitioner was residing with Petitioner's Parents at 137 Awofeso Drive, Shomolu, Lagos and has remained within the jurisdiction of Lagos since that date.

COHABITATION

Particulars of the places at which and periods which the petitioner and the respondent have cohabitated are as follows:

Immediately after marriage at 73 Ogunbadejo Way, Shomolu and finally 45 Wereni Drive Palmgrove, Lagos Mainland.

The date in which and circumstances in which cohabitation between the petitioner and the respondent first ceased are as follows: On 5th December, 1981, the Respondent threw the petitioner out of the matrimonial home at 75 Wereni Drive, Palmgrove and cohabitation between the parties ceased from that date.

Particulars relating to the children to whom Order 4 Rule 8 applies are as follows:

- (i) Yetunde, female, born on 17th April, 1976.
- (ii) Titilayo, female, born on 29th November, 1977.

PREVIOUS PROCEEDINGS:

8. Since the marriage there have not been any proceedings in a Court between the Petitioner and Respondent.

CONDONATION, CONNIVANCE AND COLLUSION:

9 The Petitioner has not condoned or connived at the grounds specified above and is not guilty of collusion in presenting this petition.

PROPOSED ARRANGEMENTS FOR CHILDREN

EDUCATION: Yetunde now in Primary iii and Titilayo in Primary 1, are currently attending Baptist Primary School, Shomolu and will continue in the School and progress to higher institution of learning in future to the best of their ability.

MORAL OBLIGATION: The Petitioner will continue to bring the two children up in the Christian faith.

MAINTENANCE: The Petitioner has been responsible for the up-keep, School fees and medical expense of the children namely: Yetunde and Titilayo and the Respondent was ordered to bear the responsibility with effect from 1st January 1984 and pay monthly allowance of N40.00 Naira per child subject to review.

CUSTODY: The children have been residing with the Petitioner and her parents at 137 Awofeso Street, Shomolu and will continue to live with the Petitioner at the same address.

ORDER SOUGHT

10. The Petitioner seeks the following orders:
 - (a) A decree of dissolution of marriage on the ground that since the marriage the Respondent has behaved in such a way that Petitioner could not reasonably be expected to live with the Respondent.
 - (b) Custody of the two children of the marriage now living

with the Petitioner.

(c) The Respondent be ordered to continue to pay the school fees and maintenance of N40.00 Naira per month subject to review.

(d) Access to the Respondent during school holidays.

The Petition was settled by MATO, Legal Practitioner for the Petitioner. Filed on the 21st day of February, 1984, by MATO on behalf of the Petitioner, whose address for service is at Western House, (2nd Floor), 8/1 O Broad Street, Lagos.

PETITIONER

IN THE HIGH COURT OF LAGOS IN THE LAGOS JUDICIAL DIVISION HOLDEN AT LAGOS

SUIT NO. WD/7/2/84

BETWEEN

MRS. OLAJUMOKE BENDEL PETITIONER

AND

AKINOLA BENDEL RESPONDENT

VERIFYING AFFIDAVIT

I, MRS. ELIZABETH OLAJUMOKE BENDEL Nigeria citizen, female, Christian, account clerk residing at No. 137, Awofeso Drive, Shomolu, Lagos State, make oath and state as follows:

1. That I am the Petitioner in this suit.
2. That I verify the facts stated in my petition by virtue of my personal knowledge of same.
3. That the statements set forth in the petition are true and correct to the best of my knowledge, information and

belief Deponent

SWORN at the Lagos State High Court,
Registry, this day of 19 .

**BEFORE ME
COMMISSIONER FOR OATHS**

NOTICE OF PETITION

TO: Akinola Bendel, 127 Martins Street, Lagos.

TAKE NOTICE that a petition has been presented to the above-named court by Mrs. Olajumoke Bendel of 137 Awofeso Drive, Shomolu, Lagos State instituting proceedings for a decree of dissolution and also seeking orders with respect to the children of the marriage.

A sealed copy of the petition is delivered to you with this notice.

If you intend to consult a solicitor in connection with this proceedings you should take to the solicitor all the documents delivered to you.

The form of acknowledgement of service delivered to you with this notice should be completed and signed by you and either you or your Legal Practitioner should immediately return it to the Petitioner's Legal Practitioner. An addressed envelope is delivered to you for that purpose.

If you desire:

To deny any facts alleged in the petition

To allege any additional facts for the consideration of the Court

To submit to the court that it should dismiss any of the proceedings instituted by the petitioner or

To make any other submission to the court, you should file an answer to the Petition.

If you wish to institute proceedings for dissolution of marriage, nullity of marriage, judicial separation or

restitution of conjugal rights, you may do so in an answer to the petition filed by you. If you institute proceedings for dissolution of marriage on the ground that the petitioner has committed adultery, you may also by the answer, institute proceedings for damages in respect of the adultery.

If you wish to institute proceedings for the purpose of seeking an order with respect to maintenance for yourself, a settlement, the custody or guardianship of infant children of the marriage or the marriage, you should do so by filing an answer to the petition. If you fail to do so you will have to obtain the leave of the court to institute the proceedings.

If you do not wish to file an answer but wish to receive a copy of each document filed in connection with the proceedings you should file a notice of address for service. However, unless you file an answer, you will not without the leave of the court be entitled to furnish evidence to the court, or address the court at the trial of the proceedings in your absence.

Any answer or notice of address for service filed by you must be filed within 14 days after you receive this notice or within such extended period as the petitioner or the court allows, and service of a copy of the answer or notice must be effected in accordance with the Matrimonial Causes Rules.

Dated this day of 19

SIGNATURE

**IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
MATRIMONIAL CAUSES (DIVORCE)
SUIT NO. WD.1712/84**

BETWEEN
MRS. OLAJUMOKE BENDEL PETITIONER
AND

AKINOLA BENDEL RESPONDENT

ACKNOWLEDGEMENT OF SERVICE

I acknowledge that on day of 1984
at, I received:

A sealed copy of the Petition in these proceedings
Notice of Petition addressed to me

I also acknowledge that I am the person referred to in the
sealed copy of the Petition as the and that I am
the person to whom the notice of petition is addressed.

Dated this day of 19

SIGNATURE

Statutory fee for Certificate is N 2.00 Naira

**Pursuant to The Marriage Act
ST. PAULS (ANG.) CHURCH, SHOMOLU**
Statutory fee for Certificate is N 2.00 Naira

Feb. 1976	N	When Marriage	Names and Surnames	Full Age Condition Or Minor	Rank or Professional	Residence at time of Marriage I	Father's Name and Surname
OLAJUMOKE BENDEL	CO	28 TH FEB. 1976	EZEKIEL AKINOLA	27yrs SINGLE	Accounts Clerk	9, Wereni Close	DANIEL BABLA
	4604	SATURDAY	ELIZABETH OLAJUMOKE BENDEL	24yrs SINGLE	Accounts Clerk	67, Awofeso, Shomolu	AMOSA OLA ONANUGA

Married at St. Paul's (Ang.)
Church, Shomolu by (or before) me (SGD.)

Marriage was celebrated between us (SGD.) EZEKIEL A
AWONIYI REGISTRAR OF MARRIAGE in the presence
of us

.....LAGOS - NIGERIA

(SGD.) AA SAM

(SGD.)

(SGD.) A T. ONANUGA

Any person who (1) falsifies any of the particulars of this certificate or (2) uses a falsified certificate as true, knowing it to be false is liable to prosecution. 1. (T. O. COKER).

Registrar of Marriages in the District of Lagos that this is a true copy of the entry No. (C) 046004 in the Register Book of Marriage held in the Registry 3rd FEBRUARY

Witness my hand this..... day of 1994

Signature and address for Service.

CHAPTER SIXTEEN **FUNDAMENTAL RIGHTS ENFORCEMENT**

The new FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 came into force on 1st December, 2009.

See Federal Republic of Nigeria Official Gazette No 74, Vol. 96, Lagos, 17th November, 2009

The Rules are part of the Constitution:

Since the rules are made pursuant to the Constitution, they too are part of the Constitution.

The Court of Appeal held in George Adumu v. The Comptroller of Prisons, Federal Prisons, Aba & Ors (2013) LPELR-22069 (CA) thus:

"It is also pertinent to state that it is trite that Rules made pursuant to the Constitutional provisions also possess Constitutional flavor, that is why they are special provisions." Per Aji, JCA, (P. 34, paras. F-G)

See also Abia State University, Uturu v. Chima Anyaibe (1996) 1 NWLR (Pt. 439) 646 at 660-66.

The Rules must be complied with:

Parties to fundamental rights applications must comply with the Rules in all the steps they take in commencing and defending the action.

The Supreme Court held in AGIP NIGERIA LTD V. AGIP PETRO INTERNATIONAL & ORS (2010) 5 NWLR (PART 1187) 348 at 419 H to 420 thus:

"More important is that where a statute or rule of Court provides for a procedure for the commencement of an action, failure to follow that procedure renders any suit commenced otherwise incompetent"

Per Adekeye JSC.

