1. OVERVIEW AND INTRODUCTORY MATTERS

1. DISCUSS THE SCOPE OF THE CIVIL LITIGATION COURSE

Civil litigation is mainly concerned with the enforcement of private rights. When used in contradiction to criminal litigation, it deals with resolution or determination of all disputes other than criminal. Thus, it refers to all processes and procedure relating to civil actions in court.

Civil litigation refers to the entire body or rules of procedure and evidence that regulate civil proceedings in a court of law. It is wide enough to accommodate processes employed by parties to resolve the dispute between them before they finally end up in court, including pre-action notices, letters and ADR options employed before during and after proceedings have commenced in court.

2. DISCUSS THE DIFFERENT CIVIL DISPUTES SETTLEMENT MECHANISMS

- Litigation and
- ADR Mechanisms

(A)Litigation: This refers to an action brought by a person against another person based on the legal principles by which the former asserts some rights or legal entitlements from the latter.

Features of Litigation----BEST WAR PLC

- Binding decisions
- Enforcement
- State Controlled
- Time consuming
- Win/Lose atmosphere
- Adversarial
- Rigid and Technical
- Publicly conducted—**SEE SECTION 36(4) OF THE 1999 CFRN and OVIASU v. OVIASU**
- Lawyer dominated
- Coercive.

Cases best suited for litigation ---MTN RICE

- Mandated by law situations
- Time is of essence
- Need for precedent
- Ridiculous/Frivolous demand situations (Litigation provides an avenue to keep out frivolous demands, thus where a case is of such a frivolous nature, one should go to court for dismissal of the claim instead of wasting time on unproductive negotiation)

- Interpretation of documents
- Criminal cases (Public Policy)
- Emergency situations

Shortcomings of Litigation ---DICE^2 BIP

- Delay
- Involuntary for the defendant
- Control over the process by the parties is absent
- Enforcement problem
- Expensive
- Breeds enemy—**SEE JADESIMI v. OKOTIE-EBOH**
- Inflexible
- Privacy absence

(B) ADR Mechanisms: ADR relate to the alternative methods of dispute resolution that is aside litigation. In other words, should a potential litigant not be willing to go to court, which other method can be used to resolve the dispute. ADR can be taken up in 2 Ways:

- Parties' Agreement- to resolve their dispute through ADR. Private agreement e.g. Lagos Court of Arbitration, Mediation centers.
- Court Referral- Most courts encourage resolution of disputes by ADR. Under the Rules of Court, the judge has an obligation to encourage parties to refer their disputes to ADR. In this sense ADR is court-connected e.g Lagos Multi-Door Court House.

The following are the methods available: **---MANCH EMER**

- **Mediation**: Parties settle amongst themselves with the help of a neutral third party known as a mediator who only facilitates the process of settlement. He helps them maintain communication and help them shift to interest-base to ensure an amicable resolution. It is a win-win system.

Enforcement of Mediator's facilitated agreement

After the parties agree to the terms, they sign and date the outcome as witnessed by their lawyers. The agreement becomes binding and no party can resile from it. Thus, **the right of a party to walk out of mediation ends as soon as the settlement agreement is signed by the parties.**

Thereafter, the parties file it in court and agree that the terms of settlement be made a consent judgment by the court. Mediation is governed by the rules of the mediation center.

Features of Mediation ---V CAF

- Voluntary (most outstanding feature)
- Confidential
- Accessible

Comment [C1]:
In the recent past the trend was dispute litigation. However in recent times ADR has occupied a pride of place due to its advantages over litigation and also because most civil procedure rules and even some criminal legislation now encourage ADR.

Enabling provisions----**OSAMA Protocol**

1. **OBJECTIVES OF THE RULES:** Lagos rules objective is to promote efficient and speedy dispensation of justice – see preamble 1(B) Lagos

2. **SCREENING OF ORIGINATING PROCESSES:** All originating processes are screened for suitability for ADR and accordingly referred to the Lagos multi-door court house or some other ADR institution – Order 3 rule 11Lagos 2012; Order 5 Rule 8 Lagos 2019; Order 2 Rule 7 Abuja 2018

3.**AMICABLE SETTLEMENT OF DISPUTES** by way of ADR (Preamble 1 (C) Lagos civil procedure rules)

4.MULTI DOOR COURTHOUSE EXISTENCE

5. **AGENDA OF CMC:** One of the agenda of the case management conference is the promotion of amicable settlement of disputes: O 25 R 1 Lagos 2012; O. 27 Lagos 2019

6. **PROTOCOL FORM:** Every claimant in actions begun either by writ if summons or originating summons is required to front load the protocol Form 01 – see the format of the form

Comment [C2]:
1.A voluntary ADR method which involves a neutral third party who uses his good offices to assist the parties achieve a negotiated settlement of their dispute
2.The mediator may be selected by mutual agreement, and he assists the parties as the facilitator of the amicable settlement of the dispute

Why mediation?
1.Mediation is similar to negotiation with the major difference that mediation involves a neutral third party – the mediator
2.Mediation is available where negotiation is impossible or ineffective due to:
i)Hostility and bad blood existing between the parties;
ii)Lack of good faith/ distrust;
iii)Undue rigidity/ uncompromising/ adamant attitude of either or both parties

- Facilitative (keeping the interest and options of the parties alive for them to reach an agreement)

Qualities of a Mediator for promotion of a successful mediation –PERFECT^{2}ING

- Patience and persistence
- Effective communication skills
- Rapport building ability
- Flexible and creative
- Empathetic (sensitive to the parties' needs)
- Conflict handling ability
- Tolerant
- Trust worthy
- Impartial and neutral
- Non-judgmental
- Good listening skills

Stages of the mediation process---POGBA

- Preparation stage (venue of the mediation session is considered here)
- Opening stage (introduction of the mediator and all the parties present; non-disclosure agreement; opening statements; privilege)
- Getting the agenda/Issue identification/Exploration stage (real issues are found out by the mediator)
- Bargaining stage
- Agreement stage (concluding agreement and enforcement)

Comment [C3]:
(ask yourself "are the real interests of the parties identified now?")

NB: Before any further step is taken in the preparation stage, the mediator must ensure the settlement of issues relating to:---**AREA PANS**

- Agreement of the parties to mediate
- Representation of the parties
- Experience of mediation previously by the parties
- Authority of the person appearing
- Pending litigation
- Arrangement for the reception of parties
- Nature of the dispute
- Sitting room arrangement

NB: The opening statement at the opening stage by the mediator usually consists of four (4) components (if asked to draft a standard mediator's opening statement, use these components as your guide): ----**IRIG**

- Introduction of the mediator
- Role to be played by the mediator
- Impartiality and neutrality of the mediator
- Ground rules to govern the process

Factors responsible for the failure of mediation

- Opposites of the qualities of a mediator mentioned above are all factors
- Stonewalling/unwillingness to cooperate on the part of the parties

Ethical matters in mediation

1. Don't misrepresent facts knowingly to the mediator
2. Duty to act with integrity. Mediation or any ADR should nit be used purposely to delay eventual litigation; or only to obtain information of the opposite party's case – RPC

- **Arbitration**: This is a method of settling dispute through an impartial third party or parties called Arbitrator(s). An arbitrator who sits as an umpire to decide the case is appointed. He hands down an award which is like a judgment of the court enforceable at the High Court. The parties may within THREE MONTHS FROM THE DATE OF THE AWARD OR DATE OF THE ADDITIONAL AWARD (where applicable) apply to the court (HC) to set aside the award on the grounds set out in **SECTIONS 29 AND 30 OF ACA,** otherwise the award is binding.
  The grounds are: ---AMI
  (i) Award contains decisions on matters beyond the scope of submission to arbitration. **NB**: where the part not submitted can be separated from that submitted, only the part not submitted is subject to be set-aside.
  (ii) Misconduct of the arbitrator.
  (iii) Improper procurement of the arbitral proceeding or award.

- **Negotiation**: This is a bargaining relationship between parties in an effort to reach an agreement. It is a voluntary process and parties have total control over the processes. Parties do not need a third party to settle. They do the offer and acceptance of terms amongst themselves.

Circumstances where negotiation is possible ---C^{2}TIMED

a. Cooperation is needed
b. Compatibility of parties' interests, needs and goals
c. Time constraint affects the parties
d. Issue identification/agreement possibility
e. Mutual benefit possibility
f. External constraints exist
g. Desirability of negotiation

Factors that account for failure of negotiation ---P^{2}ERU LEG

a. Poor negotiation skills
b. Personality clash
c. Emotional antagonism to the other party
d. Revenge desire
e. Unrealistic expectations and assessment of interests
f. Lack of appropriate authority

Comment [C4]:
Disadvantages
1.Costlier
2.Want of privacy/ confidentiality
3.Possibility of bias/ partiality on the part of the mediator
4.Where the mediator is not trusted parties may be reluctant to discuss/ disclose information
5.Lack of expertise on the part of the mediator may be fatal to the process

Comment [C5]:
Process whereby parties to a dispute seek a solution to their difference, in a voluntary and direct manner
It may take the form of communication, e.g. oral or written
i.Direct communication in a meeting
ii.By telephone
iii.SMS
iv.Email
v.Correspondence – letter
Features
Direct, limited to the parties, without the intervention of any third party.
May take place before an action is filed or even after the filing of such action
A "term of settlement" is agreed upon and filed in the latter case.

Comment [C6]:
Contrast negotiator & mediator
1.Mediator – faster – 3rd party intervention
2.Parties are easily committed to dispute resolution
3.Mediator uses his good offices and expertise to assist in achieving resolution
4.Flowing from 2, brick walls are broken down; effect of ego minimized
5.Enforcement is easier; 3rd party is a potential witness

g. Effective communication problem
h. Gamesmanship or Brinkmanship leading to stalemate

Stages of Negotiation---PF ABCD

1. Preparation/planning – know the claim of your client: e.g. in the accident case identify the heads of damages especially special damages - including future loss; if it involves a claim for injunction: how will this be addressed – an agreement? Does your client want an apology in a defamation case – can this be negotiated?
2. First contact stage – preliminary/exploratory; " without prejudice" during negotiation – **NBA v FAWEHINMI;** But note that upon an agreement, parties are bound and "without prejudice" will no longer apply – **CFAO V OLUKOGA**
3. Agenda setting – parties agree on the agenda and the ground norm for the negotiation
4. Bargaining stage
5. Conclusion – preparation of the agreement; note the areas where no agreement was reached
6. Due execution stage
   Is it court assisted ADR or ADR on a matter already in court? - Terms of settlement to be made part of the court judgement – consent judgement (note: an appeal to a consent judgment is not by right, leave of court has to be sought) – preparatory to its enforcement

NB: At the preparation stage, the negotiator is expected to have the following at the back of his mind:--**P BROS**

- Parties and the balance of power between them
- BATNA (Best Alternative To Negotiation Agreement) of both parties
- Real interest of the parties
- Obstacles and barriers to negotiation
- Style and strategy to adopt

Strategies adopted in negotiation

1. Co-operative/problem-solving strategy
2. Competitive/confrontational/positional strategy
3. Collaborative/principled/problem-solving strategy. **NB:** The first two are the main strategies.

Styles adopted in negotiation

1. Soft style---No litigation in view
2. Hard style---Hard to shift
3. Firm style---Most effective. In between the first and the second. No likelihood of litigation

Tactics adopted in negotiation

1. Nibble/ piecemeal
2. Package deal
3. Putting price last
4. Leap frogging

Comment [C7]: to give focus and direction to the negotiation

Comment [C8]: Persuasion, debate with the aim of reaching an agreement.
Factors that affect bargain in negotiation ---**LIP**
1.The **legal rights** of parties under the law, contract, customs, etc.
2.The **interest sought** to be protected – the desire, needs, concern of each party, a party in a defamation case may be interested in his reputation
3.The **power/influence of the parties**: coercive power; e.g. NUPENG may withdraw their drivers causing dislocation

Comment [C9]: When considering your limit, bear in mind the **two major yardsticks** which are:
a.**BATNA-** Best alternative to negotiated agreement. A party's BATNA is his walk away alternative. It is his best course of action for satisfying his interest in the event that negotiation with the other party fails. The BATNA of a party is the best option which he will resort to in the event that nothing comes out of the negotiation. The BATNA should be capable of implementation in the absence of agreement after negotiation. For instance, if a party is negotiating with his employer over increment in his wage package, his BATNA may be to find another job with the prospect of good remuneration.
b.**WATNA-** Worst alternative to negotiated agreement. This is the last resort the party has if negotiation fails. If for instance, the alternative the client has is to resort to litigation where he may not be too sure of the amount to be given to him in judgment and the time the case will be concluded, it is better to resort to negotiation.

Comment [C10]: Win- win

Comment [C11]: 1.Win – lose

Comment [C12]:
•Issues or matters are negotiated piecemeal
•No wholesale litigation
•Resolution of an issue before taking on another

Comment [C13]:
•Wholesome dealing
•No agreement piecemeal unless all issues/ matters have been discussed

Comment [C14]:
•All aspects of negotiation will be undertaken before price is discussed
•e.g. in the accident case , the issue of liability may be resolved before the monetary damages payable will be discussed

Comment [C15]:
•Jumping or leapfrogging from one issue to the other without a resolution
•A style that displays panic
•Used as a default position by a party that cannot hold its own in negotiation

5. Puff
6. Plea of lack of authority after negotiation and before commitment
7. Plea of limited authority
8. Flattery
9. Deadline: illustration – accident case we offer 1 million naira in full and final settlement. You have between now and tomorrow (6pm) to accept or it is withdrawn
10. Take it or leave it**.** Similar to deadline
11. Threats
12. Hit and run – selfish, concerned with the interest of the party deploying such tactic
13. Humour – can be used to "disarm" the opponent". Useful in coop / problem solving strategy
14. Freeze out – tends to outwit opponent ech point, thereby making him not to be competent or know what to do about the issues
15. Overwhelming numerical strength
16. Control of agenda
17. Nibbling—buying time

Comment [C16]:
- Puffing up on BATNA
- Deception on the actual BATNA
- Can however backfire

Roles of lawyers in negotiation

- Advisers – see the pre action counselling certificate in the FCT rules
- Legal experts and evaluators
- Direct negotiators
- Drafting of settlement agreement

……..

- **Conciliation**: Conciliation is governed by ACA. This also involves a neutral third party. He merely suggests solutions to the parties. The suggestions of a conciliator are not binding on the parties. The conciliator comes up with an opinion which is reduced to terms of settlement for parties to sign which is at the discretion of the parties.
- **Hybrid**
- **Early Neutral Evaluation**: The parties or their attorneys summarize the conflict for a neutral third party to give a non-binding opinion or the settlement value of the case. It may come with a non-binding prediction of the likely outcome of the case if adjudicated upon. Used in international commercial transactions. Example: In a dispute between Chevron and Shell, a petrochemical Engineer comes as an early neutral evaluator to evaluate the strength and weaknesses of the case. The parties then decide whether to go on with litigation or resolve amicably.
- **Mini Trial**: A settlement process in which the parties present a highly summarized version of their claims to a panel of officials who represent each party and who have authority to settle the dispute. The panel at the mini trial is mainly composed of top level executives and senior managers who are in a position to take decision as regards the dispute. Thus, it has been described as **"Supervised Settlement Procedure"** or **"Executive Tribunal"** or **"Executive Appraisal" (SEE).** This method blends formal legal advocacy procedure with elements of information management, neutral facilitation and case evaluation. This is a form of non-binding evaluative mediation as it assists the parties obtain a better understanding of the issues and enable them enter into settlement negotiation on a more informal basis.

- **Expert Determination**: This is a voluntary process in which a neutral third party who is an expert in the field in which the dispute arose, gives a binding decision on the issues in dispute. Unlike an arbitrator, the expert has no obligation to act judicially, although he must act fairly. The decision of an expert here is generally challengeable on very limited grounds.
- **Rent a Judge**: This is a process whereby the court, on request by the parties, refer a pending suit to a private neutral party for trial with the same effect as though the case were tried in the courtroom before a judge. The decision arising out of the process may be appealed against through the regular court appellate system. This process is common in USA where the legislature has also recognized the process.

Aims of ADR

1. To reduce delays, cost and court's congestion.
2. Enhances community participation in the dispute resolution process
3. Facilitate access to justice
4. To provide more effective means of dispute resolution

Advantages of ADR are as follows:

1. It saves time
2. Saves relative cost (but this may not be true of Arbitration)
3. Promotion of good cordial relationship
4. It is litigant friendly as no much legal technicalities are needed
5. De-congests the Court of cases
6. Promotion of confidentiality of parties matters
7. Promotes community or parties participation in the dispute Resolution process
8. Enforcement of Resolution by the parties is easier
9. It encourages the use of experts on an aspect of Law, e.g. admiralty, etc unlike the Courts
10. The parties have absolute control over the proceedings without adhering to strict legal rules

Disadvantages of ADR

1. Parties can easily re-open the matter except in Arbitration
2. Does not create precedents
3. It does not generate revenue for the State
4. Its application is limited in some cases
5. Decisions are not binding on the parties like judicial judgments

Limitations of ADR ---$D^2I^2CE^2$

ADR mechanisms are not applicable to the following matters:

1. Declaration of rights
2. Divorce or nullity of marriage as regards to declaration of status
3. Injunction restraining an immediate act
4. Interpretation of statutes or the Constitution
5. Capital offences which are not compoundable
6. Election petition
7. Enforcement of fundamental rights

MULTI-DOOR COURT HOUSE

The first multi-door court house in Nigeria – the Lagos multi-door courthouse was established in Lagos in 2002, being a public-private partnership project between the High Court of Lagos state and a non-profit organization, the negotiation and conflict management group (The NCMG)

Legal backing was provided through the enactment of the Lagos Multi Door Courthouse Law 2007. SEE also **ORDER 28 LAGOS 2019**. Several jurisdictions have replicated the idea. Thus for example there is now the Abuja multi-door courthouse. SEE **ORDER 19 ABUJA 2018**

Court connected, although nothing stops parties approaching the MDCH of their own volition. Independent, non-profit corporate body, with perpetual succession

Overriding objectives are listed in **S. 2 LMDCHL**

1. Enhancement of access to justice by the provision of alternative mechanism to supplement litigation
2. To minimize frustration on the part of citizens by preventing delays and providing a standard legal framework for fair + efficient ADR solutions
3. Envisaged as a focal point for the promotion of ADR in Lagos state
4. Dedicated to the promotion, growth and effective functioning of the justice system through the ADR methods

Note **ORDER 19 RULE 7 ABUJA 2018** has provision for making ADR a consent judgment

Any agreement or memorandum of understanding duly signed by the parties after mediation or other processes provided by the centre shall be filed at the LMDC and duly registered with all the necessary attachments---**S. 4(2) LMDCHL**
Such settlement shall be caused by the centre to be endorsed by an ADR judge or any other person authorized by the CJ of Lagos State. Such endorsement shall qualify the agreement as a consent judgment of the High Court of Lagos and for the enforcement of any settlement agreement under the SCPA or other similar legislation---**S. 4(1)(b) LMDCHL**

An agreement over a matter referred by a judge of the High Court should be endorsed by the same judge (Referral Judge)---**S. 19(1) LMDCHL**

3. UNDERSTAND THE LEGAL AND ETHICAL IMPLICATION OF NOT ADVISING/ENCOURAGING THE PARTIES TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)

Comment [C17]: Rule 15 (3) (d) RPC provides that a lawyer shall not fail or neglect to inform the client of the option ADR before continuing with or resorting to litigation. This reasoning is founded on the advantages these ADR methods have over litigation and it also helps to decongest the courts of cases which can be easily settled out of Court. Thus, when a lawyer fails to advise his client accordingly;
1. Rule 55(1) provides that such a lawyer shall be guilty of professional misconduct and liable to punishment as provided in the Legal Practitioners' Act, 1975
2. He may be liable to pay the costs of litigation where it places the client at a disadvantage.

4. IDENTIFY AND EXPLAIN THE SOURCES OF THE LAW OF CIVIL LITIGATION AND DISCUSS THE RELEVANCE OF EACH SOURCE TO CIVIL PROCEDURE

The following are the various sources of civil litigation

(A) Rules of courts

In practice, every court has its own rules that guide practice and procedure of such court. In this like, there is the Supreme Court Rules, Court of Appeal Rules, Federal High Court Rules, State High Court Rules, down to Sharia and Customary Court Rules.

NB: whenever there is a lacuna in the rules, IN LAGOS, the court shall adopt such procedure as will in its view do substantial justice between the parties concerned. ---**ORDER 3 RULE 2 LAGOS 2019. Thus, where there are no provisions in the local rules or where the local rules are not exhaustive on the subjects which they treat, resort is usually had to the English rules. ---LAIBRU v. BUILDING AND CIVIL ENGINEERING CONTRACTORS LTD; UTC (NIG.) LTD v. PAMOTEI**

In the NORTH, where such a lacuna exists, resort to application of English HC rules of practice and procedure to the proceedings before the HC is expressly prohibited. ---SEE SECTION 35 HC LAW OF NORTHERN NIGERIA

NB: Rules of courts are not mere rules but are held to be in the nature of subsidiary legislation having regard to the provisions of section 18(1) of the Interpretation Act. ---**MAKO v. UMOH**; though not rules of law, strictly so called, but rules of procedure.