Recently the Court of Appeal reiterated this position in The Commissioner of Police, Abia State & Ors v. Uzomba Okara & Ors (2014) LPELR-23532(CA) thus:

"The law is settled that where a statute or Rules are put in place for compliance for institution or commencement of an action or proceedings, the method, mode or procedure prescribed must be religiously, followed by a claimant/claimants in approaching the court for redress otherwise the action will be incompetent and will consequently rob the court of jurisdiction, the action will be deemed to have commenced without following the due process of law".

See also Obasanjo v. Yusuf (2004) 9 NWLR (PT. 877) PG. 144 at PAGE 221.

Pending cases filed under the 1979 Rules will continue under the new rules:

It is to be noted that all cases filed under the old rules continue to be heard and determined as though they have been brought under the 2009 Rules, they shall not be defeated in whole or in part, or suffer any judicial censure, or be struck out or prejudiced, or be adjourned or dismissed for failure to comply with these Rules provided the applications are in substantial compliance with the Rules.

See Order XV of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

In MR. CHARLES OKECHUKWU & ANOR v. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) & ORS (2014) LPELR- 24079(CA) the Court of Appeal held thus:

“It is trite and as rightly pointed out by the Appellant the law guiding procedure for the determination of rights and causes of action is the current law and rules of procedure. They operate and are construed retrospectively. Order XV above made specific provision clarifying the position of the law on the issue” Per IYIZOBA, J.C.A.

But where the hearing of the matter is concluded under the old rules and a date is fixed for judgment, parties cannot come back to re-litigate the action under the new Rules. See *Charles v EFCC (supra)*

THE APPLICABLE LAWS

1. The CFRN 1999, especially Chapter IV
2. The African Charter on Human and People’s Rights
3. Fundamental Rights (EP) Rules 2009.
4. Other instruments in the African human rights system.
5. The UDHR and other instruments in the UN human rights system
6. Municipal, regional and international bills of rights to which Nigeria is a party. See the Preamble, para. 3 FR (EP) R 2009.

SOME INNOVATIONS IN 2009 RULES

1. The preamble
2. Court shall seek to give effect to it
3. Places responsibility on parties and counsel to help court to further the over-riding objectives
4. Introduces new over-riding objectives
 - a. The constitution esp. chapter IV, ACHPR to be expansively, purposively interpreted;
 - b. Court shall respect municipal, regional and international bills of rights cited to it.

- Include ACHPR, other instruments in African human rights system, UDHR, other instruments in the UN human rights system;
- c. Vulnerable persons are specifically provided for;
 - d. Public interest litigations are welcomed;
 - e. Standing is not an issue;
 - f. NGOs HRD can sue on behalf of others;
 - g. Courts shall pursue speedy and efficient enforcement of fundamental rights;
 - h. Human rights cases to be given priority; if liberty is involved, it should be treated as an emergency.

It is to be noted that the preamble to the Rules can always be resorted as an aid while giving effect to the Rules as decided by the Court of Appeal in AIGBOJE AIG-IMOUKHUEDE v. DR PATRICK IFEANYI UBAH & ORS (2014) LPELR-23965(CA)

“In construing the provisions of an enactment, such as the 2009 Rules, a subsidiary legislation, the preamble to the enactment, though not a part of the enactment, can be resorted to as an aid to the construction of the enactment where there is some difficulty in arriving at the meaning of the words used in the enactment” per JOSEPH SHAGBAOR IKYEGH, J.C.A

MAJOR DIFFERENCES BETWEEN 1979 AND 2009 RULES

- 1. Requirement of standing now broadened
- 2. No limitation period
- 3. No requirement for leave
- 4. No one mode of application
- 5. There is requirement for written address
- 6. No filing of affidavit of service
- 7. How service is to be effected – now stated

8. Non – compliance is now irregularity (except as to the mode of commencing the action or as to the subject matter – Order IX)
9. Amicus curiae now allowed to be heard – Order XIII Rule 2
10. An *ex parte* application can first be made in cases of urgency relating to threat to life or liberty
11. Preliminary objection is taken together with the main application for enforcement – Order VIII
12. Substituted service can be applied for without attempt of service – Order V Rule 7
13. Fundamental rights application to be expeditiously entertained by court

COMMENCEMENT OF ACTION

See Order II

What is the cause of action here?

The cause of action for the purposes of commencing an action for enforcement of fundamental rights must be:

1. The breach of rights under Chapter IV of the 1999 Constitution
2. The breach of the rights under African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, LFN, 2004

Where the breach is not of both or either of the above the court lacks jurisdiction

See WAEC v Akinkunmi (2008) 9 NWLR pt. 1091, 151; Sea Trucks Nig Ltd v Anigboro (2001) SC (pt 1) 56. And therefore a chieftaincy matter cannot be brought under the Rules. See Governor of Kogi v Col. Hassan Yakubu (Rtd) (2001) 6 NWLR (pt 710) 521 and Tukur v Government of Taraba State (1997) 6 NWLR (510) 549

THE MAIN CLAIM AND RELIEF MUST BE A BREACH OF CHAPTER IV

If the main claim is breach of Chapter IV or ACHPR, can other reliefs not on fundamental rights be sought under it?

The Supreme Court held in Alhaji Tsoho Dan Amale v Sokoto Local Government & Ors LER (2012) SC 290/300 thus:

"A trial court will only have jurisdiction to proceed to enforce a fundamental right of an applicant guaranteed under Chapter IV of the Constitution if the main relief discloses a breach of the fundamental right of the applicant."

Per J.A Fabiyi JSC

MODE OF COMMENCING ACTION

See Order II Rule 2

It can be commenced by any mode accepted by the court. See Ogugua v The State (1998) HRLRA 167 at 187

What the applicant must file

See Order II Rule 3

1. Chosen originating process (e.g. Originating Summons, Writ or Motion on Notice)
2. A Statement setting out the name and description of the applicant, the relief sought and the grounds upon which the reliefs are sought
3. Affidavit setting out the facts upon which the application is made
4. Written address

Note that any application for enforcement of fundamental rights, which is not supported by a Statement, is materially defective and should be struck out.

Cunsin Nig. Ltd v Inspector General of Police (2008) 38 WRN 48

RELIEFS SOUGHT

To successfully challenge any breach of fundamental rights the relief sought also must be formulated from Chapter IV of the Constitution and or the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, LFN, 2004 or any other Human Rights instrument.

GROUND UPON WHICH THE RELIEFS ARE SOUGHT

The grounds upon which the reliefs are sought must be expressly stated to disclose the breach being complained of by the applicant. See *Economic and Financial Crimes Commission v Ekeocha* (2008) 4 NWLR (Pt. 1106) 161

Under Order VI the statements and affidavits can be amended upon application, and further affidavits may as well be used if they deal with new matters arising from the counter-affidavit of any party to the application.

AFFIDAVIT IN SUPPORT

See Order II Rule 4

The application must be supported by affidavit deposed to by the applicant or any person authorized by him.

It should be noted that where applicant is not in custody or indisposed he must depose to the affidavit himself. See *Ukegbu v NBC* (1997) 14 NWLR (Pt. 1055) 551 at 579

APPLICANT'S WRITTEN ADDRESS

See Order II Rule 5; which must accompany every application.

A respondent opposing the application must comply with Order II Rule 6 by filing a counter-affidavit and written address within 5 days of being served with applicant's processes. See also Order II Rule 7 on applicant's Address on Point of Law and Further Affidavit, if any.

SERVICE OF THE PROCESSES

See Order V generally.

Service is personal by Sheriff, Deputy Sheriff, Bailiff or other officer of the court. However, service on respondent's agent amounts to personal service on the respondent. See also Order V Rule 5 on service on police officer or prison superintendent.

SUBSTITUTED SERVICE

With or without an attempt at personal service, if it appears to the court that personal service cannot be conveniently effected, the court may order substituted service. See Order V Rule 7 Service outside the state in another state must comply with section 97 of the Sheriffs and Civil Process Act. See *Ngige v Achike* (2005) 3 W.R.N. 114.

HEARING THE APPLICATION

See Order IV generally.

Note that the application shall be fixed for hearing within 7 days from the day the application was filed.

Adjournment is also allowed where it is extremely expedient, upon such terms as the court may deem fit to make, upon being guided always by the urgent nature of the applications under the rules. See Order IV Rule 2. See also *Fawehinmi v Abacha* (1996) 9 NWLR (Pt. 475) 701 at 729. Hearing is based on affidavits and written address of the parties. Oral argument of not more than twenty minutes shall be allowed on matters not contained in the parties written address provided such matters came to the party's knowledge after filing his written address. See Order XII Rule 2.

Note that a party who did not file written address shall not be allowed to make oral argument.

See *Mini Lodge Ltd v Ngei* (2007) 4 WRN 54

EX PARTE APPLICATION

Order IV Rule 3 provides for making an application *ex parte* for interim injunction or maintaining status quo, if the court is satisfied that exceptional hardship may be caused to the applicant before the service of the main application. This can be done especially in cases involving the applicant's life or liberty. Nevertheless, the *ex parte* application must be supported with an affidavit and

affidavit of urgency and written address and must be brought and filed together with the main application.

See Order IV Rule 4(a) and (b) and the Supreme Court's decision in *Universal Trust Bank Ltd v Dolmetch Pharmacy (Nig) Ltd* (2007) 42 WRN 1.

The court can grant the interim reliefs provided under Order IV Rule 4(c). See also Order IV Rule 6 on the discharge of the interim order.

PRELIMINARY OBJECTION

See Order VIII generally.

A person challenging the court's jurisdiction must in addition to filing his notice of preliminary objection file his counter affidavit and written address to the main application. On the hearing date, the preliminary objection and the main application are to be heard at the same time.

APPEALS

No express provisions on appeal under the rules but appeals generally go to the Court of Appeal. See section 241(1) of the 1999 Constitution. And appeal from Court of Appeal lies to the Supreme Court. See section 245 of the 1999 Constitution.

COURTS WITH JURISDICTION

See section 46 of the 1999 Constitution and Order II generally.

Read the following- Cases and note the conclusion on the controversy between the jurisdiction of Federal High Court and the State High Court to hear Fundamental Human right Cases.

1. *Tukur v. Government of Gongola State* (1989) LPELR – 3272 where the Supreme Court held thus:

“The matters listed above and in the Constitution in respect of which jurisdiction has been expressly conferred on the

Federal High Court lie within the competence of the Federal High Court with regard to the enforcement of Fundamental Rights provisions of the Constitution of the Federal Republic of Nigeria, 1979. Outside those specific matters, the Federal High Court is incompetent to exercise jurisdiction.

2. *Grace Jack v. University of Agriculture, Makurdi* (2004)

LPELR – 1587 (SC) where 15 years after Tukur’s case the Supreme Court held that in application for enforcement of fundamental rights “both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may therefore be made either to the Judicial Division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur.”

3. *Gafar v Governor of Kwara State* (2007) 20 WRN 170 decided after Grace Jack in which the Supreme Court reiterated Tukur and held that the Federal High Court doesn’t have jurisdiction on application for enforcement of fundamental rights involving findings of Commission of Inquiry established by Kwara State Government

4. *Adetona v. Igele General Enterprises Ltd* (2011) 7 NWLR (Pt 1247) 535 at 564. In his concurring judgment, I.T Muhammad JSC stated thus:

“There are some areas where both the Federal High Court and the High Court of a state enjoys concurrent jurisdiction. Example of such is the enforcement of Fundamental Human Rights conferred in Chapter IV of the Constitution... Therefore it is my understanding that where a person’s fundamental right is breached, being breached or about to be breached, that person may apply under Section

46 (1) to the judicial division of the Federal High Court in the State or the High Court of the State or that of the Federal Capital Territory in which the breach occurred or is occurring or about to occur. This is irrespective of whether the right involved comes within the legislative competence of the Federation or the State or the Federal Capital Territory. See the case of Minister of Internal Affairs v. Shugaba (1982) 3 NCLR 915. It has to be noted that the exercise of this jurisdiction by the Federal High Court is where the fundamental right threatened or breached falls within the enumerated matters on which the court has jurisdiction. Thus, fundamental rights arising from matters outside its jurisdiction cannot be enforced by the Federal High Court. See *Tukur v. Government of Gongola State* (1989) 3 NSCC 225. Equally, a High Court of a State shall lack jurisdiction to entertain matters of fundamental rights, although brought pursuant to section 46(2) of the Constitution where the alleged breach of such matters arose from a transaction or subject matter which fall within the exclusive jurisdiction of the Federal High Court as provided by Section 251 of the Constitution.”

5. Federal University of Tech., Minna & Ors v. Olutayo (2018) 7 NWLR (Pt. 1617) 176. EKO, JSC at 192 held thus;

“In the resolution of this issue, I would like to point out that Section 42(1) of the Constitution of the Federal Republic of Nigeria, which I reproduced above, has provided the Court for the enforcement of the fundamental rights as enshrined in Chapter IV. A person whose fundamental right is breached, being breached or about to be breached may therefore apply to a High Court in that State for redress. Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 - defines "a Court" as meaning "the Federal High Court" or the High Court of a State".

What this means is this, both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may, therefore, be made either to the judicial division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur. See also GAFAR v. GOVERNMENT OF KWARA STATE (2007) ALL FWLR (Pt.360) 1415. On this issue, I have no hesitation agreeing with the respondent's counsel that the settled position of the law that the jurisdiction to entertain actions for the enforcement of any of the fundamental rights guaranteed by the Constitution in Chapter IV thereof is concurrently vested in the Federal High Court and the State High Court. This is without prejudice to whether any of the parties is either the Federal Government or an agent or agency of the Federal Government. NEPA v. EDEGBERO (supra) is accordingly inapplicable as it does not deal with enforcement of fundamental rights. On the other hand, GARBA v. UNIVERSITY OF MAIDUGURI (supra); JACK v. UNIVERSITY OF AGRICULTURE (supra) as well as GAFAR v. GOVERNMENT OF KWARA STATE (supra) are very apposite."

Kudirat Motonmori Olatokunbo Kekere-Ekun, J.S.C put it more succinctly in her concurrent judgment thus:

"It is quite evident that Section 46(1) above refers to "a High Court in that State" without any restriction. The violation of a citizen's fundamental rights is viewed so seriously that the framers of the Constitution sought to ensure that no fetters are placed in the path of a citizen seeking to enforce his rights. In other words, the provision ensures that he has access to any High Court as long as it is within the State in which the alleged infraction has occurred.

Indeed, it would negate the principle behind the guarantee of fundamental rights if a citizen were to have any obstacle placed in the path of enforcing those rights. The Fundamental Rights (Enforcement Procedure) Rules 1979 (applicable at the time the suit was filed at the trial Court) were made pursuant to Section 42(3) of the 1979 Constitution (now Section 46(3) of the 1999 Constitution) and therefore have constitutional flavour. Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules defines “Court” as the Federal High Court or the State High Court. There is no ambiguity in the provisions of the Constitution or of the Fundamental Rights (Enforcement Procedure) Rules referred to above regarding which Court has jurisdiction to entertain an application for the enforcement of fundamental rights. The decision of this Court in the case of Jack v University of Agriculture, Makurdi (2004) ALL FWLR (Pt.200) 1506 @ 1518 B-D has put the matter to rest in the following dictum of Katsina-Alu, JSC (as he then was) to wit: “In the resolution of this issue, I would like to point out that Section 42(1) of the Constitution of the Federal Republic of Nigeria which I have reproduced above has provided the Court for the enforcement of the fundamental rights as enshrined in Chapter IV. A person whose fundamental right is breached, being breached or about to be breached may therefore apply to a High Court in that State for redress. Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 which came into force on 1 January 1980 defines “Court” as meaning “the Federal High Court or the High Court of a State”.

What this means is this, both the Federal High Court and the High Court of a State have concurrent jurisdiction. An application may therefore be made either to the judicial division of the Federal High Court in the State or the High Court of the State in which the breach occurred, is occurring or about to occur.” (Underlining mine for emphasis)

6. Economic and Financial Crimes Commission v. Reinl (2020) 9 NWIR (Pt. 1730) 489. This case also followed the decision in FUT, Minna v Olutayo (Supra).

In conclusion, the position of the law is that both Federal High Court and State High Court have concurrent Jurisdiction in Fundamental Rights Cases irrespective of the subject matter. See Olutayo and Reinl cases which are the latest Supreme Court decisions on the matter.

Note that where there is a conflict in the decisions of the Supreme Court, the latest takes precedence. *See Maku v Sule (2022) 3 NWLR (Pt 1817) 231.*

Note: Under S. 254(C)(1)(d) of the 1999 Constitution as amended, the National Industrial Court has exclusive jurisdiction notwithstanding SS. 251, 257 and 272 and any other provision in the Constitution, to determine fundamental rights matters bordering on or arising from labour and labour-related issues.

OTHER RECOGNISED GLOBAL AND REGIONAL MECHANISMS FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS

It is also important to note that, for the significance of fundamental rights, there are other globally recognized

universal and regional avenues and mechanisms for enforcement of fundamental rights.

For instance, under the United Nations there is the Office of the United Nations High Commissioner on Human Rights (OHCHR) and the Human Rights Council which replaced the Commission on Human Rights. While the former is a leading human rights entity within the UN that assists governments to fulfil their human rights obligations and individuals to claim their rights, the latter is an intergovernmental organization consisting of over 40 State Parties responsible for promotion and protection of human rights all over the world.

The Human Rights Council established Special Procedures of independent human rights experts that undertake country-visits, receive and act on individual complaints, conduct thematic studies, convene expert consultations on human rights and contribute generally to the development of human rights standards.

Article 1 of the Protocol to the African Charter on Human and Peoples' Rights also established the African Court on Human and Peoples' Rights. The Court has jurisdiction over all cases and disputes submitted to it on the interpretation and application of the African Charter on Human and Peoples' Rights, the Protocol and any other relevant human rights instrument ratified by the States.

It receives complaint from NGOs and individuals on human rights violations against States that declare/accept the competency of the court. As at 2019, 30 States have ratified the court's Protocol but only 9 made declaration of the competence of the court to receive complaints against them.