Generally non-compliance with rules of court is classified into two

(1) Mere irregularity and

(2) Fundamental breach.

The former is regarded as an irregularity that can be corrected or remedied. However, in relation to the a mere irregularity, a complaint of non-compliance to the rules of court must be made timeously and before taking any fresh step in the proceedings.---**CBN v. AMAO**. Thus, if the objector continues with the proceedings after noticing the error, he will not succeed on setting aside the judgment.—**SARAKI v. KOTOYE**. As regards the latter, it is one capable of making the courts set aside the proceedings as it affects the jurisdiction of the court (like one relating to non-service of court processes.) ---**MAJA v. SAMOURIS**

NB: In Lagos, non-compliance to rules of court is classified into two:

(1) Non-compliance at the beginning of a suit and

(2) Non-compliance in the course of a suit.

The former leads to the nullification of the action.----**ORDER 5 RULE 1(3) LAGOS 2019; ORDER 7 RULE 1(1) LAGOS 2019.** The latter may be treated as an irregularity and may not nullify such step in the proceedings. The judge may give any direction he thinks fit to regularize such steps.---**ORDER 7 RULE 1(2)(4) LAGOS, 2019.**

(B) The Constitution

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

- The constitution creates the court. **Ss. 230(1), 237(1), 249(1), 270(1) of CFRN 1999** creating the Supreme Court, Court of Appeal, Federal and State High Court respectively.
- The constitution gives power to the courts.
- The constitution prescribes the authority to make rules. **S. 236 CFRN** conferring power on the CJN to make rules regulating the practice and procedure in the Supreme Court.

- The constitution also has rule on civil litigation. Section 36 CFRN on fair hearing; section 233 on appeal to the Supreme Court.

(C) Statutes creating courts

Rules of court are also made pursuant to statutes creating the courts. Also there are certain provisions in the statute directly on procedure. For instance, Ss. 7 & 25 of Supreme Court and Court of Appeal Act respectively on time within which an appeal can be made. 14 days for interlocutory judgments and 3 months for final judgments.

(D) Special statutes on procedure (civil)

Aside from the rules of court, there are statutes which have provisions on civil litigation. These statutes can cover an aspect of civil litigation. E.g. Admiralty. These special statutes include the following:

- The Sheriffs and Civil Process Act/Law and The Judgment (Enforcement) Rules. This is an Act of the National Assembly by virtue of the fact that the subject matter of the Act is found in item 57 of the exclusive legislative list, thus applicable in the whole federation. **Hence, any law of a state in that respect is only applicable to Magistrate (South), District (North), Customary and Sharia Courts.**
- Foreign Judgments (Reciprocal Enforcement) Act. It gives procedure on how a foreign judgment is to be enforced.
- Companies and Allied Matters Act. Under CAMA there are the Companies Winding up Rules 2001 and Companies Proceedings Rules 1992. There are rules on civil litigation but apply only to companies or entities under CAMA.
- Companies Income Tax Act under it, the Federal High Court (Tax Appeals) Rule 1992 was enacted.
- Admiralty Jurisdiction Act under it the Admiralty Jurisdiction Procedure Rules was made.
- Matrimonial Causes Act and Matrimonial Causes Rules, all on practice and procedure for matrimonial causes.

(E) Decisions of Superior Courts on procedure

There are some rules of procedure that are derived from decision of courts. Examples of court made rules of practice are:

Where there are two motions before the court of which one will render the suit competent or preserve the suit and the other would strike it out, the rule is that the court would first hear the motion that would make the suit competent before the other. ----NALSA TEAM AND ASSOCIATES v. NNPC.

The rules relating to grant of injunctions were developed by the court through its decision.--**KOTOYE v. CBN**

Also, we have the rule that before a trial court orders a non-suit, the judge should invite the parties or their counsel to address him on the propriety of the order.**---CRAIG v. CRAIG**

NB: Ordinarily, if a case is thrown out on the ground that the plaintiff has failed to prove it, that is the end of the matter. However, non-suit gives the plaintiff a second opportunity to prove his case.

Again, it is the court that laid the rule that where a party wishes to challenge the report of a referee appointed by the court to conduct an investigation on matters arising in a case, such a party should give notice of the part of the report he is objecting to and the grounds for so objecting.---**EPHRAIM v. AGWU**

The S.C developed the rule that the court should not permit a party to make a no case submission in civil cases unless he elects not to give evidence and to stand by the submission alone. –**IKORO v. SAFRAP (NIG.) LTD**

(F) Practice Directions

These are rules and guidelines given by the necessary or appropriate authority when a lacuna exists in procedure. In other words, it 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.---**UNILAG v. AIGORO**.

Also, statements of the judiciary noted in law reports which are intended to guide the courts and the legal profession on matters of practice and procedure are deemed practice directions.---**NAA v. OKORO**

Examples are:

- A multi-door court rules is a practice direction.
- In election petitions, the 1st schedule to the Electoral Act had nothing like front loading but a practice direction was issued to that effect.
- In the National Industrial Court, the president introduced front loading based on practice direction.

Whenever the rules may be short or inadequate the appropriate authority can quickly issue guideline. **Non-compliance with the practice direction is fundamental as it vitiates all steps taken at the trial resulting in nullity, as they have the force of law as rules of court**.---**NWANKWO v. YAR' ADUA**

It is pertinent to note that a practice direction is not expected to depart from or be inconsistent with the rules of court. It is not an enactment and therefore has no force that a rule of court has. Hence, it cannot fetter a rule of court and as such where there is a conflict between a rule of court and a practice direction, the rule of court shall prevail.---**UNILAG v. AIGORO**

As between the statute creating court and rules of court, the statute creating court is superior and as between the statute and the constitution, the constitution is superior, as between the rule and practice direction, the rule prevails.---UNILAG v. AIGORO

In the hierarchy of sources of civil litigation laws, practice directions come last in terms of authority in the area of conflict. –**BUHARI v. INEC**

5. EXPLAIN AND DISCUSS THE AIMS, SCOPE AND APPLICATION OF RULES OF COURT.

(A) THE AIM OF RULES OF COURT

- To achieve order and speed in the dispensation of justice
- To guide litigants' steps from commencement to judgment
- To reduce time and cost of litigation

(B) SCOPE AND APPLICATION OF RULES OF COURT

- Regulates matters of practice and procedure
- Regulates conduct of various civil proceedings and modes of commencement
- Regulates modes of instituting civil proceedings and conduct of interlocutory applications
- Regulates enforcement of orders and judgment

6. IDENTIFY THE ETHICAL ISSUES RELATING TO WRONG USE OF RULES OF COURT AS WELL AS CONSEQUENTIAL SANCTIONS (Brainstorm)

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. The ways ADR can be taken up are all except:

A. Mediation

B. Parties agreement

C. Court referral

D. B and C above

2. The ADR mechanism that allows parties settle among themselves with the help of a neutral third party is:

A. Negotiation

B. Mediation

C. Early Neutral Evaluation

D. Conciliation

3. Mr. A and Mr. B engaged Mr. C to help facilitate settlement between Mr. A and Mr. B. Which of the following statements is not true about the mechanism adopted above?

A. Mr. A and Mr. B can walk out of the process before the signing of the settlement agreement.

B. Mr. A and Mr. B cannot walk out of the process after the signing of the settlement agreement

C. Mr. A and Mr. B can walk out of the process after the signing of the settlement agreement.

D. All of the above

4. The ADR mechanism envisaged in 3 above is known as:

A. Mediation

B. Negotiation

C. Arbitration

D. Conciliation

5. The stage of mediation process where the mediator is introduced and non-disclosure agreement is entered into is the _____

A. Preparation stage

B. Opening stage

C. Bargaining stage

D. Agreement stage

6. The stage of a mediation process where the venue of the mediation session is considered is the_____

A. Preparation stage

B. Opening stage

C. Exploration stage

D. Agreement stage

7. The stage of a mediation process where real issues are found out by the mediator is the

A. Preparation stage

B. Opening stage

C. Exploration stage

D. Agreement stage

8. Mr. A and Mr. B referred a dispute between them to an impartial third party who decided the dispute between them in a judicial manner and handed down an award on the 31 January 2019. However, Mr. B seeks to challenge/apply to the High Court to set aside the award, but he is confused as to the time frame within which he can make the application. Advise him.

A. He has till 30 April 2019 to bring the application.

B. He has till 28 February 2019 to bring the application.

C. He has till 30 September 2019 to bring the application.

D. None of the above.

9. The grounds for bringing an the application in 8 above are all except_____under sections 29 and 30 of the Arbitration and Conciliation Act.

A. Award contains decisions on matters beyond the scope of submission to arbitration.

B. Misconduct of the arbitrator.

C. Improper procurement of the arbitral proceedings or award.

D. None of the above.

10. A bargaining relationship between parties is an effort to reach an agreement, without a third party, is known as_____

A. Mediation.

B. Arbitration.

C. Negotiation.

D. Conciliation

11. BATNA stands for_____-

A. Best Alternative To Native Agreement.

B. Best Alteration To Negotiated Agreement.

C. Best Alternative To Negotiated Agreement.

D. Best Aid To Negotiated Agreement.

12. WATNA stands for_____

A. We Are To Negotiate All.

B. Worst Alternative To Negotiated Agreement.

C. West Africa To North America.

D. All of the above.

13. The last resort which a party has if negotiation fails is the party's_____

A. BATNA.

B. WATNA.

C. Weakness.

D. Only option

14. A party's best option which such a party will resort to in the event of nothing coming out of the negotiation, is the party's_____

A. BATNA

B. WATNA

C. Strength

D. Only option

15. BATNA is also known as a party's_____

A. Only alternative

B. Walk away alternative

C. Last alternative

D. None of the above

16. Out of the strategies adopted in negotiation, the one with a win-win approach is the___

A. Cooperative/Problem-solving strategy.

B. Competitive/Confrontational/Positional strategy.

C. A & B above.

D. None of the above.

17. Out of the strategies adopted in negotiation, the one with a win-lose approach is the___

A. Cooperative/Problem-solving strategy.

B. Competitive/Confrontational/Positional strategy.

C. A & B above.

D. None of the above.

18. The following are the styles adopted in negotiation except____

A. Soft style.

B. Free style.

C. Hard style.

D. Firm style.

19. The ADR mechanism that involves a neutral third party who merely suggests solutions to the parties and such suggestions are not binding on the parties, is____

A. Mediation.

B. Arbitration.

C. Negotiation.

D. Conciliation.

20. A settlement process in which the parties present a highly summarized version of their claims to a panel of officials who represent each party and who have the authority to settle the dispute, is known as__

A. Early Neutral Evaluation

B. Trial

C. Mini-Trial

D. Expert Determination

21. The settlement process where the parties or their attorneys summarize the conflict for a neutral third party to give a non-binding opinion or the settlement value of the case, is____

A. Early Neutral Evaluation

B. Conciliation

C. Mini-Trial

D. Rent a Judge

22. The settlement process that is referred to as a supervised settlement procedure is the process known as_____

A. Mini Trial

B. Expert Determination

C. Rent a Judge

D. All of the above

23. The settlement process that is referred to as "Executive Tribunal" is the process known as_____

A. Mini Trial

B. Expert Determination

C. Rent a Judge

D. None of the above

24. The settlement process that is referred to as "Executive Appraisal" is the process known as_____

A. Mini Trial

B. Expert Determination

C. Rent a Judge

D. Early Neutral Evaluation

25. The settlement process that is referred to as a voluntary process in which a neutral third party who is an expert in the field of dispute and gives a binding decision on the issues in dispute, is the process known as_____

A. Rent a Judge

B. Expert Determination

C. Expert Authorization

D. Early Neutral Evaluation

26. The settlement process whereby the court, on request by the parties, refers a pending suit to a private neutral party for trial with the same effect as though the case were tried in the courtroom before a judge, is_____

A. Rent a Judge

B. Transfer of a case

C. Expert Determination

D. Mini-Trial

27. The first multi-door court house in Nigeria is the___

A. Abuja MDCH

B. Lagos MDCH

C. Enugu MDCH

D. Kano MDCH

28. The first MDCH was established in the year____

A. 2001

B. 2002

C. 2003

D. 2004

29. Mr. A and B both of No. 2 Law School Drive, Victoria Island, Lagos, engaged the services of Mr. C, who helped facilitate the dispute settlement between A & B. A settlement agreement was reached in writing and signed by the parties. The parties wish for the agreement to be a consent judgment. Advise them.

A. File the agreement at the High Court of Lagos State

B. File the agreement at the Lagos MDCH

C. File the agreement at the office of the AG of Lagos state.

D. All of the above

30. The parties in 29 above shall have the agreement qualify as a consent judgment of the High Court of Lagos state upon the happening of_____

A. Endorsement by an ADR Judge of the Lagos MDCH

B. Endorsement by any person authorized by the CJ of Lagos state

C. Endorsement by a Judge of the High Court of Lagos state

D. A or B

31. NO QUESTION

32. Assuming Mr. A and B in 29 above had a pending suit at the High Court of Lagos state and the Judge in the case referred the Parties to the Lagos MDCH or any other ADR mechanism, the agreement will only become a consent judgment of the High Court of Lagos state only when__happpens.

A. Endorsement by an ADR Judge

B. Endorsement by any person authorized by the CJ of Lagos state

C. Endorsement by the CJ of Lagos state

D. Endorsement by the referral judge

33. In Lagos, whenever there is a lacuna in the High Court Rules, the court shall adopt the_____

A. Procedure that will do substantial justice

B. English procedure (HC Rules)

C. A & B

D. None of the above

34. In Lagos, non-compliance with the provisions of the HC Rules at the beginning of the suit leads to_____

A. Nullification of the action

B. Striking out of the action

C. A mere irregularity

D. All of the above

35. In Lagos, non-compliance with the provisions of the HC Rules in the course of the suit leads to_____

A. Nullification of the action

B. Striking out of the action

C. A mere irregularity

D. None of the above

36. There are two motions before Hon. Justice ABC of the High Court of Lagos state, the first motion is for extension of time to file statement of defence . The second motion is for default judgment. Hon Justice ABC is required by law to_____

A. Hear the motion for extension of time first

B. Hear the motion for default judgment first

C. Hear the two motions together

D. None of the above

37. Assuming Hon. Justice ABC wishes to order a non-suit, he is required by law to_____

A. Invite the parties/counsel to address him on the propriety or otherwise of the order

B. Go straight and make the order

C. Invite the opinion of the amici curiae in court

D. Write to the CJ of the state

38. Where an order of non-suit is made, the effect is____

A. End of the matter

B. The same as a dismissal order

C. The matter can still be re-listed

D. None of the above

39. In the civil suit between A and B at the High Court of Lagos, after the close of the case of Mr. A as claimant in the suit, Mr. B entered a no case submission. The Judge overruled the no case submission. Mr. B subsequently sought to give evidence in the matter but was foreclosed by the Judge. Advise Mr. B

A. The Judge was wrong as a defendant can still give evidence after a no case submission

B. The Judge was right as the defendant is allowed to make a no case submission upon electing not to give evidence and to stand by the submission alone

C. The Judge ought to have invited the parties to his chambers for opinion on what is to be done.

D. The Judge should have asked the parties to file written addresses, addressing the court on that point

40. Where there is a conflict between a practice direction and the rules, the____shall prevail.

A. Practice Direction

B. Rules of court

C. None of the above

D. Resort will be had to English HC Rules

41. Where there is a conflict between Statute creating a court and the rules of the court, the____shall prevail.

A. Statute creating the court

B. Rules of court

C. None of the above

D. CFRN, 1999

42. In the hierarchy of sources of civil litigation, the source that comes last in terms of authority in the areas of conflict is_____

A. Rules of court

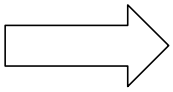
B. Practice Directions

C. Statute creating courts

D. CFRN, 1999

ANSWERS

1. A
2. B
3. C
4. A
5. B
6. A
7. C
8. A
9. D
10. C
11. C
12. B
13. B
14. A
15. B
16. A
17. B
18. B
19. D
20. C
21. A
22. A
23. A
24. A
25. B
26. A
27. B
28. B
29. B
30. D
31. BONUS
32. D
33. A
34. A
35. C
36. A
37. A
38. C
39. B
40. B
41. A
42. B



2. COURTS WITH CIVIL JURISDICTION

1. DISCUSS THE ESTABLISHMENT OF THE VARIOUS COURTS

Courts	Establishing Sections
1. Supreme Court	230(1) CFRN + 7
2. Court of Appeal	237(1) CFRN + 12
3. FHC	249(1) CFRN + 5
4. NIC	254 A(1) CFRN + 1
5. FCT HC	255(1) CFRN + 5
6. Sharia CoA FCT	260(1) CFRN + 5
7. Customary CoA FCT	265(1) CFRN + 5
8. SHC	270(1) CFRN + 5
9. Sharia CoA of a state	275(1) CFRN + 5
10. Customary CoA of a state	280(1) CFRN + 5
11. Election Tribunals	285(1) CFRN
12. ECOWAS CCoJ	Articles 6 and15 Revised Treaty of ECOWAS
13. Magistrate Courts	S. 1 MCL
KEY: 7+12+5+1+5[6]	

2. EXPLAIN THE GENERAL COMPOSITION AND CONSTITUTION OF COURTS OVER SPECIFIC MATTERS

1. SUPREME COURT

(i) General composition: The **CJN** and such number of justices **not exceeding 21(max=21)** as may be prescribed by an Act of the National Assembly.---**S. 230(2) CFRN**

(ii) Specific constitution: **7 JSCs** (Full court) for a) **Interpretation of the CFRN** b) **Constitutional matters** and c) **Fundamental Rights matters**. **5 JSCs** for any other case.----**S. 234 CFRN**

Comment [C18]: In practice, the SC also sits with a full court when asked to overrule itself

2. COURT OF APPEAL

(i) General composition: The **PCA** and such number of justices **not less than 49 justices (minimum=49)**, as may be prescribed by an Act of the National Assembly.---**S. 237(2) CFRN of which not less than 3 shall be learned in Islamic personal law and not less than 3 shall be learned in customary law.**

(ii) Specific constitution: When it sits to hear appeal, it is duly constituted of **at least 3 JCAs**. – **S. 239(2) CFRN**. If the appeal is from SCA or CCA the 3 JCAs shall be learned in IPL and CL respectively.—**S. 247(1) CFRN**

3. FEDERAL HIGH COURT

(i) **General composition**: CJ and such number of judges as may be prescribed by an Act of the National Assembly.---**S. 249(2) CFRN.** Thus, no restriction on the number of judges.

(ii) **Specific constitution**: **AT LEAST** one judge—**S. 253 CFRN**

4. NATIONAL INDUSTRIAL COURT

(i) **General composition**: The president of the NIC and such number of judges of the NIC as may be prescribed by an Act of the National Assembly.---**S. 254 A(2) CFRN**

(ii) **Specific constitution**: Duly constituted by a single judge or not more than 3 judges as the president of the court may direct---**S. 254 E(1) CFRN**

5. FCT HIGH COURT

(i) **General composition**: The CJ and such number of judges as may be prescribed by an Act of the National Assembly.—**S. 255(2) CFRN**

(ii) **Specific constitution**: At least one judge---**S. 258 CFRN**

6. SHARIA COURT OF APPEAL FCT

(i) **General composition**: A Grand Kadi and such number of Kadis of the court as may be prescribed by an Act of the National Assembly.---**S. 260(2) CFRN**

(ii) **Specific constitution**: At least 3 Kadis of the court.—**S. 263 CFRN**

7. CUSTOMARY COURT OF APPEAL FCT

(i) **General composition**: The president of the court and such number of judges of the court as may be prescribed by an Act of the National Assembly—**S. 265(2) CFRN**

(ii) **Specific constitution**: At least 3 judges of the court.—**S.268 CRFN**

8. STATE HIGH COURT

(i) **General composition**: The CJ and such number of judges as may be prescribed by a law of the House of Assembly of the State.—**S. 270(2) CFRN**

(ii) **Specific constitution**: At least one judge of the court.---**S.273 CFRN**

9. SHARIA COURT OF APPEAL OF A STATE

Same as that of FCT with necessary modification as to their Federal and State status. G---**S. 275(2) CFRN. S—S.278 CFRN**

10. CUSTOMARY COURT OF APPLEAL OF A STATE

Same as that of the FCT with necessary modification as to their Federal and State status. G.---**S. 280(2) CFRN.** S**---S.283 CFRN**

11. ELECTION TRIBUNALS

(i) **National and State House of Assembly Election Tribunal**: General composition is a chairman and 2 other members.---**Sixth Schedule Paragraph 1 CFRN**

(ii) **Governorship Election Tribunal**: General composition is a chairman and 2 other members.—**Sixth Schedule Paragraph 2 CFRN**

12. ECOWAS COMMUNITY COURT OF JUSTICE

(i) **General composition**: **7 independent judges** and no two of those judges must be a national of the same state.---**ARTICLE 3 PROTOCOL**

(ii) **Specific constitution**: The **president of the court** and **at least 2 judges** form a quorum and at any time the court is sitting, there must be an uneven number.---**ARTICLE 14(2) PROTOCOL**

13. MAGISTRATE COURTS (Focus is on that of Lagos)

(i) **General composition**: As many magistrates as possible

(ii) **Specific constitution**: one magistrate

3. EXPLAIN THE APPOINTMENT AND REMOVAL OF THE JUDGES OF THE VARIOUS COURTS

1. SUPREME COURT.
(i) Appointment: For the CJN and other JSCs, it is done by the President on the recommendation of the **National** Judicial **Council (**NJC) and **all** such appointment is subject to confirmation by the **Senate (NOT NATIONAL ASSEMBLY, FOR THE PURPOSES OF BAR PART II AND MCQ) - S. 231(1) & (2) CFRN**
NB: don't use the abbreviation NJC in exam, you must write it in full.

(ii) **Qualification** for appointment as a Justice of the Court: 15 years post call experience - **S. 231(3) CFRN**

(iii) **Removal of Justices of the Court**: the CJN is removed by the President on **an address** supported by **two-third majority of the Senate**. Other Justices of the Court are removed by the President on the recommendation of the NJC - **S. 292 CFRN**

2. COURT OF APPEAL
(i) **Appointment**: For the president and other JCAs, it is done by the President on the recommendation of the National Judicial Council (NJC)—**S. 238(2) CFRN** while only the President of the Court's appointment is subject to confirmation by the Senate—**S. 238(1) CFRN**

(ii) **Qualification for Appointment**: Not less than 12 years post-call experience--**S. 238(3) CFRN**

(iii) **Removal**: President of the CT of Appeal is removed by the President acting on an address supported by two-third majority of the Senate. For other Justices, removal is by the President acting on the recommendation of the NJC---**S. 292(1) CFRN**

NB: A judicial officer appointed to the Supreme Court or the Court of Appeal **may retire when he attains the age of sixty-five (65) years** and he shall cease to hold office when he attains the age of **seventy years (70)**---**S. 291(1) CRFN**

3. FEDERAL HIGH COURT
(i) Appointment: It is done by the President on the recommendation of the National Judicial Council (NJC) while only the Chief Judge's appointment is subject to confirmation by the Senate.--**S. 250(1)&(2) CFRN**

(ii) **Qualification for Appointment**: At least 10 years post-call experience -**S. 250 (3) CFRN**

(iii) **Removal of judges**: CJ is removed by the President acting on an address supported by two-third majority of the Senate. For other judges, removal is by the President acting on the recommendation of the NJC---**S. 292(1) CFRN**

4. FCT HIGH COURT AND STATE HIGH COURT
(i) Appointment: The Chief Judge and other Judges of the High Courts are appointed by the President/Governor on the recommendation of the National Judicial Council while the Chief Judge's appointment is subject to confirmation of the Senate/House of Assembly.—**S. 256(1) & (2) CFRN, S. 271(1)&(2) CFRN**
(ii) **Qualification for appointment**: At least 10 years post call experience.--**S. 256(3) CFRN, S. 271(3) CFRN**

(iii) **Removal**: CJ is removed by the President/Governor acting on an address supported by two-third majority of the Senate/House of Assembly. For other judges, removal is by the President/Governor acting on the recommendation of the NJC---**S. 292(1) CFRN**

5. NATIONAL INDUSTRIAL COURT
(i) **Appointment**: The appointment of the President and other Judges of the Court is done by the President on the recommendation of the National Judicial Council and the President's appointment is subject to the confirmation of the Senate. **S. 254B(1) &(2) CFRN**

(ii) **Qualification for Appointment**: A Lawyer with at least 10 years post call experience **and** has considerable knowledge in the law and practice of industrial relations/employment conditions in Nigeria. **S. 254B (3) CFRN**

(iii) **Removal**: President of the court is removed by the President acting on an address supported by two-third majority of the Senate. For other judges, removal is by the President acting on the recommendation of the NJC---**S. 292(1) CFRN**

6. MAGISTRATE COURTS (Focus is on Lagos State)
(i) **Appointment**: Magistrates are usually appointed by the **Lagos State Judicial Service Commission**.—**S. 4 MCL**

(ii) **Qualification: 5 years post call**

(iii) **Removal:** By the LSJSC—**S. 100 MCL**

7. SHARIA COURTS OF APPEAL FCT AND STATES
(i) **Appointment**: The appointment of the Grand Kadi and other Kadis of the Court is done by the President/Governor on the recommendation of the National Judicial Council and the GKs appointment is subject to the confirmation of the Senate/House of Assembly.—**S. 261(1) & (2) CFRN and S. 276(1) & (2) CFRN** respectively

(ii) **Qualification for appointment**: It is either a legal practitioner with 10years post-call experience **with a recognized certificate** in Islamic Law **OR** a non-lawyer who is an Islamic scholar from an approved institution with an experience of not less than 12 years.--**S. 261(3) and S.276 (3) CFRN**

(iii) Removal: GK of the court is removed by the President/Governor acting on an address supported by two-third majority of the Senate/House of Assembly. For Kadis, removal is by the President/Governor acting on the recommendation of the NJC---**S. 292(1) CFRN**

8. CUSTOMARY COURT OF APPEAL OF THE FCT AND THE STATES
(i) Appointment: The President and other Judges of the courts are appointed by the President/Governor on the recommendation of the National Judicial Council while the President's appointment is subject to confirmation of the Senate/House of Assembly---**S. 266(1) & (2) CFRN and S. 281 (1) & (2) CFRN**
(ii) **Qualification for Appointment**: 10 years post call and in the opinion of the NJC **with considerable knowledge and experience** in the practice of customary law **OR** in the opinion of the NJC with considerable knowledge of and experience in the practice of customary law.---**S. 266(3) CFRN and S. 281(3) CFRN**

9. ELECTION TRIBUNALS
(i) **Appointment**: The Chairman and other Members of the Tribunals are appointed by the **President of the Court of Appeal in consultation with the Heads of the Courts of a State** (CJ State, GK, PCCA)

(ii) **Qualifications**: It is either a Judge of the High Court, Customary Court or at least a Chief Magistrate.--**Sixth Schedule CFRN**

(iii) **Removal**: President (confirm this)

10. ECOWAS COMMUNITY COURT OF JUSTICE
(i) **Appointment**: This is done by the authority of Head of States from a list of not less than 2 persons on the recommendation of the judicial council. They are appointed for 4 years. No

person who is below the age of 40 years and above 60 years shall be eligible for appointment. No re-appointment at the age of 65 years
NB: The court is headed by the president of the court.

4. EXPLAIN AND DISCUSS THE MEANING AND SCOPE OF THE CIVIL JURISDICTION OF THE COURTS AND HOW THEY APPLY IN PRACTICE

Jurisdiction is the authority and power which the court has to deal with or adjudicate over matters before it. The enabling statutes creating the courts dictate the scope of this jurisdiction. The following are types of jurisdiction:

- Limited and unlimited jurisdiction (no court in Nigeria has unlimited jurisdiction)
- Constitutive jurisdiction (proper number of judges)
- Territorial/Geographical jurisdiction (SHCs)—**OGBUANYA v. OGBUDO**
- Divisional jurisdiction (for administrative convenience only)**---ORDER 3 ABUJA 2018; ORDER 4 LAGOS 2019**
- Procedural and substantive jurisdiction (non-compliance with PJ can be waived and may not vitiate the proceedings---**MOBIL v. LASEPPA**. SJ is very crucial and every court must comply with it as it cannot be conferred on the court (where it lacks it) by agreement of the parties.----**AGU v. ODOFIN**

The issue of jurisdiction can be raised at any time/stage of the proceedings even on appeal for the very first time because it is fundamental as it relates to the root of the case and when it is raised, the court must stop and hear it---**OGUNSAYA v. DADA** as you cannot put something on nothing and expect it to stand, it will fall—**MCFOY v. UAC.** However, on appeal, the leave of the court must be sought and obtained to raise the issue of jurisdiction---**OSHOTOBA v. OLUJITON**

NB: The issue of jurisdiction can be raised by the court suo moto---**EZE v. OKECHUKWU**

NB: Courts of coordinate jurisdiction= same level. Courts of concurrent jurisdiction= same subject matter.

NB: A party must not plead first in order to raise the issue of jurisdiction.---**NDIC v. CBN**. Thus, it is a misconception to hold that objection must be taken after the filing of a statement of defence.---**ELABANJO v. DAWODU**.

NB: The judicial divisions in Lagos are: **Lagos, Ikeja, Ikorodu, Badagry, and Epe (LI^{2}BE)** For the purposes of BAR II EXAMS, go with Lagos judicial division to be on a safe side though not where it involves recovery of premises because action is to be instituted in the HC where the land is situated. Abuja judicial divisions are: Gwagwalada, Bwari, Maitama, Wuse etc (find them)

NB: A party raising an objection to jurisdiction need not even bring the application under any rule of court.---**WURO BOGGA NIG. LTD v. HON. MINISTER OF THE FCT.** The application can be brought under the inherent jurisdiction of the court.---**WURO'S CASE**

NB: The modes of raising objection to the issue of jurisdiction are:

(1) Preliminary objection (most usual mode and no affidavit of facts is required)

(2) Motion on Notice (used where facts will be relied upon in establishing want of jurisdiction and it is supported by an affidavit of facts)

(3) In the statement of defence;

(4) Viva voce

Conditions precedent to the exercise of jurisdiction

(i) Subject matter of a case must be within the jurisdiction of the court.

(ii) There is no feature in the case that will prevent the court from exercising its jurisdiction

(iii) The case must have come to court, initiated by due process of the law upon the fulfillment of a condition precedent---**MADUKOLUM v. NKEMDILIM, AGU v. ODOFIN**

NB: A condition precedent to commencement of action laid down by the constitution or statute cannot be waived but must be strictly complied with---**EZE v. OKECHUKWU**. This is so because acquiescence does not and cannot confer jurisdiction on a court in this regard unlike a condition precedent created by a rule of court or subsidiary legislation, which can be waived or overlooked where there is no miscarriage of justice.

1. SUPREME COURT

(i) Original jurisdiction

- Federal Government (federation) and State Government
- State Governments inter-se----**S. 232(1) CFRN**

In both, the issue must affect their sovereign or corporate capacity and not just one that affects the citizens---**AG FED v. AG IMO STATE**, wherein the SC declined jurisdiction, otherwise the court will exercise its jurisdiction---**AG FED v. AG ABIA STATE, AG LAGOS STATE v. AG FED**

- National Assembly and President of the FRN
- National Assembly and State House of Assembly
- National Assembly and State Government--- **S. 1 OF THE SUPREME COURT (ADDITIONAL ORIGINAL JURISDICTION) ACT 2002**

NB: If the action is between the senate (a chamber/house of the N.A) and any of the above mentioned, the action may be going to the FHC.

NB: The condition precedent is that the N.A must pass a resolution of both houses by way of a **simple majority of the members present and voting at the meeting. Same goes to the SHoA.—S.2 OF THE SUPREME COURT (ADDITIONAL ORIGINAL JURISDICTION) ACT 2002**

NB: Only the parties can be involved in this original jurisdiction of the SC, not when another person is added as a party---AG OGUN STATE v……..

Comment [C19]: CONFIRM IN CLASS

Parties in the suit shall be:

- National Assembly
- Speaker of the House of Assembly (in a suit involving State House of Assembly)---**S.3 SUPREME COURT (ADDITIONAL ORIGINAL JURISDICTION) ACT, 2002.**

(ii) Appellate Jurisdiction
The SC has exclusive appellate jurisdiction over appeals from the Court of Appeal. Appeals to the Supreme Court could be as of right or with leave.—**S. 233(1) CFRN, OLABANYI v. OLAKEWU.** Its decision is final - **S. 235 CFRN, ADIGUN v. AG OYO STATE**

2. COURT OF APPEAL

(i) Original Exclusive Jurisdiction--ETV

- **Election petition matters**: It has jurisdiction to determine if a person has been validly elected to the office of the President or Vice President
- **Term of office**: whether the term of office of the President or Vice President has ceased
- **Vacancy of office**: The office of President or Vice President has become vacant--**S. 239(1) CFRN**

(ii) Exclusive Appellate Jurisdiction
It has exclusive appellate jurisdiction on decisions from the Federal High Court, High Court of the States and the FCT, Sharia Court of Appeal, Customary Court of Appeal, National Industrial Court, Code of conduct Bureau, Court Martial and the National and State Houses of Assembly Election Tribunals **- S. 240 CFRN**

NB: Appeals from the NIC is no longer restricted to FHRs and criminal matters, it has been expanded to all matters—**SKY BANK PLC v. IWU**

NB: The Court of Appeal also has power over case stated to it from lower courts---**S. 295 CFRN**

Case stated is the reference of a case by a lower court to a higher court and whatever decision the higher court reaches becomes binding on the lower court.
NB: The decisions of the CoA in respect of **appeals from election petitions shall be final - S. 246(3) CFRN** and also its decisions on **appeals from the National Industrial Court are final (ETNIC)---S. 243(4) CFRN, COCA COLA v. AKINSAYA**

Comment [C20]: NB: Decisions on appeals from NA/SHOA Election Tribunals are final—**S. 246(3) CFRN**

3. FEDERAL HIGH COURT

(i) Original Exclusive Jurisdiction---S. 251(1) (a)-(s) CFRN
(a) **Revenue** of the government of the federation whether it or its organ as a plaintiff or defendant.

(b) **Taxation** of a company, bodies established to carry on business and persons subject to federal tax. Companies Income tax – Federal High Court; Personal Income Tax – state of residence; residents of Abuja are subject to federal taxation but those in other states, Personal Income Tax.

(c) **Customs**, excise duties, export duties, claim against Nigeria Customs Service or any member or office relating to performance of their duties.

(d) **Banking**, bank, other financial institution. Action between bank and bank. Action against CBN relating to final measures, banking policy, policy-mergers, revocation of banking license, capital, examination of banks, fiscal measures are within the exclusive jurisdiction of Federal High Court. However, in cases of banker-customer relationship both the Federal High Court and the High Courts of the States will have jurisdiction----**NDIC v. OKEM ENTERPRISES**

- If customer sues for **NEGLIGENCE- FHC & SHC both have jurisdiction- SGB V.DELLUCH**
- If it is an action **between a bank and another bank** in an Ordinary Banker customer relationship e.g. one bank depositing money in another bank, then both the FHC and SHC have jurisdiction.-**FMBN v. NDIC**
- **In an action between a bank and another bank** and it is **not an ordinary banker customer relationship,** the **FHC WILL HAVE EXCLUSIVE JURISDICTION**
- Where there are issues of **BANKING POLICIES AND FISCAL MEASURE,** FHC has exclusive jurisdiction. **SOCIETE-GENERAL BANK V. DELLUCH**
- **NON CUSTOMER of bank suing for negligence –FHC has jurisdiction**

(e) **Operation** of CAMA or any law replacing CAMA. For instance, removal of a director by Federal High Court

(f) Any law on **Intellectual property**, copyright, patents, business name, trade mark, industrial designs.

(g) **Admiralty** matter, shipping, carriage by sea, River Niger, River Benue, other inland waterways designated to be international waterways, federal ports.

(h) **Diplomatic**, consular and trade representation

(i) **Citizenship**, deportation, extradition, immigration, emigration, nationalization

(j) **Bankruptcy** and insolvency

(k) **Aviation** and safety of aircraft

(l) **Arms**, ammunition, explosives

(m) **Drugs** and poisons

(n) **Mines** and minerals

(o) **Weights** and measures

(p) **Administration** or the management and control of the Federal Government or any of its agencies

(q) **Interpretation** of the constitution that affect federal government or any of its agencies.

(r) **Action**, declaration, injunction affecting validity of executive or administrative action or decision by the Federal Government or any of its agencies.

NB: However, as regards (p) (q) (r) in simple contracts between a Federal Government agency and an individual, the State High Courts alone will have jurisdiction to try the matter--**See ONUORAH V. KRPC Ltd**

(s) **Such** other exclusive civil jurisdiction to be conferred on it by an Act of National Assembly.

The Federal High Court now has original jurisdiction to decide whether the term of office or a seat of a member of the Senate or House of Representative (National Assembly) has ceased or become vacant---**S. 251(4) CFRN**

Transfer of Cases to the States/FCT High Courts by the Federal High Court.
This will occur when a matter is wrongly instituted at the Federal High Court which lacked the jurisdiction to entertain it. The only thing the Federal High Court will do is to **transfer the case to the State/FCT High Courts and not to strike it out**.---**S. 22(2) FHC ACT, FASAKIN FOODS LTD V. SHOSANYA, AMC LTD V. NPA. MOKELU V. FEDERAL COMMISSIONER FOR WORKS AND HOUSING, INAH V. UKOI**

Note that the States High Courts (Lagos specifically) cannot transfer a matter, which it lacked jurisdiction to try to the Federal High Court. **S. 22(3) FHC Act** empowers the SHC to transfer cases it has no jurisdiction over to the FHC. However, this has been held to be contrary to **S. 274 CFRN** which empowers the chief judge of a state to make laws that govern practice and procedure of the SHC, subject to any law made by the State House of Assembly.--**FASAKIN FOODS (NIG) LTD V SHOSANYA.**
FHC TO MAGISTRATE COURT (YES): **S. 26 FHC ACT**

TRANSFER OF CASES FROM MAGISTRATE COURT TO FHC: **S. 27 FHC ACT.** This section cannot validly prescribe the practice and procedure to be followed in the magistrate court. For a court to validly transfer a case to another court, it must be validly empowered by its own rules to do so.---**FASAKIN FOODS(NIG.) LTD V SHOSANYA**.

SUMMARY

FHC---SHC (YES)

SHC—FHC (NO)

FHC---MC (YES)

MC--FHC (NO)

NIC---FHC (YES)

NB: The Effect of Striking Out Order and an Order of Dismissal by the Courts

If a matter is struck out, it means it can be relisted if the grounds for which the Order was made have been remedied. Conversely, a case is dismissed after its hearing and the Court holds that it

discloses no cause of action. The case when dismissed cannot be re-listed otherwise it becomes an abuse of Court process.

4. STATE HIGH COURT AND THE HIGH COURTS OF THE FCT

S. 272(1) CFRN and S. 257(1) CFRN respectively. Can assume jurisdiction in any civil proceeding concerning the existence or extent of any legal right, power, duty, liability, privilege, interest, obligation or claim subject to the exclusive jurisdiction of the FHC and NIC.

They also have appellate jurisdiction over decisions of Magistrate/District Courts, Area Courts, Customary Courts. They also have jurisdiction over cases stated from Magistrate/District courts.

The courts have supervisory jurisdiction over actions of lower courts and this is usually exercised by way of mandamus, injunctive reliefs, certiorari, habeas corpus etc

Transfer of cases

In Lagos, nothing says that the court should transfer any case improperly filed to the FHC or other court of competent jurisdiction (except to a MC) notwithstanding the provisions of the FHC Act. Thus, the proper thing to do is for the court to strike out the matter.

However, in Abuja, the judge of the HC of the FCT has the power to transfer matters to a court with competent jurisdiction.---**ORDER 41 RULE 6 ABUJA, 2018.** It should be noted that both courts can transfer cases transfer to a Magistrate/District court and have cases from lower courts transferred to both---**ORDER 41 RULE 1 ABUJA 2018; ORDER 41 RULE 1 LAGOS 2019.**

NB: The subject matter, claim or relief sought determines jurisdiction

5. NATIONAL INDUSTRIAL COURT

It has exclusive jurisdiction in **civil** causes and matters to try the following

1. Related to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace like conditions of service, health, safety etc
2. Relating to or arising from Factories Act, Trade Dispute Act, Trade Unions Act, Labour Act, Employees' Compensation Act and any Law or Act relating to labour/employment etc
3. Relating to 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
4. Relating to any dispute over the interpretation and application of the provisions of Chapter IV of the Constitution in relation to employment, labour, industrial relations, trade unionism, employer's association or any matter which the Court has jurisdiction to hear
5. Relating to any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith
6. Relating to unfair labour practice or international best practices in labour, employment and industrial relations matters
7. Relating to any dispute arising from discrimination or sexual harassment at workplace

8. Relating to the application or interpretation of international labour standards
9. Connected with child labour, child abuse, human trafficking or any matter related hereto
10. Relating to the determination of any question as to the interpretation and application of any collective agreement, award/judgment of the Court, term of settlement of any trade dispute, award or order made by an arbitral tribunal in respect of trade dispute, trade union dispute or employment dispute as may be recorded in a memorandum of settlement, trade union/ Constitution, dispute relating to any personnel matter arising from any free trade zone in the Federation or any part thereof etc
11. Relating to the payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of an 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
12. Relating to appeals from decisions of the Registrar of Trade Unions, or matters connected to, appeals from decisions or recommendations of any administrative body or Commission of enquiry arising from employment, labour, trade unions or industrial relations;
13. Relating to or connected with the registration of collective agreements; and
14. 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.
    S. 254C(1) CFRN

S. 24(2) NIC ACT empowers the NIC to transfer causes and matters to the High Court or the Federal High Court as appropriate. **ORDER 28 RULE 2 NIC RULES** also make similar provision.

It also has **appellate jurisdiction from decisions of the Registrar of trade unions**—**S.254C(1)(L) CFRN**

Also, it has supervisory jurisdiction over arbitral tribunals, administrative matters, body of enquiries---**S. 254C(3)-(4) CFRN**
NB: There is only one NIC in Nigeria, with judicial divisions all over the country---**S. 21 NIC ACT**

6. MAGISTRATE COURTS
It is established by the State Laws. In the North, they are known as District Courts in the exercise of their civil jurisdictions. In Lagos, there are no grades of Magistrate Courts but the limit of damages or monetary claim that the Court has jurisdiction to impose/award is N10 million.