The ECOWAS Court of Justice (Community Court of Justice) also receives complaints from NGOs and individuals relating to any violation of any human rights treaty ratified by any State member of ECOWAS.

CHAPTER SEVENTEEN

COSTS AND SANCTIONS

COSTS

See O. 53 (Lagos, 2019); O. 56 (Abuja, 2018);

The purpose of costs is mainly to compensate one of the parties, especially the successful party for the expenses he incurred in the action. The expenses can be that he incurred as a result of paying his legal practitioner (solicitor's and own client cost) or for filing the action in court, for service, etc (cost as between parties). Under the Lagos Rules, the principle to be observed in fixing costs is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in coming to court. Such expenses shall include:

- a. The cost of legal representation and assistance of the successful party to the extent the judge determines that the amount of such cost is reasonable;
- b. the travel and other expense of parties and witnesses to the extent that the Judge determines that the amount of such expenses is reasonable and such other expenses that the judge determines ought to be recovered, having regard to the circumstances of the case.

Note that, when costs are ordered to be paid, the judge shall, if practicable summarily determine the amount to be paid at the time of delivering his judgment or making the order. See O. 53 r. 1(3) (Lagos, 2019).

Where costs are ordered to be paid, they become payable forthwith and shall be paid within 7 days of the order otherwise defaulting party or his Legal Practitioner may be

denied further audience in the proceedings. See O. 53 r. 10(2) (Lagos, 2019).

DISCRETION OF THE COURT

The exercise of power to award costs is provided by the rules and is at discretion of the court upon considering the circumstances of each case.

In the case of *N.N.P.C. v. KLIFCO NIGERIA Ltd.* (2011) 10 NWLR (PART 1255) 209 the Supreme Court held thus

"The award of costs is entirely at the discretion of the court, costs follow the event in litigation. It follows that a successful party is entitled to costs unless there are special reasons why he should be deprived of his entitlement. In making an award of costs, the court must act judiciously and judicially. That is to say with correct and convincing reasons" at page 234 H to 235 A-B per Rhodes-Vivour, JSC

It should be noted that the exercise of discretion in the award of costs must not be affected by questions of benevolence or sympathy. See *Haco Ltd v S.M Daps Brown* (1973) 1 NMLR 158.

WHAT TO CONSIDER IN AWARDING COSTS

These were enunciated by the Supreme Court in *Adelakun v. Oruku* (2006) 11 NWLR Pt. 992 p. 625 at 650,

They are:

- (a) the summons fees paid;
- (b) the duration of the case;
- (c) the number of witnesses called by the successful party
- (d) the nature of the case of the parties, the plaintiff's case or the defence of the defendant, whether frivolous or vexations;
- (e) cost of legal representation;
- (f) monetary value at the time of incurring the expenses; and

- (g) the value and purchasing power of the currency of award at the time of the award On the meaning of costs and the rationale behind order of costs see *University of Uyo & Ors v. Dr. Edet P. Akpan* (2013) LPELR-19995(CA).

TYPES OF ORDERS ON COSTS

1. Order as to cost of action – generally made at the end of an action against one party to pay the other costs to indemnify him for his expenses on the basis of party to party costs;
2. No order as to costs – this means none of the parties should pay the other any costs. Each party is to bear his own costs;
3. Costs in the course – is made in interlocutory proceedings whereby the party who at the end of the proceedings is ordered to pay cost shall as well pay the costs of the interlocutory proceedings to the other party. See *Dike v Union Bank* (1987) 4 NMLR 958; and
4. Cost in any event – is made in interlocutory proceedings whereby a party as a result of his failure to comply with the rules brings an application to regularize his failure. Upon entertaining the application the court may order such party to pay cost in any event, whether or not he succeeds at the end of the substantive matter. If he succeeds at the end of the action, he pays the other party the cost of the interlocutory application and the other party pays him the cost of the substantive action. And if he lost, he pays to the other party both the cost of the interlocutory application and the cost of the substantive action.

SANCTIONS

Unlike costs, sanctions are penalties prescribed by the rules of court to be paid by litigants to court for their non-compliance with the rules. Sanctions are prescribed in a number of provisions of the rules in both Lagos and Abuja and rules of courts in many states.

**SANCTIONS TABLE
UNDER LAGOS 2019 AND ABUJA 2018
RULES**

S/N	EXAMPLE OF DEFAULT/NON -COMPLIANCE	SANCTION IN LAGOS	SANCTION IN ABUJA
1	Non-compliance	Under O. 7, 2019 At the beginning – Nullifies the proceedings At any stage - is an irregularity	Under O. 5, 2018 At the beginning or at any stage of the proceedings – doesn't nullify proceedings Court can set aside the proceedings wholly or partly or order for costs
2	Late appearance	Under O. 11, 2019 By defendant – additional ₦1000 for each day of default	O. 56 r. 1 (2018) ₦200 for each day of default; Also, costs ordered by the court re payable within 7 days of the order. But after the 7 days the unpaid costs will attract additional ₦100 for each day of default until it is paid. O. 56 r. 9(2), (Abuja, 2018)

3	Filing of frivolous suit	Not specified, but general provisions on award of cost against legal Practitioner for certain defaults. NB - Questionable cases and abuse of process sanctioned under the Rules of Professional Conduct, R.24(2)&(3)	O. 2 r. 2(2)(e) (Abuja, 2018) & Form 6 (Certificate of Pre-action Counseling) Counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous. NB - Questionable cases and abuse of process sanctioned under the rules of professional conduct, R.24(2)&(3)
---	--------------------------	---	---

NB – check the rules to find out other instances of sanctions

ETHICAL ISSUES

1. Duty to appropriately date and sign documents

Aiki v Idowu (2006) All FWLR (Pt. 293) 361 CA -
unsigned statement of claim is no S/C at all. See also **Okafor v Nweke (2007) All FWLR (Pt. 368) 1016 SC.**

2. Duty to properly and appropriately draft processes in a simple, very clear, communicating and error-free language. See

Umar v Governor of Kano State (2006) All FWLR Pt 322 1516 CA

3. Duty to assist the court to do justice.

In *Gbenga Adekoya v. The State* (2014) LPELR-22933(CA) the Court of Appeal held thus:

"It is trite that counsel are ministers in the temple of justice and as officers of the court, they have a duty to assist the court in doing justice rather than misleading it. Counsel also has the bounden duty to

conduct his client's case to the best of his ability, and where blunder is committed by such counsel, the client cannot be heard to complain. So long as counsel acts within the context of his brief or apparent or even ostensible authority, the client is bound by the outcome

4. Duty to apply care and diligence and to avoid preventable pitfalls.

In *Alhaji Isiyaku Yakubu v. Federal Mortgage Bank of Nigeria Limited* (2014) LPELR-24188(CA) the Court of Appeal reiterated this duty thus

"...Counsel must apply due care and diligence, and exhibit industry in legal practice so as to avoid such preventable pitfalls that have an unfortunate backlash and repercussion on litigants who, have fought this case to this level, only to be sent out for such an issue which though, fundamental, could have been adequately taken care of much earlier with more assiduousness and thoroughness"

5. Duty to be good advocate

In *Dike Geo Motors Limited & Anor. v. Allied Signal Inc. & AnO.* CITATION: (2006) LPELR-9812(CA) the Court of Appeal held thus

"It is therefore the duty of every counsel involved in the case to always act as a good advocate and as a Minister in the temple of justice to take all necessary steps to avoid delay of justice which is said to be tantamount to a denial of justice.

CHAPTER EIGHTEEN

CASE STUDIES

CASE STUDY 1

Crown Kitchen Ltd sued K & T Ltd at the Lagos State High Court sitting at Ikeja, seeking a declaration that the contract between them and the partnership entered into by the parties was still valid and subsisting. Crown Kitchen also sought an order of perpetual injunction restraining K & T Ltd from converting 20 vehicles to its sole use and sought an order directing a division of the vehicles among the parties. Crown Kitchen Ltd also sought for payment of the sum of N2.17 million being proceeds of a contract performed by the parties from March 2018 to December 2018. The agreement between the parties had been entered into in Ikeja, although the actual performance of the contract was intended to be in Ikoyi, Lagos where K & T had its offices. A clause in the contract Agreement stipulated that the parties shall submit to conciliation before resorting to litigation. Crown Kitchen Ltd heard that cases are dealt with faster at the Magistrate's Court because it is a court of summary jurisdiction. But Okonkwo & Co., their counsel, filed an originating summons at the Lagos High Court, Ikeja. On being served with the originating summons, K & T entered a conditional appearance and subsequently filed a preliminary objection contending the following:

- a) that the High Court sitting in Ikeja lacked jurisdiction because the matter had not first been submitted to conciliation
- b) that the action was commenced in the wrong judicial division
- c) that the matter was commenced with a wrong originating process.

The court overruled all the grounds of the preliminary objection.

Crown Kitchen Ltd then brought an application for Interlocutory injunction to restrain K & T from converting the 20 vehicles to their sole use. K & T did not file any Counter Affidavit and on the day fixed for hearing of the application, the Counsel to Crown Kitchen contended that K & T cannot be heard since they did not file a counter affidavit. In Crown Kitchen's statement of claim, they failed to plead the contract agreement.