S. 28(1) (2) of the MCL vests civil jurisdiction over:

a. 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, N10,000,000.00 at the time of filling. **NB: Financial limit for Abuja is N5,000,000**
b. 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 at the time of filling provided that, in all actions, the claimant may in addition, claim arrears of rent and *mesne* profits irrespective of the fact that the total claim exceed ten million naira

c. Appointment of guardian ad litem and to make orders, issues 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.**
d. Actions of recovery of penalties, charges, rates, taxes, expenses, cost of enforcement of statutory provisions, contributions or other like demands, which may be recoverable by virtue of any existing law

It has appellate jurisdiction over appeals from the customary courts---**S. 28(1)(e) MCL**

NB: The Magistrate court does not have jurisdiction in the following matters:

- Title to land or any interest in land
- Validity of a will, bequest or any device in a will

Transfer of cases-can transfer cases between magisterial districts with consent of magistrate.-**S. 32 MCL** or by order and seal of the CJ of the state at any time before judgment**---S. 34 MCL**

7. SHARIA COURTS OF APPEAL FCT AND STATES

NB: In the FCT, **it is compulsory to have it** but for other States of the Federation it can be established by any State that requires it.—**Ss. 275 and 260 CFRN**

It only has appellate jurisdiction from lower Courts (e.g. Area/Sharia Courts) on Islamic Personal Law.----**Ss. 277 & 262 CFRN**

8. CUSTOMARY COURT OF APPEAL OF THE FCT AND THE STATES

NB: In the FCT, it is compulsory to have it but for other States of the Federation it can be established by any State that requires it.--**Ss. 280 & 265 CFRN**

Jurisdiction: It has appellate and supervisory jurisdiction on civil matters involving questions of customary Law---**Ss. 282 & 267 CFRN**

9. ELECTION TRIBUNALS (see the topic on election petition)

S. 285(2) CFRN

10. ECOWAS COMMUNITY COURT OF JUSTICE

The court has ADVISORY JURISDICTION (gives legal advice) and CONTENTIOUS JURISDICTION---**ARTICLE 9 PROTOCOL, ARTICLE 3 SUPPLEMENTARY PROTOCOL**

Who has the right to access the court?

a) Member states

b) Organs of the community/parastatals, Head of states, Council of ministries of state and Heads of commission

c) Individuals and corporate bodies.

Comment [C21]:
NB: Originally, only member states could institute cases and as such in **OLAJIDE AFOLABI v. FRN,** a case filed by a businessman against the government of Nigeria for violation of community law in closing the border with Benin. The court ruled that under the protocol, only member states could institute cases. However, this ruling led to discussions on the need for a change to allow legal and natural persons have a standing before the court. In January 2005, the community adopted an additional protocol to permit persons to bring suits against member states

d) Staff of any of the ECOWAS institution

e) Individual actions of human rights abuse occurring in any member state

f) National courts of various member states or parties before the national courts

g) Authority of Head of states/government-----**ARTICLE 10 PROTOCOL, ARTICLE 4 SUPPLEMENTARY PROTOCOL**

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.

11. SMALL CLAIMS COURT (LAGOS STATE)---discussed extensively in the later part of this note.

USE THIS TO MASTER THE CONSTITUTIONAL SECTIONS IN THIS PART (DECIPHER THE LOGIC HERE)

EGAJS	SC	COA	FHC	NIC	FCT HC	SCOA FCT	CCOA FCT	SHC	SCOA STATE	CCOA STATE
Establishing section	230(1)	237(1)	249(1)	254A(1)	255(1)	260(1)	265(1)	270(1)	275(1)	280(1)
General composition	230(2)	237(2)	249(2)	254A(2)	255(2)	260(2)	265(2)	270(2)	275(2)	280(2)
Appointment section	231	238	250	254B	256	261	266	271	276	281
Jurisdiction	232	239	251	254C	257	262	267	272	277	282
Specific constitution	234	239(2)	253	254E	258	263	268	273	278	283

Comment [C22]:
NB: States subject to the jurisdiction of the ECOWAS Community Court of Justice include: 1. Benin, 2. Burkina Faso, 3. Cape Verde, 4. Cote d' Ivoire, 5. Gambia, 6. Ghana, 7. Guinea, 8. Guinea-Bissau, 9. Liberia, 10. Mali, 11.Mauritania, 12. Niger, 13. Nigeria, 14. Senegal, 15. Sierra Leone and 16. Togo

Comment [C23]:
5. IDENTIFY THE APPROPRIATE COURT TO APPROACH IN A GIVEN CASE (See your tasks)
6. IDENTIFY THE ETHICAL ISSUES THAT MAY ARISE BY COMMENCING AN ACTION IN THE WRONG COURT. (Rules 1 and 14 RPC)—General responsibility and dedication to client's case respectively.

7. IDENTIFY THE LEGAL ISSUES RELATING TO THE WRONG CHOICE OF COURTS AS WELL AS CONSEQUENTIAL SANCTIONS. (jurisdiction of the court is abused. CS is striking out the matter)

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Courts of the same level are said to be courts of_____

A. Concurrent Jurisdiction

B. Coordinate Jurisdiction

C. Civil Jurisdiction

D. All of the above

2. The general composition of the Supreme Court of Nigeria is_____

A. The Chief Justice of Nigeria and a maximum of 21 Justices

B. The Chief Judge of Nigeria and a maximum of 21 Judges

C. The Chief Justice of Nigeria and a minimum of 21 Justices

D. The Chief Judge of Nigeria and a minimum of 21 Judges

3. Courts with the same subject matter jurisdiction are said to be courts of___

A. Concurrent Jurisdiction

B. Coordinate Jurisdiction

C. Civil Jurisdiction

D. None of the above

4. A full court of the Supreme Court of Nigeria is made up of_____

A. 7 Justices

B. 7 Judges

C. 5 Justices

D. 5 Judges

5. The Supreme Court of Nigeria is constituted in full in all except____

A. Interpretation of the CFRN, 1999

B. Fundamental Rights Matters

C. Supreme Court is asked to overrule itself

D. None of the above

6. In any other case where the Supreme Court of Nigeria is not fully constituted, it is specifically constituted by_____

A. 3 Justices

B. 4 Judges

C. 5 Justices

D. 6 Judges

7. The general composition of the Court of Appeal is_____

A. The President of Nigeria and a minimum of 49 Justices

B. The President of the COA and a maximum of 49 Justices

C. The President of the Customary COA and a minimum of 49 Justices

D. The President of the COA and a minimum of 49 Justices

8. Generally, the number of Justices of the COA that specifically constitute the court is_____

A. 1 Justice

B. 2 Justices

C. 3 Justices

D. 4 Justices

9. The general composition of the Federal High Court is___

A. The Chief Justice of the court and no restriction on the number of Justices

B. The Chief Judge of the court and no restriction on the number of Judges

C. No restriction on the number of Justices

D. All of the above

10. The Federal High Court is specifically constituted by _____

A. At least 1 Judge

B. At least 1 Justice

C. At least 2 Judges

D. At least 2 Justices

11. Constitutionally, the official name of the court in 10 above is____

A. Federal High Court

B. Federal High Court of Nigeria

C. Federal High Court of the Federation

D. All of the above

12. The general composition of the National Industrial Court is the____and no restriction on the number of Judges.

A. Chief Judge of the National Industrial Court

B. President of the Nigerian Industrial Court

C. Chief Judge of the Nigerian Industrial Court

D. President of the National Industrial Court

13. The National Industrial Court is specifically constituted by___

A. At least 1 Judge

B. At least 3 Judges

C. At least 2 Judges

D. A or B

14. The general composition of the Sharia Court of Appeal (FCT or State) is____

A. The Grand Khadi and no restriction on the number of Khadis

B. The Grand Kadi and no restriction on the number of Judges

C. The Grand Kadi and no restriction on the number of Kadis

D. All of the above

15. The Sharia Court of Appeal (FCT or State) is specifically constituted by at least___

A. 1 Khadi

B. 1 Kadi

C. 3 Kadis

D. 3 Khadis

16. The general composition of the Customary Court of Appeal (FCT or State) is____

A. The Chief Judge and no restriction on the number of Judges

B. The President of the COA and no restriction on the number of Judges

C. The President of the Customary COA and no restriction on the number of Judges

D. None of the above

17. The Customary Court of Appeal (FCT or State) is specifically constituted by at least_____

A. 1 Justice

B. 1 Judge

C. 3 Justices

D. 3 Judges

18. The High Court of Lagos State's general composition is___

A. The Chief Judge and such number of Judges as may be prescribed by an Act of the National Assembly

B. The Chief Justice and such number of Judges as may be prescribed by an Act of the National Assembly

C. The Chief Judge and such number of Judges as may be prescribed by a Law of the House of Assembly of the State

D. The Chief Judge and such number of Judges as may be prescribed by a Law of the House of Assembly of a State

19. The High Court of a State is specifically constituted by at least____

A. 1 Judge

B. 2 Judges

C. 3 Judges

D. None of the above

20. The general composition of Election Tribunals is___

A. The Chairman and 1 member

B. The Chairman and 2 members

C. 3 members

D. None of the above

21. The general composition of the ECOWAS Community Court of Justice is___

A. 7 Independent Justices

B.7 Justices

C. 7 Independent Judges

D. 7 Judges

22. The ECOWAS Community Court is specifically constituted by___(to form a quorum)

A. The President of the court and at least 2 Justices

B. The President of the court and at least 2 Judges

C. The President of the court and at least 1 Justice

D. The President of the court and at least 1 Judge

23. In Lagos, the Magistrate Court is generally composed by___

A. 3 Magistrates

B. As many Magistrates as possible

C. 4 Magistrates

D. 5 Magistrates

24. In Lagos, the Magistrate Court is specifically constituted by___

A. 1 Magistrate

B. 4 Magistrates

C. As many Magistrates as possible

D. 5 Magistrates

25. The CJN and JSCs are appointed by the President on the recommendation of the____

A. Nigerian Judicial Council

B. National Justice Council

C. National Judicial Commission

D. National Judicial Council

26. The appointment in 25 above of the ____is subject to confirmation by the_____

A. CJN only/Senate

B. All Justices/National Assembly

C. All the Justices/Senate

D. Senate/All the Justices

27. The qualification for becoming a JSC is_____

A. 15 years post call experience

B. 14 years post call experience

C. 13 years post call experience

D. 12 years post call experience

28. The CJN is removed by the President on_____

A. An address supported by 2/3 majority of the National Assembly

B. An address supported by 2/3 majority of the House of Representatives

C. An address supported by 2/3 majority of the Senate

D. The recommendation of the NJC

29. The JSCs are removed by the President on_____

A. An address supported by 2/3 majority of the National Assembly

B. An address supported by 2/3 majority of the House of Representatives

C. An address supported by 2/3 majority of the Senate

D. The recommendation of the NJC

30. The qualification for becoming a JCA is_____

A. 15 years post call experience

B. 14 years post call experience

C. 13 years post call experience

D. 12 years post call experience

31. The President of the COA and other JCAs are appointed by the President on the recommendation of the NJC and____appointment is subject to the confirmation of the_____

A. President only/Senate

B. All Justices/National Assembly

C. President only/National Assembly

D. Senate/President only

32. A Judicial officer appointed to the SC or COA may retire at the age of___and shall cease to hold office at the age of_____

A. 70/65

B. 65/70

C. 75/65

D. 65/75

33. The qualification for appointment as FHC, SHC and HC FCT Judge is_____

A. 8 years post call experience

B. 10 years pre call experience

C. 10 days post call experience

D. None of the above

34. The qualification for appointment as a Judge of the NIC is____

A. 10 years post call

B. 10 years post call or having considerable knowledge in the law and practice of industrial relations/employment conditions in Nigeria

C. 10 years post call and having considerable knowledge in industrial relations/employment conditions

D. 10 years post call and having considerable knowledge in industrial relations/employment conditions in Nigeria

35. Magistrates in Lagos State are appointed by the_____

A. Governor of Lagos State

B. Lagos Service Judicial State Commission

C. Lagos State Judicial Service Council

D. None of the above

36. The qualification for appointment as a Magistrate in Lagos State is____

A. 2 years post call experience

B. 3 years post call experience

C. 4 years post call experience

D. 5 years post call experience

37. Magistrates in Lagos are removed by____

A. The Governor on the recommendation of the NJC

B. The Governor on the recommendation of the Lagos State Judicial Service Commission

C. The Lagos State Judicial Service Commission

D. None of the above

38. A legal practitioner who wishes to be appointed a Kadi of the Sharia COA (FCT or State) must have/be____

A. 10 years post call experience

B. 10 years post call experience with a recognized certificate in Islamic Law

C. An Islamic scholar from an approved institution with an experience of not less 12 years

D. All of the above

39. An individual/non-lawyer who wishes to be appointed a Kadi of the Sharia COA must have/be____

A. 10 years experience

B. 12 years experience

C. An Islamic scholar from an approved institution with an experience of not less 12 years

D. None of the above

40. One of these is a condition for appointment as a Judge of the customary COA

A. 10 years post call experience with recognized certificate in customary law

B. 10 years post call experience with considerable knowledge and experience in the practice of customary law

C. In NJC's opinion, considerable knowledge and experience in the practice of customary law

D. B or C above

41. The Chairman and other members of an election tribunal are appointed by the____

A. President of Nigeria

B. President of the COA

C. President of the customary COA

D. The Governor

42. One of these is not qualified to be a member of an election tribunal

A. Judge of a High Court

B. Chief Magistrate

C. Judge of Area Court

D. Judge of customary COA

43. Appointment of Judges of the ECOWAS Community Court of Justice is by the____

A. Authority of Head of States

B. Authority of Heads of Parliament

C. A or B

D. None of the above

44. Judges of the ECOWAS Community Court of Justice are appointed for___

A. 1 year

B. 2 years

C. 3 years

D. 4 years

45. All these are Judicial Divisions in Lagos State except___

A. Ikoyi

B. Ikeja

C. Epe

D. Badagry

46. All these are Judicial Divisions in Abuja except____

A. FCT

B. Gwagwalada

C. Bwari

D. Maitama

47. The FRN and Lagos State are in a dispute over the amount of allocation to be remitted to Lagos State from the Federation Account. The matter is to be brought before the_____

A. FHC

B. COA

C. SC

D. HC of Lagos State

48. Lagos State and Oyo State are contesting the delineation of a major boundary at the Lagos-Ibadan express way. The matter is to be brought before the____

A. HC of Oyo State

B. HC of Lagos State

C. COA

D. Supreme Court

49. Constitutionally, the official name of the apex court in Nigeria is the_____

A. Supreme Court

B. Supreme Court of Nigeria

C. Supreme Court of the Federal Republic of Nigeria

D. Supreme Court of the Federation

50. Disputes between the National Assembly and either the President of the FRN, State HOA or State Government is to be brought before the_____

A. Supreme Court

B. Court of Appeal

C. Federal High Court

D. None of the above

51. Before the matter in 50 above can be brought before the appropriate court, the National Assembly must pass a resolution by way of_____(of members present and voting)

A. Simple majority

B. 2/3 majority

C. ¾ majority

D. Absolute majority

52. Election petitions as to the validity of election of the President or Vice-President, term of office, ceassation of office and vacancy of office of the President or Vice-President, is to be brought before the____

A. Court of Appeal

B. Federal High Court

C. Supreme Court

D. None of the above

53. The reference of a case by a lower court to a higher court for a decision that will become binding on the lower court is known as_____

A. Appeal

B. Judicial Review

C. Case stated

D. Referencing

54. Appeals from the National Industrial Court are restricted to____

A. Fundamental Human Rights

B. Criminal matters

C. B and A above

D. None of the above

55. Appeals from the National and State House of Assembly Election Tribunals end at the_____

A. Supreme Court of Nigeria

B. Court of Appeal

C. Federal High Court

D. State High Court

56. Appeals from the National Industrial Court end at the____

A. Supreme Court

B. Court of Appeal

C. Customary Court of Appeal

D. Federal High Court

57. The Court with the original jurisdiction to decide whether the term of office or seat of a member of the Senate or House of Representatives has ceased or become vacant is the_____

A. State High Court

B. Federal High Court

C. Court of Appeal

D. Supreme Court

58. ____has the effect of allowing the matter to be relisted upon remedying the ground for the order, whereas____has the effect of not allowing the natter to relisted.

A. Striking out order/Dismissal order

B. Dismissal order/Striking out order

C. Striking out order/Non-suit order

D. Non-suit order/Striking out order

59. In Lagos State, where the High Court lacks competence to try a case, the proper thing to do is to____

A. Strike out the matter

B. Dismiss the matter

C. Non-suit the matter

D. Transfer the matter

60. In Abuja, where the High Court lacks competence to try a case, the proper thing to do is to____

A. Strike out the matter

B. Dismiss the matter

C. Non-suit the matter

D. Transfer the matter

61. At the National Industrial Court, where the Court lacks competence to try a case, the proper thing to do is to____

A. Strike out the matter

B. Dismiss the matter

C. Non-suit the matter

D. Transfer the matter

62. Appeals from the Registrar of Trade Unions go to the_____

A. Court of Appeal

B. Federal High Court

C. National Industrial Court

D. State High Court

63. The Federal High Court, the State High Court, the National Industrial Court, the Sharia COA and the Customary COA are all regarded as courts of____

A. Coordinate jurisdiction

B. Concurrent jurisdiction

C. Appeal only

D. None of the above

64. The financial limit of Magistrate Courts in Lagos is____, whereas that of District Courts in Abuja is____

A. N5,000,000/N10,000,000

B. N10,000,000/N5,000,000

C. N500,000/N100,000

D. N100,000/N500,000

65. In Lagos, appeals from customary courts go to____

A. Customary Court of Appeal

B. High Court of Lagos State

C. Magistrate Court

D. Small Claims Court

66. In Lagos, cases can be transferred between magisterial districts with the /by the___

A. Consent of the Magistrate

B. Order and seal of the Chief Judge of the State

C.A or B above

D. None of the above

67. It is not compulsory to be have a Sharia/Customary COA in all except___

A. FCT, Abuja

B. Lagos State

C. A and B above

D. None of the above

68. The Lagos State Small Claims Court Practice Direction was made by the___

A. Chief Justice of Lagos State

B. Chief Magistrate of Lagos State

C. Chief Judge of Lagos State

D. None of the above

69. Where the Governor of a State appoints the most Senior Judge of the High Court to perform the functions of the Chief Judge on ground of vacancy office or the incapacity of the person holding the office, it shall be for a period of____

A. 1 month from the date of appointment

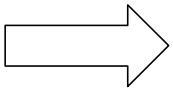
B. 2 months from the date of appointment

C. 3 months from the date of appointment

D. 4 months from the date of appointment

ANSWERS

1. **B**
2. **A**
3. **A**
4. **A**
5. **D**
6. **C**
7. **D**
8. **C**
9. **B**
10. **A**
11. **A**
12. **D**
13. **D**
14. **C**
15. **C**
16. **C**
17. **D**
18. **C**
19. **A**
20. **B**
21. **C**
22. **B**
23. **B**
24. **A**
25. **D**
26. **C**
27. **A**
28. **C**
29. **D**
30. **D**
31. **A**
32. **B**
33. **D**
34. **D**
35. **D**
36. **D**
37. **C**
38. **B**
39. **C**
40. **D**
41. **B**
42. **C**
43. **A**
44. **D**
45. **A**
46. **A**
47. **C**
48. **D**
49. **B**
50. **A**
51. **A**
52. **A**
53. **C**
54. **D**
55. **B**
56. **B**
57. **B**
58. **A**
59. **A**
60. **D**
61. **D**
62. **B**
63. **A**
64. **B**
65. **C**
66. **C**
67. **A**
68. **C**
69. **C**



3. PARTIES TO A CIVIL ACTION

1. STATE THE PERSONS THAT CAN SUE AND BE SUED AT LAW

For the action to be competent, both parties must be legal persons (whether natural or juristic). If the competence of the claimant is challenged, the onus is on him to establish his competence as lack of competence on the part of the claimant will lead to the action being struck out. In **SHITTA & ORS v. LIGALI & ORS** the plaintiffs described themselves as "the executive community of the central mosque, Lagos," the court held that the committee had no capacity to sue. However in **ADEGBITE & ORS V LAWAL & ORS**, the plaintiffs sued 'for themselves and on behalf of the Muslim community of Ijebu-Ode central mosque and the court held that they were natural persons.

Who can sue and be sued?---NEST FURR DIL

- **Natural or Artificial persons:** Thus, non-existent persons cannot sue or be sued. If the defendant is not a legal person, the matter will be struck out for it is incompetent---**AGBOMAGBE BANK V. GENERAL MANAGER, G.B. OLLIVANT.** However, in the case of a **misnomer**, the position of the law is that upon an application, the writ and other court processes will be amended to bear the correct name.---**OKECHUKWU & SONS v. NDAH**. Thus, amendment is granted only where the wrong name is used in relation to a juristic person, thus considered a misnomer.
  NB: The natural or artificial person must be living/existent for an action to be brought against them.
- **Estate of deceased**
- **Statutory bodies---IBRAHIM V. JUDICIAL SERVICE COMMISSION**
- **Trade Unions----BONSOR V. MUSICIAN'S UNION**
- **Firms/Partnerships---IYKE MED. MERCHANDISE V. PFIZER INC.**
- **Unincorporated associations**
- **Registered associations**
- **Registered Business names---OKECHUKWU & SONS V. NDAH**
- **Donee of a power of attorney**
- **Infants----SOFOLAHAN V. FOWLER**
- **Lunatics**

2. NAME THE APPROPRIATE PARTIES IN RESPECT OF ANY CAUSE OF ACTION AND DISCUSS THE CAPACITY IN WHICH PARTIES SUE OR ARE SUED

Scenarios

1. Mr L is the executor of the estate of Chief G and intends to sue Ritzmz Nig Ltd which is owned by Mr O for trespass with respect to Plot 213 Ikoyi belonging to Chief G's estate.

BETWEEN
Mr L
(suing as executor to the estate of Chief G, deceased)……**CLAIMANT**

AND

Ritzmz Nig Ltd….. …….**DEFENDANT**

2. Acting under a power of attorney given to him by Miss Sally Harris, Mr Dibia wants to file an action for recovery of premises against Mrs Abike George

BETWEEN
Miss Sally Harris
(suing through her lawful attorney, Mr Dibia)……**CLAIMANT**

AND

Mrs Abike George…….**DEFENDANT**

3. **The Redeemers Christian Church of God intends to bring an action for defamation against Vanguard Nig Ltd whose editor Mr Portua wrote an article about the church.**

BETWEEN
The Incorporated Trustees of the Redeemers Christian Church of God….. **CLAIMANT**

AND

1. Vanguard Nig Ltd
2. Mr Portua……**DEFENDANTS**

4. Figure Consult an accounting firm made up of Messrs Obi, Chukwura, Chukwudi and Onome as partners intends to sue Logo corporation international for their professional fee
3 ways to sue

BETWEEN

Figure Consult…. ……**CLAIMANT**

OR
1. Messrs Obi,
2. Chukwura
3, Chukwudi
4. Onome …….**CLAIMANTS**

OR

Messrs Obi & Chukwura (suing on behalf of Figure Consult) ….. **CLAIMANTS**

AND

Logo Corporation International…. **DEFENDANT**

5. Jacob Olumo alias Jay Jones wants to sue Central Bank of Nigeria for wrongful termination of employment

BETWEEN
Jacob Olumo
(also known as Jay Jones) ……..**CLAIMANT**

AND

Central Bank of Nigeria ….. ……**DEFENDANT**

6. Rose Kalu, a legal practitioner facing the disciplinary committee of the NBA intends to sue the association for breach of her fundamental rights

BETWEEN
Rose Kalu……**CLAIMANT**

AND

Registered Trustees of the Nigerian Bar Association….**DEFENDANT**

7. Fashola Odibo has been denied admission into the Nigerian law school. He intends to sue the institution for breach of his right to education

BETWEEN
Fashola Odibo…….**CLAIMANT**

AND

Council of Legal Education.....**DEFENDANT**

8. Obi, a patient at Uselu Psychiatric Hospital Lagos wants to sue his former employer Casa Bank Plc for his unpaid severance benefits

BETWEEN
Mr Obi
(suing through his guardian, Tony Ramal)……**CLAIMANT**

AND

Casa Bank Plc ……**DEFENDANT**

9. Tega who is a 12 yr old pupil of Army Day Secondary School Abuja was assaulted by James as a result of which she lost the use of one of her eyes. She wants to sue

BETWEEN
Tega (An infant)
(suing through her guardian, Mrs Okoro)……**CLAIMANT**

AND

James……**DEFENDANT**

10. The Bwari market women intends to bring an action against the Bwari Area Council for wrongly marking the market for relocation and they seek to obtain an injunction restraining the council from relocating the market. Mrs Agidigba & Mrs Abdulateef are their spokespersons

BETWEEN
1. Mrs Agidigba
2. Mrs Abdulateef
(suing as spokespersons, for themselves and on behalf of the Bwari Market Women)……**CLAIMANTS**

AND

The Bwari Area Council……..**DEFENDANT**

11. The University of Abuja intends to sue the National Universities Commission for wrongful de-accreditation of some of their faculties

BETWEEN
The University of Abuja …. ……..**CLAIMANT**

AND

The National Universities Commission…**DEFENDANT**

12. Alhaji Danjuma executed a contract for the Ministry of Commerce who failed to pay him for the contract sum

BETWEEN
Alhaji Danjuma ……**CLAIAMANT**

AND

1. Attorney General of the Federation
2. The Ministry of Commerce …….. **DEFENDANTS**

13. Action by a liquidator

BETWEEN
CUNDY SMITH NIG LTD
(A company under liquidation, suing by MR KENECHUKWU ANEKE,
the liquidator of CUNDY SMITH NIG LTD)----------….**CLAIMANT**

AND

MASCO NIG LTD……**DEFENDANT**

NB: Any claim if successful must be against another party and such party must be the person who claims can be recovered from. There are usually two parties in a civil action, the party who is claiming and the party who is being claimed against. Generally, a party cannot be both claimant and defendant in the same action at the same time.--**UDE v. NWANGWU**

3. EXPLAIN THE EFFECTS OF SUING OR BEING SUED IN A WRONG CAPACITY

1. Whatever judgment the court gives only binds the right parties in court.
2. If the proper parties are not before the court, the matter will be struck out.
3. The time of the court and that of the client will be wasted and costs will be borne.

4. EXPLAIN THE PROCEDURES FOR BRINGING PROCEEDINGS BY OR AGAINST VARIOUS CLASSES OF PARTIES AND REPRESENTATIVE SUITS

(a) Classification of parties

1. Proper Parties: A proper party has no interest in the case and the matter can be completely, effectually, logically and conclusively determined without the person, but such a person is joined as a party because of the particular role he played which led to the cause of action. The judgment of the court will not affect this party---**GREEN v. GREEN**

2. Desirable Parties: A desirable party is one who has an interest in the case and that interest notwithstanding, the court can completely, effectually, logically and conclusively decide the matter without such a person. Thus, a DP need not be joined as a party to the suit as it is not compulsory that he must be joined. It is only desirable that they be joined because the court is to make a pronouncement that will affect their interest.----**GREEN V. GREEN, PEENOK INVESTMENT LTD. V. HOTEL PRESIDENTIAL LTD.** Note that the AGENT of a disclosed principal is a desirable party.

3. Nominal Parties: These are parties who are not really involved in the set of facts constituting the cause of action, but are made parties to the suit by virtue of the office they hold or occupy---**PADAWA v. JATAU.** For example, in actions involving the federal government or the government of a state, the AG of the federation or of the state respectively is the nominal party---**S. 20 SUPREME COURT ACT;** and in actions involving the House of Assembly of a State, the nominal party is the Speaker of the House, **S. 3 SC (AOJ) ACT**; in an action for passing off, the **CAC is a nominal party;** in Magistrate Courts, the Commissioner of Police is a nominal party

for the state. However in a case where the principal parties sue or are sued instead of the nominal parties, it would only amount to an irregularity----**PLATEAU STATE v. AG FEDERATION**

4. **Necessary Parties**: These are persons who are interested in subject matter and in whose absence, the proceeding cannot be fairly dealt with.---**GREEN v. GREEN**. Thus, a necessary party is a party whose presence is necessary for the just, effectual and complete determination of all the issues in the action. When an agent acts on behalf of a disclosed principal, the PRINCIPAL is a necessary party. In all actions, necessary parties are used except where the law specifies a nominal party.

NB: The basis of categorization is dependent on the interest of such persons---**OGUN STATE GOVT. V. DALAMI NIG. LTD.**

How parties are designated (LAGOS AND ABUJA)

- Writs of summons –Claimant/Defendant
- Originating summons –Claimant/Defendant
- Petition – Petitioner/Respondent
- Originating motions-Applicant/Respondent

The same person can be both a claimant and defendant (in case of counter-claim) in the same matter; also an applicant and respondent.

(b) Representative Actions---ORDER 13 RULE 14 ABUJA 2018; ORDER 15 RULE 12 LAGOS 2019

Essence

- Curtail multiplicity of suits
- Saves cost and time.
  ADELEKE V ANIKE

A representative action is an action brought by two or more persons as representatives of a group of persons having a common grievance and the same interests in an action. The reason or purpose of representative capacity is for the convenience of both the parties and the court. Applies to both the claimant and defendant.

Factors to be considered ---CRI

- Cause of action is the same
- Relief sought must be the same
- Interest is the same/joint
  ALFRED NWANGUMA& ORS V IKYAANDE& ORS.

Procedure (mode) for bringing a representative action

1. Leave of court: The rules in Lagos and Abuja do not expressly provide for the claimant to obtain leave before suing in a representative capacity. However, in practice in Lagos and Abuja,

the leave of the court is still needed in order to sue in a representative capacity and this is by way of MEP + A + WA (Motion Ex Parte supported by an Affidavit and a Written Address)

As per defending in a representative capacity, the rule in Lagos does not provide for leave to defend in a representative capacity whereas Abuja made a rule for the leave before defending in a representative capacity. In practice in Lagos, leave of the court is needed before defending in a representative capacity.

However, in **ANABARAONYE v. NWAKAIHE**, it was held that although it is desirable to seek leave of court to sue in a representative capacity, failure to obtain the leave is not fatal and will not vitiate the action.

2. Written Authority: This must be obtained from those sought to be represented by those seeking to represent.

3. Court Processes: The representative capacity must be represented in all the court processes

NB: Any challenge to suing or being sued in a representative capacity must be brought timeously by way of a preliminary objection and not a statement of defence---**WALI V AMAEFULE**

Effect of Representative Action

The decision in a representative action binds every member being represented and those representing.---**THESY OKPEBIYI V. SHITTU**

Sample Draft

BETWEEN

1. Emeka ABC

2. Ebuka ABC

(Suing for themselves and on behalf of the family of ABC)----------**CLAIMANT**

AND

XYZ……**DEFENDANT**

5. DISCUSS THE SCOPE OF CLASS ACTIONS

It is usually used where a wrong affect wide spectrum of persons. The difference between class action and representative action is that in the latter, persons involved are identifiable unlike class action where the persons involved are not determinable and is restrictive in nature.

Where in any proceedings, the person or class of persons or members of that class interested in the subject matter cannot be ascertained; or if ascertained, cannot be found, or if ascertained and found, it is expedient that one or more of them be appointed for the purpose of representing the class, the judge may make the appointment of such persons for the purpose of proceedings and the decision of the court shall bind all the persons so represented---**ORDER 13 RULE 15(1) ABUJA 2018; ORDER 15 RULE 13(1) LAGOS 2019**

In Lagos, bringing of action under class action is restricted to proceedings concerning:---**CAT Land**

- Construction of any written instrument including a statute.
- Administration of an estate;
- Trust property: Property subject to a trust;
- Land held under customary law as family or community property or

In Abuja, the scope is wider than that of Lagos, as it relates to the above four in Lagos plus

- Torts or any other class action

The fundamental idea of this procedure is to remedy wrongs that may have been done to a large group of people not necessarily known to each other, which will make it impossible or impracticable for the court to entertain each individual's claims.

Class actions make it possible for all unascertained persons to subsequently take benefit of the suit when they become ascertained.

Procedure (mode)

Apply for appointment as a representative of the class by way of **MEP + A + WA**

NB: Where the court has made the appointment, the court processes will be served on those that were appointed. NB: In Lagos, court processes are served only on the persons appointed---**ORDER 15 RULE 13(2) LAGOS 2019**. In Abuja, it involves the mode in Lagos plus publication in a national daily---**ORDER 13 RULE 15(2) ABUJA 2018**

Effect of class action

Binding on everyone connected to that class even those that are not ascertainable or cannot be found so that when they are ascertained and can be found, they reap the fruit of the action.

Differences between Rep Action and Class Action

- The number of persons involved in a Representative action are identifiable whereas in a class action such persons cannot be easily ascertained.
- In a REP Action there is need for authority from the persons to be represented, whereas in a class action no need for authority
- In a Rep action leave of the court is sought, whereas in a class action no need for leave.

6. EXPLAIN THE PROCEDURE FOR JOINDER, NON-JOINDER, MISJOINDER AND ALTERATION OF PARTIES

(a) Joinder of Parties

This happens when two or more persons come together as claimants---**ORDER 15 RULE 1 LAGOS 2019, ORDER 13 RULE 1 ABUJA 2018** or jointly defending an action---**ORDER 15 RULE 4 LAGOS 2019, ORDER 13 RULE 4 ABUJA 2018**

The reasons or purposes of joinder

- To avoid multiplicity or duplicity of actions and avoid undue delay that may be occasioned by overloading the justice system with multiple suits.
- To ensure that all the necessary parties that ought to be part of the action are made parties to the action.
- Save time and avoid abuse of court process.
  OGBOLO V FUBARA; AGAH & ORS V ONAH &ORS

Factors to be considered----CRE (in addition to CRI being the same--- **AMACHREE & ORS v. NEWINGTON)**

- **Counter-claim rule**: Whether any of the defendants has a good ground for counter-claim against any of the claimants which may embarrass and delay the other party.
- **Relative poverty** of any of the parties vis-à-vis each other
- **Evidence rule**: Whether the parties are likely to put up conflicting evidence/claim between themselves.

NB: A situation may arise where the claimant is in doubt as to whom he is entitled to claim relief from; that is, who the **appropriate** defendant is. In such situations, **ORDER 15 RULE 8 LAGOS 2019, and ORDER 13 RULE 8 ABUJA 2018** provide that where the claimant is in doubt as to whom he is entitled to redress from, the claimant may sue both or all of the possible defendants, leaving the court to determine the liability or otherwise of each defendant and the extent of such liability. Where the claimant adopts this procedure, the court may issue a **BULLOCK ORDER,** as established in the case of **BULLOCK v. LONDON GENERAL OMNIBUS CO**, which compels the claimant to pay the costs of the innocent defendant and order the liable defendant to reimburse the claimant in addition to paying the claimants own costs and damages. This principle was applied in the Nigerian case of **EKUN & ORS V. YOUNAN & SONS & ANOR**

In considering whether a person should be joined as co-defendant, it must be noted that a person against whom no right to relief exists and against whom the claimant has no cause of action should not be joined as a co-defendant.---**ADEFARASIN v. DAYEKH; AROMIRE v. AWOYEMI.** Therefore, in deciding whether to join a person as co-defendant or not, the questions which should agitate the mind of the court where stated in **GREEN v GREEN**, and they are as follows:

a. Is the cause or matter liable to be defeated if the person is not joined?
b. Is it possible for the court to adjudicate on the cause of action, set-off, without the person being joined either as claimant or defendant?
c. Is the party or person a person who ought to have been joined ab initio?
d. Can the person partake sufficiently in the matter as a mere witness?

Procedure for application

Application for joinder whether as claimant or as co-defendant is by MOTION ON NOTICE, SUPPORTED BY AFFIDAVIT AND WRITTEN ADDRESS (MON + A + WA)

(b) Non-Joinder of parties

Where there is a failure to join a person who ought to have been joined as a party.

Effect of non-joinder

The case will not be struck out.---**ORDER 15 RULE 16(1) LAGOS 2019, ORDER 13 RULE 18(1) ABUJA 2018; OSONDU V SOLEL BONEH(NIG) LTD.** It is a procedural irregularity**.** However, the party not joined will not be bound by the decision of the court.

Procedure for adding parties in cases of non-joinder

MON + A + WA—**ORDER 15 RULE 17 LAGOS 2012, ORDER 13 RULE 19 ABUJA 2018**

These documents (MONAWA) must be served on person joined together with the following

- Statement of claim or defense,
- Deposition of witnesses on oath
- Documents to be relied upon.----**ORDER 15 RULE 16(5) LAGOS 2019, ORDER 13 RULE 18(5) (20) ABUJA 2018**

Steps to take when parties are joined

- All parties have to rectify/ amend their originating processes to reflect the joinder.
- File an amended originating process
- Cause the new defendant to be served with the processes as if he were an original defendant.

Stage or time at which joinder may be ordered

a) Preferably before hearing
b) During hearing
c) It can be ordered even on appeal.----**EZENWA v. MAZELI &Ors; ODAHE v. OKUJENI.**

(c) Mis-joinder of parties

When a party has been improperly joined to a suit.---**ORDER 15 RULE 16(1)(2) LAGOS 2019, ORDER 13 RULE 18(1) ABUJA 2018.** When it is clear that a mis-joinder has occurred, the court may either suo moto or upon application by a party make an order striking out the name of the party so wrongly joined

Effect of Mis-Joinder

It is not fatal to the action----**OSONDU V SOLEL BONEH(NIG) LTD.**

Procedure

MON + A + WA

(d) Parties by intervention

This is a type of joinder known as "joinder by intervention". Here, a person who was not originally made a party to the suit may apply to be joined as party either as co-claimant or as co-defendant. Such a party joined by his own intervention is called an "intervener".---**ORIARE v. GOVERNMENT OF WESTERN REGION & ORS.**

Essence of intervention

To prevent the principle of estoppel from applying.

Procedure

MON + A + WA

The affidavit must disclose the reasons why he seeks to be joined and **must satisfy the conditions for joinder by intervention; and it must be served on all existing parties to the suit.** It is drafted like the normal application for joinder with necessary modifications.

Conditions for granting the application---FEJI

1) **First instance**: The intervener ought to have been joined as a party in the first instance
2) **Effectual adjudication:** The joinder of the intervener is necessary to enable the court effectually and completely adjudicate on and settle all the issues in the case.
3) **Judgment:** That the intervener is a necessary party as whatever judgment to be given in the matter will affect him as a party-- **OYEDEJI v. ISHOLA**
4) **Interest**: The intervener must have an interest he wants to protect.

Instances where joinder by intervention is usually granted

- **Matrimonial causes:** Proceeding for the custody of a child where both parents are of bad character. Any relation can come and apply for custody as an intervener
- **Probate actions:** There is probate intervention---**SHOLANKE V OBED** (The AG on behalf of the state can intervene where a deceased left no will and the estate is fighting over the deceased properties)
- **Land matters** (A landlord can intervene in an action in relation to his land brought by a licensee)
- **Representative actions** (an action brought on behalf of an infant can be taken over by such infant when he comes of age)

NB: One can be a party by intervention even on appeal provided leave of the court is sought---**LAIBURU V BUILDING AND CIVIL ENGINEERING LTD.**

(e) Alteration/change of parties

ORDER 15 RULE 29 LAGOS 2019, ORDER 13 RULE 31 ABUJA 2018

In the course of proceedings, events may occur which may necessitate a change in parties. For instance:

- Death
- Bankruptcy
- Marriage
- Assignment or devolution of interest.

Death of a party

- Where the cause of action is a personal one such as defamation, false imprisonment, breach of promise to marry, unlawful termination of employment, the action abates with the person.
- However, where the cause of action survives the person eg an action for breach of contract, recovery of debt, an application can be made to the court for the substitution of the personal representatives of the deceased party.--- **MBADINUJU V EZUKA.**

Procedure/Mode of Application

MEP + A + WA

NB: THE NAME OF THE DECEASED WILL BE SUBSTITUTED WITH THAT OF THE PR

ABC

(Suing as personal representative to the estate of Olomouc Odofin, deceased).

MARRIAGE: No changes to be made (substitution is at the option of the married woman)

BANKRUPTCY: A bankrupt has legal capacity to sue and be sued in all personal actions. However, under section 58(1)(b) of the Bankruptcy Act, where the action **relates to the property of the Bankrupt,** he lacks capacity to sue and be sued. Thus, under those provisions, in any action relating to the property or proprietary interest of the bankrupt, his **trustee in bankruptcy** can sue and defend on behalf of the bankrupt.

7. DISCUSS THE PRINCIPLES AND SCOPE OF THIRD PARTY PROCEEDINGS.

A third party proceeding is a procedure usually used a defendant only or a claimant who has become a defendant to a counterclaim. It is an action in which a defendant claims to be entitled to relief or indemnity from a third party or that such third party may bear eventual liability with him either in the form of indemnity or contribution, to reduce liability to the claimant.---**ORDER 15 RULE 19 LAGOS 2019, ORDER 13 RULE 21 ABUJA 2018.**

Procedure

Apply for leave of the court by way of MEP + A + WA to issue a third party notice to such person and where it appears to a judge that any person not a party in the proceedings may bear eventual liability either in whole or in part, the judge may upon an application ex parte allow that person to be joined as a third party by any of the defendants. The application shall state the

grounds for the applicant's belief that such third party may bear eventual liability.—**OKAFOR v. ACB LTD; UBN LTD v. BISI EDIONSERI; SUN INSURANCE LTD v. OJEMUYIWA.**

A perfect example of third party proceedings is applying to join an insurance company to pay indemnity or bear eventual liability; OR a tort feasor can join other joint tort-feasors by way of third party proceedings to recover contribution and indemnity from them.

When the application for leave is granted, the following are served on the third party:

- Order of the court
- Third party notice
- All court processes

When served with TPN, the TP is to enter appearance.