After the trial, the judge in his judgment granted the claimant's claim. K & T are aggrieved and have appealed. They intend also to include their grievance over the overruling of the preliminary objection in the substantive appeal. K & T applied for stay of execution to the High court's judgment and while the application was pending, counsel to Crown kitchen applied for a writ of fifa and executed the judgment.

Some days before the date fixed for hearing of the appeal, the counsel to Crown Kitchen filed and served a preliminary objection on the ground that leave of court was not sought before the filing of the appeal. The appellant, K & T in their notice of appeal raised the issue of the illegality of the contract for the first time. They had 4 grounds of appeal in their notice of appeal. They formulated 12 issues for determination from these 4 grounds. On the date fixed for hearing of the application, counsel to the appellant (K&T) was not present in court although he had filed his appellant's brief within time. The justices of the Court of Appeal, Lagos allowed the appeal in part.

CASE STUDY 2

In March, 2018, the Plaintiff, Mrs. Kayuba Ada, (now Respondent) entered into a contract in Lagos with

Agricultural Bank PLC to supply five hundred tons of Cashew nut worth ₦10,000,000:00 (Ten million Naira) only to the Bank for onward exportation to Malaysia. The term of the contract is that down payment of ₦3,000,000:00 will be made before the exportation and that the balance will be paid when the goods reaches its destination. Subsequent to this, the Plaintiff received the sum of ₦3,000,000:00 and supplied the goods to its destination in Malaysia. Since then, Agricultural Bank has refused to pay the Plaintiff the balance sum despite letters of repeated demands sent.

However, on 1st June, 2018, Agricultural Bank wrote a letter to the Plaintiff of its decision not to pay the balance because the goods supplied were inferior to the standard requested for. The Plaintiff, on 19th June 2018, instituted an action at the Lagos State High Court against Agricultural Bank claiming the balance of ₦7,000,000:00, ₦4,000,000:00 special damages and ₦3,000,000:00 as general damages. Pleadings were filed and exchanged. Trial commenced, each party opened and closed its case and the court adjourned for judgment.

Before the judgment could be delivered, Agricultural Bank became a no-going concern and was taken over by the NDIC with a view to winding up the Bank. NDIC brought an application to be joined as a Defendant and as a necessary party and the court granted the application. Thereafter, NDIC brought a preliminary objection for, among others:

- (i) an Order of Court dismissing the action because it is statute barred,
- (ii) an Order of Court dismissing the action because it is only the Federal High Court that has the jurisdiction to entertain the matter since

Agricultural Bank is in the process of being wound-up.

The trial court refused and dismissed the application of NDIC. The Court then delivered its judgment on 10th June 2019 and granted all prayers of the Plaintiff. The Defendant did not appeal against the judgment and ruling until 18th September, 2019 when it has approached you to help her appeal against the ruling and judgment.

CASE STUDY 3-Recovery of Premises

Chief Olowo is the landlord of Koko Lodge, consisting of 6 flats of 4 bedrooms each. Mr. Dauda Kareem is a tenant in respect of one of the flats. The agreement between the parties is that the tenancy shall be a yearly tenancy commencing on 1st January every year at a rent of ₦500,000 per annum. After paying rent for the first 2 years in 2012 and 2013, Mr. Kareem has refused to pay further rent but remains in possession till date. Kareem throws noisy parties in the house every week to the annoyance of neighbours. Chief Olowo is fed up and intends to recover possession of the premises from Mr. Kareem.

CASE STUDY 4-Recovery of premises

By an agreement dated the 31st day of December, 2013, Okon Banga puts John Thunder in possession of his two bedroom premises at Block 2 Flat 10, Katagun Street, Wuse – Abuja in consideration of an agreed rent from year to year with effect from 1st day of January 2014.

John Thunder could only pay for the first year of the tenancy and thereafter fell into arrears of rent as his business suffered a financial setback. About the month of May 2015, Okon Banga orally instructed his solicitors to take legal steps to recover possession of the premises from

John Thunder for non-payment of rent pursuant to which instructions his solicitors issued a quit notice dated the 1st day of June 2015 and served the same on John Thunder on the 30th day of July, 2015 with the 30th day of December 2015 as the expiry date of the quit notice. John Thunder refused to yield up possession of the premises even after the expiration of the notice to quit.

During the hearing of the action, Counsel to John Thunder raised an objection to the competence of the suit on grounds that a further step ought to have been taken by the solicitors to Okon Banga upon the expiration of the quit notice before instituting the action. But the Court overruled the objection and proceeded with the substantive suit.

While filing his defence to the action, John Thunder had counterclaimed for improvements made on the premises with oral consent of Okon Banga.

CASE STUDY 5- Election Petition

Dr. Charles Dodo was the gubernatorial candidate of the National Nigerian Party during the recent gubernatorial election in Anambra State. Chief Chris Pius contested the same election on the platform of Unity Congress Party.

In order to cause confusion among Dr. Dodo's supporters, Chief Pius caused him to be arrested by the police and detained for 14 days without telling him what offence he committed. He was not released until the declaration of the results. The Independent National Electoral Commission (INEC) declared Chief Pius as the winner of the election having scored the highest number of votes cast during the election. Dr. Charles Dodo is aggrieved. He intends to sue for the enforcement of his fundamental rights and to challenge the election on the grounds of irregularity, indictment of Chief Pius by Economic and Financial

Crimes Commission and previous conviction of Chief Pius for the offence of receiving stolen property by a High Court sitting in Onitsha in 2006.

CASE STUDY 6- Election Petition

Dr Brown was a senatorial candidate of the National Nigerian Party for Asaba North Federal constituency, Delta State in 2015 General Elections. Chief Ben Okagbue contested the same Election for the same senatorial district on the platform of Unity Congress Party. The Independent National Electoral Commission Declared Chief Okabue as the winner of the Election having scored the highest number of votes cast in the Constituency. Dr. Brown is not satisfied with the outcome of the Election. He has therefore brought a petition before the National Assembly and the Legislative House of Assembly Elections Petitions Tribunal sitting at Asaba, Delta State, challenging Chief Okagbue's election on the grounds of irregularity, indictment of Chief Okagbue by the Economic and Financial Crimes Commission and previous conviction of Chief Okagbue for the offence of receiving stolen property by a High court sitting in Asaba in 2004.

CASE STUDY 7-Matrimonial Causes

Shola Fineface got married to Bobo Nice less than 2 years ago at the Marriage Registry Ikoyi, Lagos. Bobo Nice is rich and handsome. However, after the marriage, Fineface discovered that Bobo Nice is impotent. Since the discovery, Fineface has become disillusioned and frustrated. She intends to put an end to the marriage.

CASE STUDY 8- Matrimonial Causes

Miss Lynda Roberts had come to Nigeria in 2014 on an exchange programme from the United States and has since remained here. On 17th January, 2015 Lynda and Paul

Baba contracted a church marriage at the Congress Hall of the Nicon Hilton, Abuja. The ceremony was performed by Mr. Ibekwe, a part-time teacher and an aspiring pastor of the Happy People of God Church. Unknown to Paul and Lynda, Lynda is the daughter of Paul's brother's wife who had naturalized in the United States of America. After the marriage, Paul and Lynda continued to live in Abuja until 14th September 2015 when one day Lynda came home and found a note from Paul stating that he had travelled to Australia on an immigrant visa and was never intending to return to Nigeria again. Paul also made it clear to Lynda that he was leaving her because of those occasions she willfully refused to sleep with him. In any event, Lynda had before now been thinking of how she will get out of the marriage, as she had come to find out that the angel she married saw her as a punching bag to beat up every now and then. Also, she has since found out that faithfulness did not particularly feature in Paul's daily routine as he was in the habit of visiting brothels on a daily basis, from where he had on several occasions contacted STDs. Lynda had finally filed a petition for dissolution of the marriage. At the hearing of the petition, Paul Baba raised several objections to the petition and indeed cross-petitioned. He was also not happy that one prostitute Miss Ada Ogun was joined as a co-respondent with him. He felt that such joinder seriously defamed his character. The court after final addresses by the parties on the 1st of December 2015 adjourned for judgment to the 22nd of March 2016, on which date judgment was entered for Lynda, granting her a decree nisi.

CASE STUDY 9- Fundamental Rights

Mr. R, has just graduated from the Nigerian Law School and started practice in Kano under Rabo and Rabo Chambers. With interests in politics, Mr. R. spends most of his time in PRR headquarters, a political party which

believes in the use of force to overthrow the government if democratic principles fail. On the 12th of July, 2010 Mr. R was suspected of planning to overthrow the government and was taken to Mushroom police headquarters for questioning. Forty days after his arrests, no clear reasons has formally been given for his arrest. Several days after his arrest some of his friends who disappeared after having been picked up by the police are believed to have been implicated by Mr. R. after been tortured by the security forces.