Time for entering of appearance by third party

In Lagos, the third party may enter appearance **within 8 days** or **within 30 days** if he resides or carries on business outside jurisdiction----**ORDER 15 RULE 20 LAGOS 2019**. In Abuja, the third party may enter appearance **within 8 days** and not later than **35 days** if he is outside jurisdiction—**ORDER 13 RULE 21 ABUJA 2018**

Effect of failure to Appear

Where the third party has been served with the third party notice and he does not enter an appearance or file pleadings as required, he shall be deemed to **have admitted the claims on the Third Party Notice and shall be bound by all the decisions in the proceedings, whether by consent or otherwise.----ORDER 15 RULE 21 LAGOS 2019, ORDER 13 RULE 23 ABUJA 2018**

NB: A third party is to be designated as such on the court processes and not to be made a co-defendant- **SOYINKA V. ONI**

Differences between joinder of parties and third party proceedings

- Third party proceedings is only available to a defendant while joinder of parties can be applied for either by the parties or the court suo moto, or even by the party seeking to be joined as in the case of joinder by intervention
- The application for third party proceeding is by MOTION EX PARTE, for joinder, it is MOTION ON NOTICE.
- Third party proceeding can only be applied for only before judgment while joinder of parties can be at any time even on appeal.
- The third party proceeding is between the defendant and the third party thus not a party to the main suit, while in joinder the person joined is a party to the main suit.

8. DRAFT THE VARIOUS APPLICATIONS ON PARTIES

(Practice your motions with special attention to the prayers)*

KEY TO MASTERING THE RULES UNDER PARTIES TO A CIVIL ACTION (PLEASE PAY CLOSE ATTENTION)

Parties in Abuja and Lagos are generally under ORDER 13 (ABUJA 2018) and ORDER 15 (LAGOS 2019). This is the foundation. Now let's build! **NB:** Abuja rules under this order are ahead of Lagos by 2. Thus, if, for example, we have ORDER 13 RULE 14 ABUJA 2018; you only have to take away 2 from the rules to get the equivalent of that of Lagos which is ORDER 15 RULE 12 LAGOS 2019

In exam, you may be asked to bring an application for any of the following:

- Representative Action
- Class Action
- Non-joinder of parties
- Mis-joinder of parties
- Third party proceedings
- Alteration/change of parties

At this point, students are usually faced with two issues:

- Is it an Ex Parte application or a motion on notice?
- Under which order and rule of court do I bring the application?

On the first issue, the secret to deciphering it is this, **E**x p**A**rte has the letters "E" and "A". Thus, any of the applications that has "E" or "A" in it, is to be by way of MEP+A+WA. Thus, r**E**present**A**tive actions, cl**A**ss actions, third p**A**rty proceedings and **A**lteration/ch**A**nge of parties are all by way of MEP+A+WA. On the other hand, anything j**O**i**N**der is by way of MON+A+WA. Just take it that the "O" and "N" represent **On Notice.**

On the second issue, we have already talked about the general orders in Abuja and Lagos. Thus, focus will be on the rules. To know the particular rule that provides for a particular application ONE ONLY HAS TO COUNT THE LETTERS OF THE APPLICATION ONE WISHES TO BRING IN ABUJA. IT'S SIMPLE, RIGHT? Let's try it out.

For REPRESENTATIVE action, we have **R**+**E**+**P+R+E+S+E+N+T+A+T+I+V+E = 14 letters.** Thus, in Abuja it is ORDER 13 RULE 14 ABUJA 2018. To get that of Lagos, we go back to our foundation above by taking away 2 from 14 and as such in Lagos we have ORDER 15 RULE 12 LAGOS 2019.

For CLASS action, we have **C+L+A+S+S = 5 letters.** It falls short of our target which is 15 letters. Thus, we add 1 before the 5, giving us 15. Thus, in Abuja, it is ORDER 13 RULE 15 ABUJA 2018. To get that of Lagos, we go back to our foundation above by taking away 2 from 15 and as such in Lagos we have ORDER 15 RULE 13 LAGOS 2019.

For NON-JOINDER OF PARTIES, we have
N+O+N+J+O+I+N+D+E+R+O+F+P+A+R+T+I+E+S, = 19 letters. Thus, in Abuja it is ORDER 13 RULE 19 ABUJA 2018. To get that of Lagos, we go back to our foundation above by taking away 2 from 19 and as such in Lagos we have ORDER 15 RULE 17 LAGOS 2019.

For MIS JOINDER OF PARTIES, we have
M+I+S+J+O+I+N+D+E+R+O+F+P+A+R+T+I+E+S, = 19 letters. This is the same as non-joinder above. However, because we are now dealing with MIS-joinder, we are going to MISS one letter while counting and as such we have 18 letters. Thus, in Abuja it is ORDER 13 RULE 18 ABUJA 2018. To get that of Lagos, we go back to our foundation above by taking away 2 from 18 and as such in Lagos we have ORDER 15 RULE 16 LAGOS 2019.

For THIRD PARTY PROCEEDINGS, we have
T+H+I+R+D+P+A+R+T+Y+P+R+O+C+E+E+D+I+N+G+S = 21 letters. Thus, in Abuja it is ORDER 13 RULE 21 ABUJA 2018. To get that of Lagos, we go back to our foundation above by taking away 2 from 21 and as such in Lagos we have ORDER 15 RULE 19 LAGOS 2019.

For ALTERATION/CHANGE OF PARTIES, we only have to add another CHANGE before counting. Thus we have
A+L+T+E+R+A+T+I+O+N+C+H+A+N+G+E+O+F+P+A+R+T+I+E+S+C+H+A+N+G+E = 31 letters. Thus, in Abuja it is ORDER 13 RULE 31 ABUJA 2018. To get that of Lagos, we go back to our foundation above by taking away 2 from 31 and as such in Lagos we have ORDER 15 RULE 29 LAGOS 2019.

ANOTHER KEY: For situations where the claimant is in doubt as to whom he is entitled to claim relief from; that is, who the **appropriate** defendant is. To remember the rule here, remember it talks about "appropri**ATE**" party. Thus, see it as **"**appropri**8".** We thus have **ORDER 15 RULE 8 LAGOS 2019, and ORDER 13 RULE 8 ABUJA 2018**

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. If the competence of a claimant to a suit is challenged, the onus is on the___to establish competence.

A. Claimant

B. Challenger

C. A or B

D. None of the above

2. Where a claimant to a suit lacks competence to bring an action, the matter is to be_____

A. Struck out

B. Dismissed

C. Transferred

D. Non-suited

3. A party to a suit that has no interest in the suit and the matter can be completely, effectually, logically and conclusively determined without the party, is referred to as a____

A. Necessary party

B. Proper party

C. Nominal party

D. Casual party

4. A party not really involved in the set of facts constituting the action but joined by virtue of the office held is a_____

A. Nominal party

B. Proper party

C. Desirable party

D. Necessary party

5. A party to a suit that has an interest in the suit and the interest notwithstanding, the matter can be completely, effectually, logically and conclusively determined without the party, is referred to as a____

A. Proper party

B. Desirable party

C. Nominal party

D. Necessary party

6. A party to a suit that has an interest in the suit and the matter cannot be completely, effectually, logically and conclusively determined without the party, is referred to as a____

A. Proper party

B. Nominal party

C. Necessary party

D. Desirable party

7. An agent of a disclosed principal is a____

A. Nominal party

B. Desirable party

C. Necessary party

D. Proper party

8. CAC in actions for passing off is a____

A. Nominal party

B. Necessary party

C. Desirable party

D. Proper party

9. When an agent acts for a disclosed principal, the principal is a___

A. Nominal party

B. Necessary party

C. Proper party

D. Desirable party

10. Parties to an originating motion are referred to as_____

A. Claimant/Respondent

B. Claimant/Defendant

C. Applicant/Respondent

D. Applicant/Defendant

11. Parties to an originating summons are referred to as____

A. Claimant/Defendant

B. Claimant/Accused

C. Complainant/Defendant

D. Plaintiff/Defendant

12. An action brought by two or more persons on behalf of a group of persons having common grievance and the same interest in an action, is a_____

A. Representative action

B. Class action

C. Joint action

D. All of the above

13. Any challenge to the action in 12 above must be by way of_____

A. Raising a preliminary objection

B. Filing statement of defence

C. A or B

D. None of the above

14. _____is brought where persons of a certain group interested in a matter cannot be ascertained or if ascertained, cannot be found or if ascertained and found, it is expedient that one or more persons of the group be appointed to represent the group.

A. Representative action

B. Classic action

C. Representation action

D. Class action

15. To seek leave to sue or defend in a representative capacity, the application is by way of___

A. Motion on notice

B. Motion ex parte

C. Motion on notice supported by an affidavit and a written address

D. Motion ex parte supported by an affidavit and a written address

16. In Lagos, bring a class action is applies to all but__

A. Administration of estate

B. Property subject to a trust

C. Land under customary law

D. Tort

17. Application to be appointed a representative of a class is by way of___

A. Motion ex parte supported by a written address

B. Motion ex parte supported by an affidavit and a written brief

C. Motion ex parte supported by an affidavit and a written address

D. Motion on notion only

18. In Lagos, after appointment of representatives of a class, court processes are served___

A. On persons appointed only

B. By publication in a national daily

C. By substituted means only

D. A and B

19. In Abuja, after appointment of representatives of a class, court processes are served___

A. On persons appointed only

B. By publication in a national daily

C. A or B

D. A and B

20. When two or more persons come together as claimants or to jointly defend an action, it is referred to as____

A. Joint action

B. Consolidated action

C. Joinder of parties

D. Mis-joinder of parties

21. The application in 20 above is by way of_____

A. Motion on notice

B. Motion ex parte

C. Motion on notice supported by an affidavit and a written address

D. Motion ex parte supported by an affidavit and a written address

22(a). Application for non-joinder of parties is by way of_____

A. Motion on notice

B. Motion on notice supported by an affidavit and a written address

C. Motion ex parte

D. Motion ex parte supported by an affidavit and a written address

22(b). Application for mis-joinder of parties is by way of_____

A. Motion on notice

B. Motion on notice supported by an affidavit and a written address

C. Motion ex parte

D. Motion ex parte supported by an affidavit and a written address

23. Application for joinder of parties is by way of_____

A. Motion on notice supported by an affidavit and a written address

B. Motion ex parte

C. Motion on notice

D. Motion ex parte supported by an affidavit and a written address

24. Where there is a failure to join a party who ought to be joined, there is said to be a_

A. Joinder of parties

B. Mis-joinder of parties

C. Non-joinder of parties

D. Re-joinder of parties

25. Where a party has been improperly joined to a suit, there is said to be a____

A. Mis-joinder of parties

B. Non-joinder of parties

C. Re-joinder of parties

D. Joinder of parties

26. Where a party, not originally joined as a party, applies to the court by himself to be joined, such is referred to as an application for___

A. Non-joinder of parties

B. Joinder of parties

C. Joinder by intervention

D. All of the above

27. An application for alteration/change of parties is by way of_____

A. Motion on notice

B. Motion on notice supported by an affidavit and a written address

C. Motion ex parte

D. Motion ex parte supported by an affidavit and a written address

28. Miss B is suing Mr. A, a bankrupt, for breach of promise to marry, the action should be brought against____

A. Mr. A personally

B. Mr. A's estate

C. Mr. A's trustee in bankruptcy

D. None of the above

29. Assuming in 28 above, Miss B is suing Mr. A for the sum of N10,000,000 (Ten Million Naira) which she lent to Mr. A, the action should be brought against__

A. Mr. A personally

B. Mr. A's estate

C. Mr. A's trustee in bankruptcy

D. All of the above

30. Third party proceedings are applied for by way of___

A. Motion ex parte supported by a written address

B. Motion ex parte supported by an affidavit and a written address

C. Motion ex parte supported by an affidavit

D. Motion on notion only

31. In Lagos, where the third party in 30 above is outside jurisdiction, appearance is to be entered within___whereas the third party within jurisdiction is to enter appearance within____

A. 8/30 days

B. 35/8 days

C. 8/35 days

D. 30/8 days

32. In Abuja, where the third party in 30 above is within jurisdiction, appearance is to be entered within___whereas the third party outside jurisdiction is to enter appearance within____

A. 8/30 days

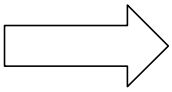
B. 35/8 days

C. 8/35 days

D. 30/8 days

ANSWERS

1. A
2. A
3. B
4. A
5. B
6. C
7. B
8. A
9. B
10. C
11. A
12. A
13. A
14. D
15. D
16. D
17. C
18. A
19. D
20. C
21. C
22. (a) B (b) B
23. A
24. C
25. A
26. C
27. D
28. A
29. C
30. B
31. D
32. C



IF, IN ALL HONESTY, YOU DO NOT UNDERSTAND ANYTHING IN THIS PART OF THIS NOTE AND YOU WISH TO BE CLEARED; OR YOU WISH TO HAVE A PRIVATE TUTOR GUIDE YOUR READING, WE WOULD BE GLAD TO HELP OUT. YOU CAN CONTACT US USING THE FOLLOWING:

TEL. NO: 07053531239 (WHATSAPP MESSAGES ONLY. NO CALLS)

E-MAIL:
kundycmith@gmail.com

4. PRELIMINARY MATTERS: PRE-ACTION ISSUES AND COMMENCEMENT OF ACTIONS IN THE MAGISTRATE COURT

1. DISCUSS AND EXPLAIN VARIOUS MATTERS THAT NEED TO BE CONSIDERED BEFORE COMMENCING OR DEFENDING AN ACTION AND ETHICS AGAINST FRIVOLOUS ACTIONS OR AVOIDING ABUSE OF COURT PROCESS---CJL[2] VEPAPIS

(a) Cause of action: A cause of action is an aggregate of **material facts** that can lead to a party having a claim in a court of law---**AG FEDERATION v. AG ABIA STATE.** If in a contractual or statutory duty, the moment the other party fails to perform his own obligations, then a cause of action will be said to have arisen--**OSHOBOJA v. AMUDA**

Counsel should ensure that all material facts that constitute the ingredients for the particular cause of action must be in existence. There is a rule against piece meal prosecution of cause of action by the claimant as there should be an end to litigation.

The time when the cause of action arose is important for the purpose of calculating limitation period. This is because the period of limitation will begin to run from the day the cause of action arose---**OKENWA v. MILITARY GOVERNOR IMO STATE; AJAYI v. MILITARY ADMINISTRATOR OF ONDO STATE**

To determine whether there is a reasonable cause of action, the court looks at the statement of claim or the particulars of claim---**ABUBAKAR v BEBEJI OIL & ALLIED PRODUCTS LTD.**

(b) Jurisdiction: This is fundamental-- **MADUKOLU V. NKEMDILI** (3 tests of determining jurisdiction: 1. Constitution; 2. Subject matter; 3. Condition precedents)

Failure to commence the action at the appropriate judicial division of a court that has jurisdiction is not usually fatal and may be waived. However, state or territorial jurisdiction is fundamental and cannot be waived. Where the action is commenced in another state, it is hopeless--**FRN v. IFEGWU.** Instituting a matter in wrong court could lead to the matter being struck out, except there is a provision for transfer.

Jurisdiction can be substantive or procedural. Substantive jurisdiction can be raised at any time even on appeal---**OZOMO v. OYAKHIRE,** while procedural jurisdiction has to be raised timeously as it can be waived.

It is the claim (statement of claim) of the claimant that determines jurisdiction---**ADEYORI V. OPEYEMI**

The court can raise the issue of jurisdiction **suo moto, but the parties must address it on that point before it rules.**

Where a court finds that it lacks jurisdiction, it should strike out the matter and not dismiss it--**NDIC V CBN.** This is because the order of dismissal connotes that the case has been heard on the merits before being dismissed, while an order of striking out has nothing to do with the merits of the case. **As such, the prayer on the preliminary objection should also be for striking out.**

(c) Limitation period: This is the period of time after the accrual of the cause of action within which legal proceedings can be brought before a court of law---**OGBORU v. SPDCN LTD**

Counsel should thus check the statute that established the corporation (in case of a corporation)—**S. 11 NNPC Act**, check the Public Officers Protection Act (POPA), check general limitation laws.

Once the cause of action has been determined, then limitation period should then be determined because for every cause of action, there is a limitation period. Limitation period is determined from when the cause of action arose--**OKENWA v. MILITARY GOVERNOR IMO STATE; AJAYI v. MILITARY ADMINISTRATOR OF ONDO STATE.** There is a limitation period for every cause of action which is determined by the nature of the transaction. The following are some transactions with their limitation period.

- Public officers - 3 months—S. 2(1)(a) POPA
- Tort libel/slander/defamation - 3 years.
- Simple contract - 6 years.
- Contract under seal – 12 years
- Land matters for individual in north & east - 12 years, west - 10 years and state government - 20 years.

Once the limitation period of a cause of action has expired, the action is statute barred and dead.

(d) Locus standi: This is to determine whether the plaintiff has enough or sufficient interest in the matter—**S. 6(6)(b) CFRN.** In determining whether a person has locus standi, such person must be directly affected by the facts or series of fact in issue---**OLORIODE v. OYEBI**. Once a plaintiff/claimant lacks the locus standi, the court will strike out the action without considering the merit of the case. There should be no "professional litigant" and as such an interloper not interested in the case should be prevented from maintaining an action for want of locus standi --**AG BENDEL STATE V. AGF** (except it relates to FHRs)

(e) Venue of the court: Suits on land must be in the judicial division where the land is situated as there may be need for a visit to the locus. Actions on contracts are to be instituted in the judicial division where the contract ought to be performed or in the judicial division where the defendant resides/carries on business. However, institution of an action in a wrong JD is not fatal to a case---**UBN V. DAIRO**

(f) Exhaustion of available remedies such as arbitration clauses or ADR: Otherwise the cause of action will be deemed to be premature and the court will decline jurisdiction and strike out the claim.**---ARIBISALA V. OGUNYEMI**

(g) Pre-action notice/Condition precedents: There are condition precedents which are to be met before the commencement of an action. Such conditions must be fulfilled by plaintiff and his counsel before commencing an action. These condition precedents include:

Pre-action notice: The statutes establishing statutory corporation (some) do provide for pre-action notice to be given to such corporation before action is commenced against them. There are specific information which are to be contained in the pre-action notice. In **AMADI v. NNPC** the pre-action notice to be issued to the NNPC in section 11(2) of the NNPC Act must observe the following:

- Written notice of commencement of action.
- Notice to be served by intending plaintiff or his agent.
- Notice must clearly state the cause of action.
- Notice must clearly state the particulars of claim.
- State the name and address of plaintiff.
- The relief which he claims.

This notice must be served on NNPC **for a period of one month before commencing action**.

In **MOBIL V. LASEPA**, the Supreme Court stated that:

- Provisions prescribing pre-action notice are mandatory.
- Non-compliance with such mandatory provision can be waived by delay or failure to object.
- Non-compliance with such provision is an irregularity in the exercise of jurisdiction which should not be with total lack of jurisdiction.
- Non-compliance with a condition precedent to the commencement of action must be pleaded and failure to plead it amounts to a waiver.
- Service of a pre-action notice on the party intended to be sued pursuant to a statute is at best a procedural requirement and not an issue of substantive law on which the rights of the plaintiff depend. It is not an integral part of the process for initial proceedings.

NB: In **KATSINA LOCAL AUTHORITY V. MAKUDAWA,** the Supreme Court stated that a condition precedent must be expressly or at least impliedly raised at the trial so that the other party may have opportunity of meeting the point. **Thus, it cannot be properly raised on appeal for the first time when it was not raised at the trial either expressly or impliedly**.

Local governments are also entitled to pre-action notice. Other forms of conditions precedents are the statutory notices required in actions for recovery of premises.

(h) Availability of ADR methods: There is a screening for suitability of ADR by the courts---**ORDER 2 RULE 7 ABUJA 2018**.

(i) Pre-action counseling/pre-action protocol: Pre-action counseling (ABUJA) is the advice given the client by the legal practitioner **as to the strength and weakness of the case**. Pre-action protocol (LAGOS) is compulsory in Lagos and it evidences that the parties have tried to **settle out of court**. Pre-action counseling is compulsory in Abuja.

NB:

- A counsel must advise client appropriately.
- The pre-action counseling certificate must be indicated in the originating processes.
- Where action is filed by the counsel on behalf of the litigant and the suit turns out to be frivolous, the counsel shall be personally liable to pay the costs of proceedings.

(j) Immunity: Cannot sue/no subpoena or witness summons against the P, VP, G and DG ONLY---**S. 308 CFRN**. These persons can sue---**DUKE V. GLOBAL EXCELLENCE**. Cannot sue foreigners **(INCLUDING MEMBERS OF THEIR FAMILY AND DOMESTIC STAFF)** who are staff of the High Commission (within the common wealth) or Embassy (outside the common wealth) because of diplomatic immunity (does not apply to Nigerian staff of the HC or E)---**Ss. 1 and 10 DIPA**

(k) Sufficiency/Enforceability of judgment: All the issues surrounding enforcement and realization of judgment should be considered.

NB: Cost of litigation and t**he relevant law should also be considered.**

NB: Ethical issues involved in instituting frivolous actions, abuse of court process and failure to advice on ADR options (Brainstorm)

NB: Consequences of not observing the preliminary matters before instituting an action in court

- The defendant may bring an application to strike out the matter
- The defendant may bring an action for the dismissal of the action as it discloses no cause of action
- The Counsel will be made to pay any fine imposed by the Court
- The Counsel is also liable to the Client for negligence.

2. IDENTIFY PRELIMINARY ISSUES IN CASE STUDIES (see your task)

3. EXPLAIN THE GENERAL PRINCIPLES AND PROCEDURE FOR COMMENCING ACTIONS IN THE MAGISTRATE COURT/SMALL CLAIMS COURT OF LAGOS STATE.

(a) Applicable Laws

- Magistrate Court Law of Lagos State, 2009
- Magistrate Court Rules of Lagos State, 2009
- Sheriff and Civil Processes Act/Law

(b) Features of MCs

- An inferior court of records
- Amenable to the supervisory jurisdiction of the HC
- Magistracy is divided by the SJSC into magisterial districts.

- A court of summary jurisdiction---**EHWRUDJE V. WARRI LOCAL GOVT.** This is because :
  (a) It does not waste time (a court of summary trial)
  (b) There is no elaborate exchange of pleadings (though something similar to pleadings exists)
  (c) There is no discovery facts/documents
  (d) There are no interrogatories
  (e) There is no pre-trial conference
  (f) There is time bound proceedings
  (g) There is limited number of adjournments (**after a matter has been set down for trial**, non-contested civil cases= maximum of **2** adjournments whereas contested civil cases= maximum of **4** adjournments) and **one adjournment shall be within a period not exceeding 14 working days**---**S. 42(1)(2) MCL**
  (h) Judgment is to be delivered **within 21 working days from date of conclusion of trial**, and reasons for judgment can be reserved

- Your Honour is used in Lagos to refer to a magistrate---**S. 8(1) MCL,** and Your Worship in other jurisdictions.
- Magistrate is robed in black magistrate gown---**S. 8(2) MCL**
- Power to establish it is vested in the state (thus established by a law of a state)—**S. 6(4)(a) CFRN**
- Magistrates in Lagos are appointed by the State Judicial Service Commission---**S. 4(1) MCL,** such person must be a legal practitioner of not less than five(5) years post call with relevant experience---**S. 4(2) MCL.**

(c) Jurisdiction

S. 28 MCL, vests civil jurisdiction over:

e. 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, 10,000,000.00 at the time of filling

f. 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 at the time of filling provided that, in all actions, the claimant may in addition, claim arrears of rent and *mesne* profits irrespective of the fact that the total claim exceed ten million naira

g. Appointment of guardian ad litem and to make orders, issues 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**

h. Actions of recovery of penalties, charges, rates, taxes, expenses, cost of enforcement of statutory provisions, contributions or other like demands, which may be recoverable by virtue of any existing law

Please note that a magistrate court does not have jurisdiction to entertain:

- Matters relating to title to land or any interest in land
- Validity of a will or bequest
- Limitation of a will or settlement--**S. 28(7) MCL**

(d) Modes/ways/types of commencement of action in a Magistrate court

- By Claim– **ORDER 1 RULES 1 & 4 MCR**
- Originating application – **ORDER 1 RULES 2 & 8 MCR**

1. Claim

Conditions

An action may be commenced by claim in the MC in Lagos if:

- The defendant or one of the defendants resides or carries on business in Lagos—**ORDER 1 RULE 1(1)(a) MCR or**
- The cause of action arose wholly or partly in Lagos—**ORDER 1 RULE 1(1)(b) MCR**
  NB: Where the claimant sues as assignee of a debt or other thing in action, then the action can be commenced in the Magistrate Courts in Lagos if the assignor could commence the action in Lagos but for the assignment--**ORDER 1 RULE 1(2) MCR**

By **ORDER 1 RULE 4(1) MCR** Lagos, in commencing an action by claim, the claimant shall deliver to the Registrar a claim and particulars of claim for filing. By **ORDER 1 RULE 4(2) MCR** Lagos, the particulars of claim shall be signed by the claimant or his legal practitioner and the legal practitioner shall provide an address for service, a telephone number and an e-mail address to which the court and the other party may use for direct communication.

There is a difference between the claim and the particulars of claim. **The claim is the relief sought and the particulars of claim are the grounds upon which the relief is sought.** A claim basically contains a very brief summary (not more than one paragraph) of the facts of the case leading to the claim. The particulars of claim is like a statement of claim (but must be designated as particulars of claim)

The particulars of claim must indicate the cause of action or else, the Magistrate will strike it out if it does not disclose such cause of action--**ORDER 1 RULE 5(1) MCR.**

NB: Procedure for commencing action in a MC using a claim (IMPORTANT) and Action by the Magistrate and Registrar—FAR ENDS

- **File** C and P in the prescribed form at the MC registry
- **Assessment** of the C and P at the registry to determine how much claimant is to pay
- **Required filing fees** should be paid

- **Entry:** Upon filing the claim, the registrar shall cause same to be entered in the **civil cause book** kept for that purpose--**ORDER 1 RULE 6 MCR.**
- **Numbering:** Give the action a number according to how it is filed in the year
- **Delivery:** Deliver the claims to the office of the **designating magistrate,** the same day it is filed.
- **Service:** Direct service to be effected to the other party to the suit

Upon the entering of a claim by the Registrar in the cause book, then, by **ORDER 2 RULE 1(1) MCR there are two types of summons** that can be issued either by the magistrate or the registrar on the directive of the magistrate in the alternative, they are:

- Ordinary summons; or
- Summary summons

(a) Ordinary summons

ORDER 2 RULE 1(1) MCR provides that after a claim has been entered, the Magistrate or the Registrar on the directive of the Magistrate **shall issue an ordinary summons directed to the defendant unless a summary summons has been applied for**. By **ORDER 2 RULE 1(2) MCR**, a copy of the particulars of claim shall be annexed to every summons for service. **Note that application for summary summons is by a Letter**. Note also that a summons, whether ordinary or summary can only be issued by:

- The Magistrate; or
- The Registrar on the directive of the Magistrate--**ORDER 2 RULE 1(1) MCR**

Note that **an ordinary summons is used in contentious actions while the summary summons is used in ACTIONS FOR RECOVERY OF DEBT OR LIQUIDATED MONEY DEMANDS, with or without a claim for interest to which the claimant honestly believes that the defendant has no defence to, TOGETHER WITH THE SATISFACTION OF THE CONDITIONS MENTIONED ABOVE.**

Note that when an ordinary summons is issued, it shall be in **CIVIL FORM 1** together with **CIVIL FORM 4A** annexed thereto for use by the defendant for admission, defence, or counter-claim.

Comment [C24]: MCQ

Return Date (because a plenary trial is envisaged): **ORDER 2 RULE 2 MCR** provides that where an ordinary summons is issued, the Registrar shall fix a date for the defendant to appear in court to answer the claim, **provided that such date shall not be less than five (5) days after the service of the claims on the defendant**.

Life Span: By **ORDER 2 RULE 3 MCR**, the life span of an ordinary summons is **three (3) months from the date it was issued** and **if an ordinary summons is not served within three (3) months from the date of its issue, it shall become void, with liberty to file a fresh action subject to any statute of limitation.**

Options open to the defendant: Upon being served with the ordinary summons, there are different steps which the defendant can take namely:----**DCATS**

- **DEMAND FOR FURTHER PARTICULARS:** He may by himself or through his legal practitioner **demand further particulars within 6 days of service of the summons** on him--**ORDER 2 RULE 4(1) MCR. The claimant shall within 2 days of the service of the notice for further particulars,** file the further particulars together with a copy of it--**ORDER 2 RULE 4(2) MC**
- **COUNTER-CLAIM/DEFENCE:** He may within 6 days file a counter-claim or defense---**ORDER 2 RULE 5(1) MCR.** He may make a counter-claim against some other persons, who are not parties to the action, and apply to the court that those persons be added as defendants--**ORDER 2 RULE 6 MCR**
- **ADMIT LIABILITY:** He may admit liability as to whole or part of the claim and request for time to make payment within 6 days of service –**ORDER 2 RULE 7 MCR**
- **TENDER AN AMOUNT:** He may tender an amount before action and pay into court the amount tendered – **ORDER 2 RULE 8 MCR**
- **SETTLEMENT:** Approach the defendant for settlement. The court may refer the parties to ADR centers--**S. 35 MCL.**

Comment [C25]: The claimant is to send response of acceptance **within three (3) days** of receipt of notice of admission.

(b) Summary Summons

Summary summons is usually issued for non-contentious matters. It is usually used in actions for recovery of debt or liquidated money demands (calculable by having regard to some data/figures/formular/arithematic code), **with or without a claim for interest, to which the claimant believes that the defendant has no defence to**.

The claimant may file a claim and request by letter to the Registrar for the endorsement of the claim as a summary summons (accompanied by CIVIL FORM 4A and CLAIM and PARTICULARS OF CLAIM)---ORDER 3 RULE 1 MCR. Thus, a summary summons will not be issued unless it is applied for.

NB: However, by the Proviso to the said Order 3 r 1 MCR, there is a certain **group of persons against whom a summary summons cannot be issued.** They are:**---IMAMS**

- **Infant/USM/LNT:** An infant or person of unsound mind/lunatic.
- **Money lender:** To recover money lent by money lenders within the meaning of Money Lender's Law or interest on money so lent or to enforce any agreement or security on money so lent.
- **Assignee of debt:** A claim on behalf of an assignee of a debt or other thing in action.
- **Mortgage/charge:** To recover money secured under a mortgage or charge.
- **Service of defendant outside jurisdiction:** Against a defendant who has to be served outside jurisdiction.

In all these instances mentioned above, only an ordinary summons can be issued.

A defendant served with summary summons can take the following steps:

- Set up a counter-claim within 5 days of service – **ORDER 3 RULE 3 MCR.**
- He may set up a defense within 5 days –**ORDER 3 R 5 MCR.**
- He may deliver an admission within 5 days of the whole or part of the claim--**ORDER 3 R 6 MCR.**

- He may request for more time.

Note that by Order 3 r 4 MCR, if within five (5) days after the service of the summons on him, the defendant fails to do anything, judgment may be given against him called DEFAULT JUDGMENT; if he does any of the above, the matter will go to trial. However, it must be noted that if after the five (5) days, but before the default judgment is entered, the defendant takes steps to defend, then judgment will not be entered until he is heard.

Where the defendant admits in part or wholly, such admission notice will be sent to the claimant to either accept or reject. In either case, the judgment thereon is on the **merit.**

Life span of summary summons: By **ORDER 3 RULE 8 MCR**, where a summary summons has been served and three (3) months have expired since it was served, but no defence or admission or counter-claim has been delivered and judgment has not been entered against the defendant; OR an admission has been delivered to the claimant but no notice of acceptance or rejection has been received from the claimant, **the action shall be struck out and no extension of time shall be granted beyond the three (3) months**. However, note that by **ORDER 3 RULE 9 MCR**, a summary summons **WHICH HAS NOT BEEN SERVED** may, at the request of the claimant and after the payment of the prescribed fees, **be exchanged for an ordinary summons within three (3) months of the issue of the summons.**

NB: No return date in a summary summons because no plenary trial is envisaged.

Note that order 3 r 8 MCR provides for the power to strike out (life span after service); while order 3 r 9 MCR provides for the exchange of a summary summons for an ordinary summons (life span before service)

DRAFTS

IN THE MAGISTRATE COURT OF LAGOS STATE

IN IKEJA MAGISTERIAL DISTRICT

HOLDEN AT IKEJA

Suit No:……..

BETWEEN

CROWN KITCHEN LTD…….CLAIMANT

AND

K & T L……DEFENDANT

CLAIM

1. The Claimant claims its rights to the sum of 2.17 million (Two million, one hundred and seventeen thousand naira) being its share of the proceeds of a contract jointly performed by the claimant and defendant from March 1995 to December 1997 under a partnership agreement.
2. The claimant is also entitled to an order of injunction restraining the defendant from converting 20 vehicles jointly purchased and owned by the parties under the same partnership agreement and a further declaration that the partnership agreement between the party is still valid and subsisting

Dated this….day of ……20…

...……..

Cundy Smith, Esq

Claimant's counsel

Cundy Smith Chambers

No. 2 Law School Drive,

Victoria Island, Lagos

Tel. No: 07053531239

Kundycmith@gmail.com

FOR SERVICE ON:

The Defendant

K & T LTD

No 18 Ikeja Road, Ikeja, Lagos

IN THE MAGISTRATE COURT OF LAGOS STATE

IN IKEJA MAGISTERIAL DISTRICT

HOLDEN AT IKEJA

Suit No:……..

BETWEEN

CROWNKITCHEN LTD…….CLAIMANT

AND

K & T LTD……DEFENDANT

PARTICULARS OF CLAIMS

1. The claimant is a limited liability company registered under the Companies and Allied Matters Act, Cap. C20, LFN, 2004 with its registered address at No 16 Kayode Street, Ajah, Lagos.
2. The defendant is a limited liability company registered under the Companies and Allied Matters Act, Cap. C20, LFN, 2004 with its registered address at No 12 Obafemi Awolowo Road, Victoria Island, Lagos.
3. The claimant avers that a valid partnership contract was made between the Claimant and the Defendant between……..and……..which is still subsisting.
4. The defendant owes the claimant the sum of 2.17million being the sum accrued to the partnership contract between the claimant and defendant
5. The partnership agreement states that the vehicles will be used jointly in the running of the business after which the vehicles will be shared equally between the parties. However, the defendant has converted the 20 vehicles purchased for the contract to its sole use contrary to the terms of the contract between the parties. The cars with particulars (registration number, chassis number, motor company from where it was bought, the receipt of the car)
    - Car 1: Nissan Juke; Reg number: GVO8 WFM; Chassis no: 501345; bought from Nissan Motors, Garki II, Abuja; Receipt number: 534
6. The defendant has failed, refused or neglected to pay the contract price and the claimant's share of the vehicles despite letters of demand written by the claimant to the defendant (add date of the letters)

WHEREOF THE CLAIMANT CLAIMS AS FOLLOWS:

1. A declaration that the contract under the partnership agreement between the parties is still valid and subsisting
2. The sum of N2.17million which accrued to the claimant being its own share of the proceeds of the contract performed by the parties from March 1995 to December 1997
3. Interest on the N2.17 million at the rate of 10% per annum from the 1st day of December 1997 until judgment and thereafter until the judgment sum is paid (either because this is stipulated in the contract or going commercial rate)
4. An order of perpetual injunction restraining the defendant from converting the 20 vehicles to its sole use
5. An order directing an equal division of the vehicles between the parties
6. The sum of 2million naira for general damages

Dated this….day of ……20…

……..

Cundy Smith, Esq

Claimant's counsel

Cundy Smith Chambers

No. 2 Law School Drive,

Victoria Island, Lagos

Tel. No: 07053531239

Kundycmith@gmail.com

FOR SERVICE ON:

The Defendant

K & T LTD

No 18 Ikeja Road, Ikeja, Lagos

APPLICATION FOR SUMMARY SUMMONS

CUNDY SMITH & ASSOCIATES
LEGAL PRACTITIONERS, SOLICITORS, AND CHARTERED ARBITRATORS
NO 2 LAW SCHOOL DRIVE, VICTORIA ISLAND, LAGOS
EMAIL: KUNDYCMITH@GMAIL.COM
07053531239

Our Ref: _____ Your Ref: _____ Date: 8 April 2019

The Registrar,
Magistrate Court of Lagos State,
Ikeja Magisterial District,
Ikeja, Lagos.

Dear sir,

APPLICATION FOR SUMMARY SUMMONS PURSUANT TO ORDER 2 RULE 1(1) AND ORDER 3 RULE 1 OF THE MAGISTRATE COURT OF LAGOS (CIVIL PROCEDURE) RULES, 2009
We are the solicitors to Crown Kitchen Ltd (our client), on whose instruction we write to you.

We wish to apply on behalf of our client that a summary summons be issued against the defendant as per the attached claim and particulars of claim.

We undertake to pay the necessary fees.

We thank you for your usual co-operation.

Yours faithfully,

_____
Cundy Smith Esq
Cundy Smith & Associates

Enclosed:
1) Claim dated 8th of April, 2019
2) Particulars of claim dated 8th of April, 2019.

2. Originating Application – ORDER 1 RULES 2 & 8 MCR

This is the second method of commencing an action in the Magistrate court in Lagos.

Conditions

It may be used:

- If claimant or one of the claimants resides or carries on business in Lagos; **and**
- The subject matter of the application is situated in Lagos;
  OR
- If no claimant is named in the application, if the claimant or one of the claimants resides or carries on business in Lagos (ONLY)

NB: THERE IS NO REQUIREMENT OF THE DEFENDANT OR ONE OF THE DEFENDENTS RESIDING OR CARRYING ON BUSINESS IN LAGOS.

This procedure is used where proceedings are authorized by statute to be commenced in the MCs by originating application OR in an action for declaration of rights. It **shall be referred to as "ACTION"**

Note that by **ORDER 1 RULE 8(5) MCR, the originating application shall be heard in chambers**. NB: The originating application is usually by Motion, whether on notice or exparte, supported by affidavit and written address. **Designation of parties: applicant and respondent.**

NB: Service of processes in magistrate court

Personal service – ORDER 5 RULE 1 MCR
Substituted service – ORDER 5 RULE 2 MCR
Leave to issue for service on defendant outside Lagos – ORDER 5 RULE 3 MCR

Service of documents is done by the Bailiff or other authorized persons, and service is to be done personally. That is personal service. Order 5 r 1(1) provides how documents are to be served personally on persons.

- Individual is personally
- For partnership, either to a partner personally or employee of the principal place of business. Provided that where the claimant knows that the partnership had been dissolved before the commencement of the action, he shall apply for substituted service.
- A company – the secretary or any person with executive authority at the registered office
- Business name: delivery to him as if he were a partner in a firm.
- A lunatic/infant. Their guardians.

Substituted service can be resorted to when personal service cannot be effected on the defendant. It can only be resorted to with the leave of court. See Order 5 r 2 MCR which provides that where it appears to the court, **either with or without an attempt at personal service,** that for any reason, service of any process cannot conveniently be effected, the court may, after being satisfied that it is necessary to do so, order that the processes be served by substituted means. Under Order 5 r 2, substituted service can be through any of the following methods

- Delivery of the process with order of court to an agent of the defendant.
- Delivery of process through accredited courier service.
- By advertisement in some newspaper circulating within jurisdiction.
- By notice affixing the process on a conspicuous part of the court or other public place wherein proceedings have been made.
- By affixing the process together with order on a conspicuous position at the door of the defendant's last known residential or business address.
- Such other manner specified by the court.

An order of court upon an affidavit deposed to is needed for a substituted service.

(e) Small Claims Court

The Practice Directions shall apply and be observed in the Magistrates'Courts designated as SCC by the High Court.

SMALL CLAIMS PROCEDURE **(SEE THE SUMMARY OF THIS PD AT THE END OF THIS TOPIC)**

Comment [C26]: Permission/leave is needed for the issuance of a process for service outside Lagos state, see Order 5 r 3 MCR which provides that no summons for service on a defendant outside of Lagos shall issue without the written permission of the court.
Order 5 r 6 provides that Bailiff or any member of the police or any person designated by Magistrate is the process server. A landlord is to serve the notice for determination of tenancy and intention to recover possession on the tenant.
For proof of service, an affidavit is to be deposed to, which sets out the facts, time, place, mode and date of service – order 5 Rule 7. **Such proof of service is to be filed within 2 days of service otherwise it will not be accepted by the magistrate.**
Service of ordinary summons must be within 3 months. Summary summons can be converted to ordinary summons within 3 months of issue of the summons (EXCHANGE)
Note that summons for service outside jurisdiction must be by leave of court.
DRAFT (see and study p.39 of your sample draft)

ARTICLE 1

Objective

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

ARTICLE 2

Commencement of Action

(1) An action may be commenced in the Small Claims Court where:

(a) The Claimant or one of the Claimants resides or carries on business in Lagos State;

(b) The Defendant or one of the Defendants resides or carries on business in Lagos State;

(c) The cause of action arose wholly or in part in Lagos State.

(d)The claim is for a liquidated monetary demand in a sum not exceeding N5,000,000 (Five Million Naira), excluding interest and costs.

(e) The Claimant has served on the Defendant, a **LETTER OF DEMAND** as in **Form SCA 1.**

(2) The action shall be commenced by Claim upon the completion of a Small Claims **Complaint Form as in Form SCA 2**

(3)The Summons in Form SCA 3 shall be issued upon the Registrar being satisfied that the requirements of 2 (1) above have been met.

ARTICLE 3

Marking and Payment of filing fees.

Where a case satisfies the criteria in Article 2 above, **the Assistant Chief Registrar or any person in charge of the Small Claims Registry** shall **cause the Claim to be marked "Qualified for Small Claims"** and direct the Applicant to pay appropriate filing fees.

ARTICLE 4

Assignment of Small Claims Files

(1)Upon the marking of the Claim, the Assistant Chief Registrar **shall within 24 hours** forward the case files **to the Administrative Magistrate for assignment to a Magistrate of the Small Claims Court.**

(2)The Administrative Magistrate **shall within 24 hours of receipt of the case files** assign the Small Claims files to a Magistrate of the Small Claims Court. **Such case assignments shall be undertaken on a random basis.**

ARTICLE 5

Service of the Summons

(1)The Summons shall be served **by the Registry of the Small Claims Court within seven (7) days of filing by the Sheriff of the Small Claims Court.**

(2)Upon service, **the Sheriff of the Small Claims Court shall file an Affidavit of service as in Form SCA 6 within 2 days of service.**

(3)The provision of the Magistrates' Courts (Civil Procedure) Rules regarding mode of service, except as provided herein shall apply to any process of whatever description issued by the Small Claims Court.