On the 13th of August, the President in a news conference said that he hoped that Mr. R. would be given a long and harsh sentence so that people like him would learn a lesson. Mr. S. who is Mr. R's childhood friend came to the rescue of Mr. R's family by engaging the services of Ms. Q. a renowned lawyer and human rights defender to defend Mr. R. However, she received a letter from the state security that in her own interest she should withdraw from the case or else she would be charged together with Mr. R for terrorism. She forcefully withdrew from the case the next morning. Mr. R. was arraigned before Mr. T. whose father is currently the Minister of Justice and a very close friend of Mr. President. Mr. R. was charged with terrorism and attempt to overthrow the government.

Mr. R. was not represented at the trial by any lawyer throughout the trial and in about five occasions the trial continued in his absence because the judge ordered him to be removed from the court for his disruptive behavior. Mr. R. was found guilty on all the charges, convicted and sentenced to 20 years imprisonment with hard labor. He was taken to one of the most over-crowded prisons and confined to a cell with a 250 – watt electric bulb left on day and night.

CASE STUDY 10-Fundamental Rights

Mr Teddy King was arrested by men of the State Security Service (SSS) on the 1st day of November, 2010 for allegedly trafficking in Nigerian Currency notes (Naira) and has since been locked up in Kuje prisons Abuja. The Nigerian Government had in reaction to the upsurge in currency trafficking enacted the fake Currency Act 2009. A clause in the Act had provided that – The arrest and/or the detention of any person(s) pursuant to the provisions of this Act shall not be the subject of any inquiry and/or called into question by or before any court of law in Nigeria. Mrs. King whose husband is now in detention has engaged your services for the purposes of taking legal steps to enforce her husband's fundamental rights.

CASE STUDIES FOR MOCK TRIALS

CASE STUDY 1

On the 3rd of October, 2015 Mr. Oke Madu entered into Diamond Super Market at No. 10 Ogui Road, Enugu where he bought a bag of semovita and paid at the counter. On his way out, Mr. Okoro a Security man at the entrance gate of the super market asked him for the receipt of purchase. He searched the pocket of his trousers without finding the receipt, forgetting that it was in the breast pocket of his shirt, where he actually kept it.

While he was still searching for it, fighting started as Okoro felt that Mr. Madu had no receipt for the purchase because he was wasting his time and he shouted at Madu "You thief, you have stolen the semovita to the hearing of one Chika, another customer of the super market. Chika is a friend to Miss Ndidi who is Mr. Madu's fiancée. On returning home, Miss Chika informed Miss Ndidi of the events that transpired at the supermarket. On the basis of

this information, Ndidi said she would no longer marry Mr. Madu.

However, Mr. Oke Madu saw the receipt on the breast pocket of his shirt and presented it to Mr. Okoro. Nonetheless, Mr. Madu had filed a suit for defamation of character against Mr. Orji at the High Court of Enugu State.

CASE STUDY 2

City links Transport Company limited is a thriving transport company with a fleet of buses. Mr. Darlington Okoye (a.k.a. Osama) is one of the drivers of the company. On the 14th of February, 2015, Dr. Henry Obama, a Consultant Physician at the National Hospital, Abuja, was travelling, form Lokoja to Abuja in his brand new Mercedes Benz ML 340 jeep car with Registration Number ABJ 999 BWR, which he bought for Eight Million Naira (₦8,000.000. 00) only.

On getting to Giri Junction, near Gwagwalda, in the Federal Capital Territory, Dr. Henry Obama who was then driving at a speed of 120 KM per hour noticed a motor cycle rider attempting to cross the road and applied his break to avoid hitting him. Immediately, Dr. Henry Obama was hit from behind by a bus belonging to City Links Transport Company Limited and driven by Mr. Darlington Okoye (a.k.a Osama).

Dr. Henry Obama“s car was badly damaged as a result of the accident. In fact, it was a write-off. Dr. Henry Obama also sustained serious injuries and had to be rushed to the University of Abuja Teaching Hospital, Gwagwalada, Abuja, where he received treatment and was discharged after one week. The treatment, in all, cost him one Hundred

Thousand Naira (₦100,000.00) only, for which the hospital issued him a bill and a receipt.

Dr. Henry Obama has now commenced an action for negligence at the High Court of the Federal Capital territory; Abuja against Mr. Darlington Okoye (a.k.a Osama) and City Links Transport Company Limited claiming general damages to the tune of Five Hundred Thousand Naira (₦500, 000.00) only, and special damages of Eight Million and One Hundred Thousand Naira (₦8,100,000.00) only for his damaged car and treatment.

CASE STUDY 3

Dr. Vincent Brown was a senatorial candidate of the National Nigerian Party for Asaba North Federal Constituency, Delta State in the 2015 General Elections. Chief Ben Okagbue contested the same election for the same Senatorial district on the platform of Unity Congress Party. The Independent National Electoral Commission declared Chief Okagbue as the winner of the election having scored the highest number of votes cast in the Constituency.

Dr. Brown is not satisfied with the outcome of the election. He has therefore brought a petition before the National Assembly and the Legislative House of Assembly Elections Tribunal sitting at Asaba, Delta State, challenging Chief Okagbue's Election on the grounds of irregularity, indictment of Chief Okagbue by the Economic and Financial Crimes Commission and previous conviction of Chief Okagbue for the offence of receiving stolen property by a High Court sitting at Asaba in 2006.

**SEE JAMES IBORI V. AGBI
MOTIONS**

1. An injunction by the Petitioners seeking to restrain the Senate President and the Clerk of the National

- Assembly from swearing in the 1st Respondent as a Senator of the Federal Republic of Nigeria pending the determination of the petition.
2. A motion on Notice by the petitioner seeking to join Unity Congress party as 4th Respondent in the petition.

CASE STUDY 4

On 1st April, 1992 Mr. Kunle Komolafe was employed as a medical doctor in the medical department of First Atlantic Petroleum Company Nigeria Ltd, a subsidiary of the Nigerian National Petroleum Corporation (NNPC). By the year 2004 he was elevated to the post of General 130 Manager, Medical Department. Upon his appointment and as part of his total package he was given a 4 bedroom Duplex in the official quarters of his employers at first Atlantic Petroleum Staff quarters, Lekki phase 1, Lagos as a service tenant. His housing allowance was deducted at the beginning of each year as rent for his occupation of property.

On 28th February, 2019 his appointment with First Atlantic Petroleum Company Nig. Ltd. was terminated with immediate effect without any good reason or any just cause. A cheque for the sum of ₦750, 000.00 was enclosed as payment for 3 months salary in lieu of notice. Also in the same letter, he was asked to vacate his official quarters immediately. On that same day, some men acting as agents of the company entered into the premises of Mr. Kunle Komolafe threw out some of his properties in an attempt to forcefully eject him from the property. Fortunately for Mr. Kunle Komolafe, he was able to resist all attempts made to unlawfully & forcefully eject him. Presently, he still remains in occupation of the property. Mr. Kunle Komolafe has instituted an action at the Lagos State High Court, Lagos Judicial Division asking for the following reliefs:

1. A declaration that the purported termination of his employment by virtue of the letter dated 28th February, 2019, is invalid, null and void and of no effect.
2. A declaration that he is still a staff of First Atlantic Petroleum Company Nig. Ltd. In the alternative.
3. ₦10 million as his salary till the age of compulsory retirement at 65 years of age.
4. An order of injunction restraining First Atlantic Petroleum Company Nig. Ltd, its agents and privies from forcefully and unlawful ejecting him from his official quarters.
5. The sum ₦10 million of damages for unlawful trespass committed when the agents of the defendants unlawfully invaded his house.
6. The sum of ₦5 million special damages for the destruction of the plaintiff's properties by the agents of the defendants during their attempt to unlawfully eject him from his quarters as follows:
 - i. Damage done to his Kia Rio Car - ₦3.5 million naira
 - ii. Damage done to his Plasma Sony T.V Set-₦750,000.00
 - iii. Damage done to his Jewelries and wrist watches-₦750, 000.00

ISSUES FOR INTERLOCUTORY APPLICATIONS

1. Interlocutory injunction by the plaintiff restraining the defendant and or their agents from forcefully and unlawfully ejecting him from his official quarter's pending the final determination of the suit.
2. Preliminary objection by the defendant that the Lagos State High Court has no jurisdiction to hear the matter.

READ:

1. BEN CHUKWUMA V SHELL B. P (1993) 4 NWLR (Pt 289) 512 SC
2. NWANA V. F.C.D (2004) 13 NWLR (Pt 889) 128 SC

Index

Index

A

Abuja and Lagos State
 Tenancy Law, 234, 236
Abuja High Court Rules, 81,
 84, 87, 92
Abuja Rules, 28, 54, 55, 81,
 85, 109, 111, 112, 142,
 148, 163, 169, 175, 176,
 177, 178, 179, 180, 181,
 182, 183, 184, 185
Abuse of ex-parte injunctions,
 22
Action, Commencement of, 4,
 5, 16, 19, 95, 97, 106
Admiralty Jurisdiction Act, 58,
 65
Admissibility, 30, 32
Adultery, 159, 256, 257, 258,
 259, 267
Affidavit, 19, 20, 21, 22, 23,
 87, 91, 93, 109, 115, 117,
 121, 124, 127, 129, 136,
 143, 144, 145, 148, 149,
 150, 151, 152, 169, 181,
 202, 203, 210, 247, 259,
 261, 274, 276, 277, 278,
 279, 296
counter, 23, 88, 148, 155,
 167, 168, 176, 277, 279,
 296, 303
Affidavit evidence, 21
African Charter, 273, 275,
 276, 287
African human rights system,
 273, 274
Agreement, 65, 76, 77, 100,
 155, 162, 234, 235, 260,
 295, 296, 298
Agreement, collective, 73

Ajegunle, 170, 172, 174
Akinola Bendel, 263, 267
Allegation, 161, 165, 166, 167,
 173, 259
Allied Matters Act, 58, 63, 135
Amendment, 27, 58, 61, 223,
 248
Anambra State, 211, 299
Appeal, 4, 8, 59, 61, 214, 218
 grounds, 8, 12, 40, 41, 56,
 57, 58, 59, 61, 75, 184,
 196, 198, 207, 209, 211,
 212, 215, 216, 217, 218,
 219, 220, 221, 222, 223,
 227, 228, 243, 271, 272,
 274, 279, 281, 284, 293,
 294, 296
 record of, 220
Appearance, 19, 20, 21, 50, 51,
 54, 113, 114, 115, 116,
 117, 118, 120, 121, 122,
 124, 125, 133, 136, 137,
 138, 139, 148, 153, 169,
 175, 245, 291, 295
conditional, 116, 117, 120,
 122, 295
unconditional, 120, 121
Appellant, 184, 223, 227, 229,
 230, 273
Appellate jurisdiction, 61, 214
Application main, 275, 278,
 279
Asaba, 13, 300, 305
Assessment, 3, 13, 21, 23, 25,
 26, 28, 37, 40, 42, 43, 46,
 47, 52

C

Cases election Petition
 plaintiff in, 26, 27
Chambers, Judge in, 141, 149

- Civil Form, 98, 106
 Civil jurisdiction, 4, 5, 62, 75, 76, 77
 Civil Procedure, 11, 15, 27, 52, 53, 54, 55, 57, 80, 82, 86, 87, 95, 97, 111, 123, 131, 150, 151, 155, 176, 196, 197, 200, 207, 239, 240, 246
 Civil Procedure in Nigeria, 196
 Civil Process Act, 53, 56, 57, 58, 125, 126, 127, 199, 200, 201, 205, 206, 278
 Claim, 18, 130, 134, 135, 165, 173, 237, 238
 plaintiff's, 165, 307
 Claim and statement of defence, 26, 27
 Claimant, 38, 78, 79, 100, 101, 102, 103, 104, 105, 106, 110, 113, 116, 130, 131, 133, 135, 138, 148, 149, 164, 169, 172
 Claimant's claim, 167, 296
 Class precedents, 44
 Co-defendant, 15, 16
 Commencement of Action, 4, 5, 16, 19, 95, 97, 106
 Companies and Allied Matters Act, 58, 63, 135
 Constitution, 41, 53, 55, 56, 59, 61, 62, 64, 66, 67, 68, 69, 70, 71, 72, 74, 75, 193, 194, 195, 196, 197, 198, 215, 216, 231, 239, 243, 247, 248, 252, 253, 271, 275, 276, 279, 280, 281, 282, 283, 285, 286
 Constitution of Nigeria, 196
 Contract, 65, 77, 82, 84, 87, 100, 107, 161, 172, 256, 295, 296, 297
 Co-respondent, 257, 259, 260
 Costs , award of, 100, 289
 Counterclaim, 131, 165
 Counter-claim, 168
 Court
 appellate, 198, 207, 208, 209, 210
 appropriate, 5, 11, 233, 244
 foreign, 8, 203, 204, 205
 lower, 91, 207, 209, 210, 211, 219, 221, 224, 227
 open, 141, 223, 251
 Court Fees, 131
 Court of Appeal, 40, 41, 53, 55, 57, 58, 59, 61, 71,, 75, 162, 184, 198, 207, 209, 210, 211, 212, 215, 216, 217, 218, 219, 220, 221, 222, 223, 227, 228, 229, 230, 243, 271, 272, 274, 279, 281, 284, 293, 294, 296
 Court of Appeal Act, 58, 198, 207, 216
 Court of Appeal Rules, 41, 53, 55, 57, 209, 221, 222, 223
 Court rules, 87, 90, 148, 151, 154
 Customary Court of Appeal, 55, 71, 215
 Customs, 62, 66

D

- Damages, 104, 130
 special, 2, 3, 33, 34, 92, 104, 112, 135, 137, 160,

- 162, 208, 213, 243, 271,
 289, 297, 305, 307
 Darlington Okoye, 304, 305
 Decision, final, 195, 216
 Defence, statement of, 122,
 155, 163, 165, 167, 168,
 169, 174, 175, 177
 Delivery, 2, 196, 197
 Delta State, 300, 305
 Discovery of documents, 29
 Dissolution of marriage, 255,
 257, 258, 261, 265, 267
 District Court, 55, 77, 99, 215,
 233, 237, 238, 239
 Draft, 103, 105
 Draft applications, 8, 10, 39,
 48, 51
- E**
- Eastern Nigeria, 120, 122
 Economic Community of West
 African States
 (ECOWAS), 75
 ECOWAS Court, 11, 287
 Election, 4, 9, 44, 61, 215,
 243, 251, 299, 300, 305
 Election petitions, 243
 Electoral Act, 243, 244, 245,
 246, 247, 248, 249, 250,
 252
 Electoral law, 244, 245
 Electoral Officer, 244
 Enactment, 63, 64, 72, 142,
 274
 Endorsement, 110, 113, 134,
 135, 137
 Enforcement, 4, 8, 10, 39, 48,
 51, 57, 58, 59, 68, 199,
 205, 272, 275, 276, 282,
 283, 284
 reciprocal, 204, 205
- Enforcement of Foreign
 Judgments, 204
 Enforcement of interstate, 39
 Enforcement Procedure, 48,
 52, 283
 Estate, 88, 135, 138
 Ethical issues, 11, 14, 19, 21
 Events, procedure and
 sequences of, 9, 10, 44, 45,
 46, 47
 Evidence
 documentary 7, 31, 143, 175,
 185, 186, 250
 inadmissible, 112, 157,
 181, 187, 218, 258
 rules, 7, 30, 31
 Evidence Act, 31, 44, 157,
 158, 183, 187, 188, 191,
 192, 218, 257
 Examination, cross-, 34, 35
 Examination-in-chief, 34, 35,
 36
 Examination of witnesses, 4
 Execution, , 8, 39, 40, 56, 58,
 144, 193, 199, 201, 203,
 207, 208, 209, 210, 211,
 212, 213, 296
 Exercise jurisdiction, 9, 42,
 43, 44, 45, 46, 47, 48, 51,
 62, 64, 66, 75, 280
 Ex parte injunctions, 21, 22,
 23
 Ex parte applications, 21,
 22, 23
- F**
- FCT Abuja, 27, 82, 85, 86, 154
 Federal High Court Act, 69, 70
 First Schedule, 244, 245, 248,
 249, 250

- Foreign judgments, 39, 58, 204, 205
- Fundamental rights, 275
enforcement of, 4, 8, 58, 68, 75, 89, 97, 108, 142, 200, 204, 207, 262, 274, 275, 276, 279, 280, 282, 283, 284, 286, 299
- Fundamental Rights
Enforcement Procedure
Rules, 10, 48, 51, 108
- Fundamental Rights
Enforcement Procedure
Rules and Judicial
Review/Writ, 10, 48
- FWLR, 12, 13, 112, 155, 191, 212, 238, 244, 248, 249, 250, 282, 284, 293
- G**
- Gongola State, 12, 13, 68, 69, 201, 279, 281
- H**
- High Court Civil Procedure
Rules, 151, 207
- High Court Law, 70, 214
- High Court Rules, 24, 49, 53, 55, 56, 59, 81, 84, 87, 92, 124, 150, 168
- High Court sitting in Onitsha, 300
- High Courts in Nigeria, 54
- I**
- Illegality, 44, 159, 161, 296
- Independent National Electoral Commission (INEC), 246, 299
- industrial relations, 72, 73, 74
- Infants, 82
- Injunction, 6, 21, 22, 23
interim, 22, 23, 145, 146, 212, 214, 278, 279
- Inspection, 29
- Intention, 240, 241
- interest, 84, 85, 86, 88, 89, 91, 92, 96, 98, 100, 101, 102, 127, 135, 141, 142, 144, 145, 183, 191, 199, 200, 214, 216, 254, 257, 274, 302
- Interlocutory applications, 141
- Interlocutory decisions, 195, 214
- Interlocutory injunctions, 21, 22, 23, 146
- Interpleader., 21, 144
- interpretation, 59, 64, 67, 72, 73, 76, 132, 287
- Interrogatories, 29, 180, 181
- interstate, 39
- intervention, 90, 91
- Irregular proceedings, 50
- ISC, 122, 126, 127
- Islamic Personal Law, 61, 71
- J**
- Jack, Grace, 12, 13, 69, 280, 281, 285
- Joinder, 14, 15
- joinder of parties, 80, 81, 88, 90, 91, 102
- Judgment, 4, 6, 7, 24, 37, 57, 58, 59, 81, 102, 131, 148, 149, 151, 153, 193, 196, 197, 198, 200, 201, 205, 206

- summary, 6, 7, 24, 25, 26, 76, 105, 106, 125, 148, 151, 152, 153, 174, 254, 295
- Judgments**
default, 24, 117, 118, 193
enforcement of , 8, 97, 204
- Judgment creditor**, 201
- judgment debtor**, 144, 199, 201, 202, 203, 207
- Judicial division**, 106, 107, 113, 203, 280, 282, 284, 295
- Jurisdiction**
concurrent, 66, 67, 68, 69, 194, 280, 281, 282, 284, 285, 286
exclusive, 65, 66, 72, 281, 284, 286
- Justices**, 61, 215, 296
- K**
- Kano High Court**, 54
- Kano Rules**, 57, 150
- Kwara State**, 280
- L**
- Lagos High Court Civil Procedure Rules**, 24, 89
- Lagos High Court Rules**, 81, 84, 87, 92, 124, 151
- Lagos Rules**, 54, 55, 57, 59, 81, 85, 114, 124, 125, 128, 148, 151, 153, 168, 174, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 288
- Lagos State**, 15, 17, 18, 27, 54, 57, 70, 77, 80, 82, 85, 86, 95, 97, 120, 125, 133, 136, 138, 139, 140, 148, 149, 154, 155, 172, 174, 176, 203, 206, 212, 231, 232, 234, 235, 236, 237, 238, 239, 240, 241, 242, 266, 267, 295, 297, 307
- Lagos State High Court sitting at Ikeja**, 295
- Lagos State Tenancy Law**, 231, 236, 238
- Laws of Nigeria**, 199, 200, 205, 232
legal practitioner, 50, 51, 112, 123, 163, 165, 182, 183, 288, 292
- LFN**, 147, 205, 215, 216, 275, 276
- Litigants**, 291, 294
- M**
- Magistrate**, 4, 17, 18, 53, 77, 95, 98, 99, 214, 215, 233, 238, 239, 295
- Magistrates Courts**, 70, 214, 232
- Magistrates' Court Law**, 214, 231
- Magistrates Courts Rules**, 55
- Mareva Injunction**, 21
- Marriage nullity of**, 255, 258, 260, 267
- Marriage Act**, 254, 255, 270
- Material facts**, 9, 42, 43, 44, 45, 46, 47, 143, 158, 159, 184, 191
- Matrimonial**, 4, 9, 46, 58, 254, 260, 261, 262, 268, 300
- Matrimonial petitions**, 9, 46
- Memorandum**, 73, 100
- Memorandum**, 116, 124, 133, 136

- Mock trials, 1, 2
- Mode of enforcement, 200,
262
- Motion ex parte, 115, 141,
142, 251
- N**
- National Assembly, 56, 61, 62,
72, 74, 75, 231, 252, 300,
305, 306
- National Industrial Court, 53,
61, 71, 74, 75, 95, 286
- NBA, 83
- NDIC, 12, 15, 16, 66, 67, 297,
298
- NEPA, 11, 13, 66, 283
- NLR, 59, 79, 82, 90, 91, 114,
123, 150, 156, 207, 208,
216, 219, 232
- NMLR, 70, 83, 84, 87, 110,
113, 115, 143, 150, 155,
157, 161, 200, 216, 218,
289, 290
- Notice of appeal, 40, 41, 58,
207, 209, 216, 219, 218,
220, 227, 296
- NSCC, 66, 80, 117, 122, 123,
156, 159, 195, 196, 281
- Nwabueze, 56, 120, 126, 127,
213
- NWL, 120, 126
- NWLR, 11, 60, 65, 66, 67, 68,
69, 70, 75, 80, 82, 83, 88,
96, 107, 109, 110, 111,
112, 114, 115, 119, 120,
123, 126, 127, 145, 155,
156, 181, 185, 188, 192,
193, 196, 197, 198, 200,
201, 203, 205, 207, 208,
209, 213, 217, 218, 222,
232, 238, 243, 244, 246,
- 250, 251, 252, 255, 271,
272, 275, 277, 278, 280,
281, 282, 284, 289, 308
- O**
- Obi Okoye, 56, 120, 126, 127
- Olajumoke Bendel, 263, 267
- Oral argument, 278
- Order II Rule, 276, 277
- Order IV Rule, 278, 279
- Original Jurisdiction, , 61, 68,
214, 243, 285
- Originating processes, 6, 19,
20, 79, 86, 125
- Oyo State, 145, 177, 263
- P**
- Particulars of claim, 98, 99,
100, 102, 106
- Parties
- interrogating, 180, 181
- political, 244, 246, 252,
301
- Personal service, 124
- Persons, legal, 14, 79, 83
- Petition, 9, 44, 108, 260, 266,
267, 269, 299, 300
- Petitioner, 109, 245, 246, 248,
263, 264, 265, 266, 267
- Plaintiff, 92, 148, 167, 170,
171, 211, 227, 230, 237,
296, 297, 298
- Plaintiff/claimant, 36, 79
- Pleadings, rules of, 166
- Plenary discuss, 31, 35, 38, 39,
40, 41, 43, 45, 47, 51
- Possession, 101, 241

- Premises Act, 231, 232, 234, 235, 236, 237, 238, 239, 241, 242
- Pre-trial Conference, 7, 29, 30, 31, 33, 178, 183,
- Principles, 81, 196
- general, 7, 9, 10, 13, 17, 18, 23, 28, 29, 30, 38, 40, 42, 43, 44, 45, 46, 47, 48, 50, 51, 57, 58, 66, 79, 90, 100, 104, 108, 113, 161, 165, 166, 170, 172, 186, 216, 218, 222, 292, 297, 305
- Property, 82, 196
- R**
- Recover possession, 9, 42, 43, 233, 236, 237, 239, 298
- Recovery of possession of premises, 9, 42, 43, 231
- Recovery of Premises Act, 231, 232, 234, 235, 236, 237, 238, 239, 241, 242
- Re-examination, 34, 35, 36, 191
- Registrar, 74, 106, 131, 133, 136, 140, 149, 151, 219, 220, 221, 222, 244, 270
- Registry, 129, 133, 136, 137, 250, 266, 270, 300
- Reliefs, 45, 99, 143, 157, 159, 184, 204, 248, 275, 276, 277, 279, 307
- Renewal, 19
- Rent, 231, 232
- Rent Control and Recovery of Residential Premises Law, 231
- Respondent, 41, 108, 109, 142, 143, 145, 147, 184, 221, 229, 230, 240, 244, 246, 263, 264, 265, 296, 306
- Rules, applicable, 48, 56, 57
- S**
- Sanctions and costs, 10, 48, 49, 52
- SCNJ, 56, 67, 80, 93, 107, 119, 120, 141, 143, 144, 145, 146, 164, 167, 181, 196, 197, 198, 216
- Sekondy Ukey, 122, 126, 127
- Sequences, 9, 10, 44, 45, 46, 47
- Sharia Court of Appeal Rules, 55
- Sheriffs and Civil Process Act, 205
- Shomolu, 263, 264, 265, 266, 267, 270
- State High Courts, 55, 58, 66, 67, 68, 214, 215
- Statement of claim, 111, 173
- Substituted service, 275
- Summary judgment
- procedures, 24, 25
- Supreme Court, 53, 55, 57, 59, 61, 65, 66, 67, 69, 70, 90, 91, 92, 93, 115, 122, 123, 125, 126, 127, 141, 143, 156, 188, 194, 201, 212, 223, 225, 232, 271, 276, 279, 280, 281, 282, 289
- Supreme Court Rules, 57, 223
- Supreme Court Rules of England, 55
- T**
- Tenancy, 231, 232, 234, 235, 236, 237, 238, 239, 240, 241, 242

Tenant, 241
Third party, 14, 92
Third party proceedings, 14,
 15, 16, 93
Time, extension of, 40, 115,
 122, 169, 217, 219
Trade Unions, 72, 74, 84
Trial
 conclusion of, 9, 10, 44, 45,
 46, 47
 issues for, 29, 185
Trial court, 110, 157, 197, 209,
 210, 211, 219, 224, 276,
 298
Trial judge, 193, 197, 211
Trial plan, 7, 31, 32, 186
Tribunal, 44, 61, 73, 74, 75,
 198, 215, 231, 243, 244,
 245, 248, 250, 251, 300,
 305

U

Undefended list, 24
Uniform Rules, 57, 142, 150

W

Witness box, 189, 190
Witnesses, 7, 32, 34, 102
 hostile, 33, 34, 189, 191
Witness statements, 8, 32, 33,
 36
WNLR, 238, 244, 257
Writ, 42, 48, 52, 54, 108, 110,
 111, 113, 129, 133, 136,
 148, 155, 174, 237, 238
writ of summons, 19, 20, 21,
 25, 79, 110, 113, 122, 125,
 135, 149, 164, 169, 175,
 240



COUNCIL OF LEGAL EDUCATION NIGERIAN LAW SCHOOL

Yaliam Press Ltd.:
08060010202, 09093232264