(4)Where the Sheriff of the Small Claims Court is unable to serve the Summons on the Defendant within the time specified in (1) above, **he shall file an Affidavit of Non-Service as in Form SCA 4 after the expiration of the time allowed for service.**

(5)In the event of (3) above, the Claimant shall apply for **an Order of substituted service of the Summons on the Defendant by filling and filing Form SCA 7.**

ARTICLE 6

Filing of defence/admission/counterclaim

(1)Upon service of the Summons, the Defendant shall file his Defence/Admission or Counterclaim **within Seven (7) days by completing Form SCA 5** as appropriate.

(2)The provision of Article 5 on service of Summons shall apply to service of a Counterclaim.

(3)Where a Defendant fails to file an Answer to the Claim, such Defendant may be held to have admitted the Claim.

ARTICLE 7

Counter Claim

(1)If at the time the action is commenced the Defendant intends to claim against the Claimant a liquidated money demand not exceeding N5,000,000.00 (Five Million Naira) (excluding interest and costs) **and which claim arises out of the same transaction or series of transactions**, the Defendant shall fill and file a **counterclaim form as in Form SCA 5** in answer to the Claim.

(2)If at the time the action is commenced, the Defendant intends to claim against the Claimant a liquidated money demand exceeding N5,000,000.00 (Five Million Naira) but not more than N10,000,000.00 (Ten Million Naira) (excluding interest and costs), (which is the limit of the general jurisdiction of the Magistrate Court),the Defendant may file a counterclaim in the pending Small Claims action by filling Form SCA 5.

(3)If at time the action is commenced, the Defendant has a counterclaim that exceeds the general jurisdiction of the Magistrate Court, the Defendant may file the counterclaim, by filling Form SCA 5,

PROVIDED that any Judgment in the Defendant's favour shall be limited to the general jurisdiction of the Magistrates' Courts.

(4)In the event of (3) above, the Defendant/Counterclaimant shall be deemed to have abandoned the excess of the counterclaim.

(5)The Defendant(s) counterclaim shall be limited to the Claimant(s) on record.

(6)The Claimant may file a reply to the Defendant(s) Defence and Counter-claim within 5 days of service of the Defendant(s) Defence and Counter-claim.

(7)No pleadings after reply are allowed.

ARTICLE 8

Non-Appearance

(1)When the claim is called for hearing on the date fixed and neither party appears, the Magistrate **shall unless he sees good reason to the contrary, strike out the claim**.

(2)Where the claim is called for hearing and the Claimant appears but the Defendant does not appear, provided there is proof of service, **the Magistrate shall proceed with the hearing of the claim and enter Judgment as far as the Claimant can prove his claim.**

(3)Where the claim is called for hearing, and the Defendant appears but the Claimant does not appear, **the Defendant if he has no counterclaim, shall be entitled to an Order striking out the claim, but if he has a counterclaim, the Magistrate shall proceed to hear the counterclaim and enter Judgment accordingly, as far as the Defendant can prove his counterclaim.**

ARTICLE 9

Proceedings at the Hearing

(1) At the first appearance of the parties before the Court, the Magistrate shall promote, encourage and facilitate amicable settlement of the dispute among the parties by mediating and providing settlement options to the parties as he deems fit. **The process of mediating and facilitating amicable settlement of the dispute among the parties shall not exceed seven (7) days.**

(2)Notwithstanding 9(1), the parties are also encouraged to contact one another with a view to settling the matter amicably or to narrow the issues. However, the court must be informed on the hearing date if the case is settled by agreement before that date, and a consent judgment may be entered by the Court accordingly.

(3)In the event that parties are unable to settle the dispute amicably, the Magistrate shall hold a preliminary hearing for the purpose of giving directions for hearing of the claim or counterclaim (as the case may be) including a hearing time table, length of trial or hearing, exchange of witness(es) list, formulation and settlement of issues, as appears to the Magistrate to secure the just, expeditious and speedy disposal of the claim or counterclaim.

(4)Hearing shall be conducted by the court from day to day as far as is practicable and may only be adjourned as a last resort and for the shortest possible time.

(5)Adjournment can only be granted during proceedings in unforeseen and exceptional circumstances and a party may not be granted more than one adjournment during the entire proceedings.

(6)The entire hearing period shall not be more than thirty (30) days from the first date of hearing, inclusive of the seven (7) days for amicable settlement.

ARTICLE 10

Representation

Parties may represent themselves at the proceedings in the Small Claims Court. Partnerships and Registered Companies can be represented by either a Partner, Company Secretary or any other Principal Officer of the Partnership or Company.

ARTICLE 11

Evidence

Parties may testify on their own behalf and tender all necessary documents and they may call other witnesses to give evidence at the hearing.

ARTICLE 12

Judgment

(1)The Magistrate shall endeavour to deliver judgment within fourteen (14) days of the completion of hearing. The judgment shall include the Court's determination of issues raised in any interlocutory application(s) filed by any of the parties.

(2)The entire period of proceedings from filing till judgment shall not exceed sixty (60) days).

(3)The judgment of the Court shall not be invalid by reason of the entire proceedings of the court having exceeded sixty (60) days.

(4)The Magistrate shall endeavour to issue authenticated copies of the judgment immediately after its delivery **but in any event not exceeding 7 days from the date of the delivery of the judgment.**

ARTICLE 13

Enforcement of Judgment

(1)The Defendant or Defendant to counterclaim (as the case may be) **shall comply with the Judgment and pay the Judgment sum within fourteen (14) days of delivery of judgment.**

(2)Upon default of the Defendant or Defendant to counterclaim to pay the Judgment sum within the time specified, **the Judgment shall be enforced in like manner as any order of the Magistrate's Court for the payment of money.**

ARTICLE 14

Appeals

(1)Where either party is aggrieved with the Judgment, such party shall fill the Appeal form, as in Form SCA 8 within 14 (fourteen days) of the delivery of the Judgment stating the reasons for the Appeal.

(2)The Assistant Registrar of the Small Claims Registry shall compile the records of appeal within fourteen (14) days of the submission of Form of SCA 8

(3)The Records of Appeal shall thereafter be **forwarded to the Fast Track Registry of the High Court**, where it is **then assigned to a Judge of the Fast Track Court** designated to hear appeals from the Small Claims Court.

(4)The Judge, so designated shall cause Hearing Notices to issue to the parties and the appeal shall be heard at the earliest convenience of the Court.

(5)The Appeal **shall be by oral hearing of the parties and on the records of the appeal.**

(6)The whole Appellate Process from the assignment of the Appeal to Judgment shall not exceed thirty (30) days.

SUMMARY OF THE PRACTICE DIRECTION

OC MASK CAPREJEA

1. Objective
2. Commencement of action
3. Marking and payment of filing fees
4. Assignment of small claims files
5. Service of summons
6. "K"ounter-claim, admission and defence
7. Counter claim
8. Appearance and non-apperance
9. Proceedings at hearing
10. Representation
11. Evidence
12. Judgement
13. Enforcement of judgment
14. Appeals

FORMS USED----LC SAns CASA

Form SCA 1-----Letter of demand

Form SCA 2------Complaint form

Form SCA 3------Summons

Form SCA 4------Affidavit of non-service

Form SCA 5------Counter-claim/admission/defence

Form SCA 6------Affidavit of service

Form SCA 7------Substituted service application

Form SCA 8------Appeal form

TIME PERIODS

- ACR to forward case files to the administrative magistrate **within 24 hours.**
- Administrative magistrate to assign the files to a magistrate of the SCC **within 24 hours of receipt of the case files.**

- Sheriff of the SCC to file affidavit of service **within 2 days of service.**

- Claimant to file reply to the Defendant's defence/counter-claim within 5 days of service of the Defendant's defence/counter-claim
  ---
- Summons to be served on the Defendant **within 7 days of filing.**

- Counter-claim, admission/defence to be filed **within 7 days upon service of the summons.**
- Amicable settlement **shall not exceed 7 days.**
- Authenticated copies of judgment shall be issued **immediately after delivery** or **at any day not exceeding 7 days from the date of delivery of the judgment.**

- Judgment to be delivered **within 14 days from the day of completion of hearing.**
- Comply with judgment and pay the judgment sum **within 14 days from the day of delivery of judgment.**
- Appeal form to be filed within **14 days from the day of delivery of judgment.**
- Records of appeal shall be compiled by the AR SCC **within 14 days of the submission of the appeal form.**

- Entire hearing period from the date of first hearing, inclusive of the 7 days amicable settlement, **shall not be more than 30 days**.
- The appellate process from the assignment of the appeal to judgment **shall not exceed 30 days**

- Entire period of proceedings from filing till judgment **shall not exceed 60 days.**

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. When a court finds that it lacks jurisdiction, it should___the matter

A. Strike out

B. Dismiss

C. Non-suit

D. All of the above

2. The limitation period for actions against public officers is___

A. 3 months

B. 3 years

C. 6 years

D. 12 years

3. The limitation period for tort/libel/slander/defamation is____

A. 3 months

B. 3 years

C. 6 years

D. 12 years

4. The limitation period for a simple contract is____

A. 6 years

B. 12 years

C. 20 years

D. 3 years

5. The limitation period for contract under seal is____

A. 6 years

B. 12 years

C. 20 years

D. 3 years

6. The limitation period for land matters for individuals in the North and East is___

A. 6 years

B. 12 years

C. 10 years

D. 20 years

7. The limitation period for land matters for individuals in the West is___

A. 6 years

B. 12 years

C. 10 years

D. 20 years

8. The limitation period for land matters for State Government is___

A. 6 years

B. 12 years

C. 10 years

D. 20 years

9. In an action brought against NNPC, a notice of____is to be given to NNPC before the commencement of the action.

A. 1 month

B. 30 days

C. 31 days

D. 42 days

10. In Abuja, the pre-action advice given by a legal practitioner to his client as to

Comment [C27]: (FAST TRACK PROCEDURE POSSIBLE MCQS ARE HERE) THIS IS TO HELP AGITATE YOUR MIND AS IT WOULD BE DISCUSSED IN THE SUBSEQUENT PART OF THIS NOTE.

the strength and weaknesses of the case of the client is as in_____

A. Pre-action counselling Form 6

B. Pre-trial counseling Form 6

C. Pre-action notice Form 01

D. Pre-trial notice Form 01

11. In Lagos, the pre-action requirement that makes it compulsory for parties to have tried to settle out of court is as in____

A. Pre-action counselling Form 6

B. Pre-trial counseling Form 6

C. Pre-action protocol Form 01

D. Pre-trial protocol Form 01

12. Magistracy is divided into magisterial districts for states by the____

A. State Judicial Service Commission

B. National Judicial Council

C. Governor of the state

D. Chief Judge of the state

13. After setting down a matter for trial, the maximum number of adjournments a magistrate in Lagos may grant for non-contested cases is____

A. 1

B. 2

C. 3

D. 4

14. For contested cases as in 13 above, it would be____

A. 1

B. 2

C. 3

D. 4

15. One adjournment of a Magistrate court in Lagos shall not exceed____from the day of trial to the next adjourned date.

A. 14 days

B. 14 clear days

C. 14 working days

D. All of the above

16. Judgment of a magistrate court in Lagos is to be delivered within___

A. 21 working days

B. 21 working days from the date of conclusion of trial

C. 21 working days from the date of filing of final addresses

D. 21 clear days from the date of close of evidence

17. A Magistrate in Lagos is to wear____

A. Black suit

B. Black gown

C. Black Magistrate gown

D. Black Magistrate suit

18. Magistrates in Lagos are appointed by the____

A. Governor of Lagos State

B. Lagos State Judicial Service Commission

C. Chief Judge of Lagos State

D. None of the above

19. The qualification for appointment as a Magistrate in Lagos State is___post call experience.

A. 5 years

B. 3 years

C. 2 years

D. 8 years

20. A summons on a defendant to come and answer to a claim before a Magistrate court in Lagos can only be issued by the____

A. Magistrate

B. Registrar

C. Registrar on the directive of the Magistrate

D. A or C

21. An ordinary summons issued by a Magistrate court in Lagos State is as in___

A. Civil Form 1

B. Civil Form 4

C. Civil Form 4A

D. Civil Form 2

22. Where an ordinary summons is issued, the minimum time frame to enter appearance to the claim is___days

A. 21

B. 14

C. 42

D. 5

23. The lifespan of an ordinary summons is__months

A. 2

B. 3

C. 6

D. 9

24. If an ordinary summons is not served within the prescribed time from the date of its issue, it shall become___

A. Void

B. Voidable

C. Inchoate

D. Incompetent

25. Where a defendant is served with ordinary summons and he wishes to demand for further particulars from the claimant, this is to be done within___after the service of the summons on him, and the claimant is to file further particulars within____after service of the notice/demand for further particulars.

A. 6/2 days

B. 2/6 days

C. 5/2 days

D. 2/5 days

26. Where a defendant is served with an ordinary summons and he wishes to file a counter-claim/defence, he is to do so within____days of service of the ordinary summons on him.

A. 5

B. 6

C. 7

D. 8

27. Where the defendant as in 26 above wishes to admit liability and request for

time to make payment, he is to do so within___ from the date service of the ordinary summons on him, and the claimant is to file a notice of acceptance within___of receipt of notice of admission.

A.6/2 days

B. 6/3 days

C. 3/3 days

D. 3/2 days

28. The form used by the defendant for admission, defence or counter-claim in Magistrate court in Lagos is as in_____

A. Civil Form 4

B. Civil Form 4A

C. Civil Form 4B

D. Civil Form 4C

29. Summary summons when served is accompanied by all the following in support except____

A. Civil Form 4A

B. Affidavit in support

C. Claim

D. Particulars of claim

30. Where a defendant is served with a summary summons and he wishes to set up a counter-claim, defence or an admission, he is to do so within____days from the date of service of the summary summons on him

A. 5

B. 6

C. 7

D. 8

31. The lifespan of a summary summons is__from the date of service.

A. 3 months

B. 3 months with option to extend for another 3 months

C. 3 months with no option of extension

D. None of above

32. A summary summons can be exchanged for an ordinary summons within____

A. 3 months from the date of service

B. 3 months from the date of issue

C. 3 months

D. All of the above

33. The following statements are correct, except___

A. An ordinary summons has a return date

B. An ordinary summons has no return date

C. A summary summons has no return date

D. All of the above

34(a). An action commenced by way of an originating application shall be referred to as___

A. Action

B. Suit

C. Motion

D. Claim

34(b). Originating application in Lagos is to be heard in____

A. Chambers

B. Open court

C. A or B

D. None of the above

35. The designation of parties in an originating application is___

A. Claimant/Defendant

B. Applicant/Respondent

C. Plaintiff/Respondent

D. Petitioner/Respondent

36. Under the MCR Lagos, before there can be an issuance of a process for service outside Lagos state___is needed.

A. Permission of the court

B. Leave of the court

C. Written permission of the court

D. All of the above

37. The following can serve as a process server for a Magistrate court in Lagos except___

A. Bailiff

B. Member of the Nigeria Police Force

C. Designated person by the Magistrate

D. None of the above

38. In a Magistrate court in Lagos state, proof of service is to be filed within___days of service.

A. 2

B. 3

C. 4

D. 5

39. Letter of demand under the Small Claims Court practice direction is as in Form SCA___

A. 1

B. 5

C. 3

D. 2

40. Counter-claim/admission/defence under the SCC is as in Form SCA___

A. 2

B. 5

C. 3

D. 8

41. Affidavit of service under the SCC is as in Form SCA___

A. 6

B. 7

C. 3

D. 8

42. Complaint form under the SCC is as in Form SCA___

A. 2

B. 1

C. 3

D. 5

43. Affidavit of non-service under the SCC is as in Form SCA___

A. 2

B. 4

C. 6

D. 8

44. Application for substituted service under the SCC practice direction is as in Form SCA___

A. 5

B. 7

C. 9

D. 8

45. Appeal form under the SCC practice direction is as in Form SCA___

A. 6

B. 8

C. 7

D. 5

46. Summons under the SCC practice direction is as in Form SCA___

A. 3

B. 5

C. 7

D. 6

47. The ACR is to forward case files to the administrative Magistrate under the SCC practice direction, within____

A. 24 hrs

B. 24 days

C. 21 hrs

D. 21 days

48. The administrative Magistrate is to assign the files to a Magistrate of the SCC within___of receipt of the case file.

A. 24 hrs

B. 24 days

C. 21 hrs

D. 21 days

49. Under the SCC practice direction, the claimant is to file reply to the defendant's defence/counter-claim within___ days of service.

A. 21

B. 5

C. 14

D. 7

50. Under the SCC practice direction, summons is to be served within___ days of filing.

A. 21

B. 5

C. 14

D. 7

51. Under the SCC practice direction, counter-claim, admission/defence is to be filed within___ days upon service of summons.

A. 21

B. 5

C. 14

D. 7

52. Under the SCC practice direction, time for amicable settlement shall not exceed___

A. 21

B. 5

C. 14

D. 7

53. Under the SCC practice direction, authenticated copies of judgment shall be issued within___after delivery.

A. Immediately

B. 7 days

C. 21 days

D. A or B

54. Under the SCC practice direction, the entire hearing period from the date of first hearing, inclusive of the time period for amicable settlement shall not be more than___

A. 90 days

B. 30 days

C. 60 days

D. 3 months

55. Under the SCC practice direction, the entire period of proceedings from filing till judgment shall not exceed___

A. 90 days

B. 30 days

C. 60 days

D. 3 months

56. Under the SCC practice direction, the entire appellate process from the date of assignment of appeal to judgment shall not exceed___

A. 90 days

B. 30 days

C. 60 days

D. 3 months

57. Under the SCC practice direction, judgment is to be delivered within___days from the day of completion of hearing.

A. 14

B. 15

C. 7

D. 30

58. Under the SCC practice direction, judgment is to be complied with within___days from the day of delivery of judgment.

A. 14

B. 15

C. 7

D. 30

59. Under the SCC practice direction, appeal is to be filed within___days from the day of delivery of judgment.

A. 14

B. 15

C. 7

D. 30

60. Under the SCC practice direction, records of appeal shall be compiled by the AR SCC within___days of submission of the appeal form.

A. 60

B. 30

C. 15

D. 14

61. Under the Lagos fast track procedure, the main objective is to reduce the time spent on litigation to period not exceeding___from commencement to judgment.

A. 3 months

B. 30 days

C. 90 days

D. 9 months

62. Under the Lagos fast track procedure, the entire period of trial including final addresses shall not be more than__from the date the trial directions were made.

A. 3 months

B. 30 days

C. 90 days

D. 9 months

63. Under the Lagos/Abuja fast track procedure, the party beginning shall file his final written address within___after the close of evidence and the other party is to file his within___after receipt of service from the party beginning; and the party who files the first address shall have a right of reply, on points of law, within__after the service on him of the other party's address.

A. 21/21/7 days

B. 14/14/7 days

C. 7/7/5 days

D. 10/10/3 days

64. If it were in a normal trial, your answer in 63 above would be___

A. 21/21/7 days

B. 14/14/7 days

C. 7/7/5 days

D. 10/10/3 days

65. Under the fast track procedure in Lagos State, the coordination of the whole procedure is left to the____

A. Chief Registrar of the High Court of Lagos State

B. Registrar of the High Court of Lagos State

C. Chief Judge of the High Court of Lagos State

D. Designated Judge of the High Court of Lagos State

66. The monetary jurisdiction of the fast track procedure in Lagos State is___

A. N50,000,000 and above

B. N80,000,000 and above

C. N100,000,000 and above

D. N150,000,000 and above

67. Under the Abuja fast track procedure, parties specifically request to proceed by way of fast track as in Form___

A. 30

B. 31

C. 32

D. 33

68. In 67 above, the monetary jurisdiction is limited to_____

A. N50,000,000 and above

B. N80,000,000 and above

C. N100,000,000 and above

D. N150,000,000 and above

69. It is only a matter commenced by way of___under the Lagos rules on fast track that can qualify for the fast track procedure.

A. Writ of summons

B. Originating summons

C. Originating motion

D. All of the above

70. Under the fast track procedure in Abuja, a fast track Judge may not be assigned more than___cases a week.

A. 3

B. 4

C. 6

D. 5

71. In Lagos, the marking of the originating process as qualified for fast track is done by the___

A. Deputy Chief Registrar of the High Court of Lagos State

B. Chief Judge of the High Court of Lagos State

C. Person in charge of the litigation section

D. A or C

72. Fast track procedure in Abuja requires the applicant to pay a filing fee of___before the matter can be placed on fast track.

A. N50,000

B. N100,000

C. N150,000

D. N200,000

73. Under the fast track procedure in Abuja, upon the receipt of the processes the___shall issue an acknowledgement and forward the cause or matter to the____for approval or otherwise.

A. Chief Judge/Coordinator

B. Coordinator/Chief Judge

C. Trial fast track Judge

D. Motion fast track Judge

74. The forms used for approval/refusal of the acknowledgement in 73 above, is as in Forms___for approval or resfusal respectively.

A. 32/33

B. 33/34

C. 34/35

D. 35/36

75. Under the fast track procedure in Abuja, monthly account shall be rendered by the coordinator using form___

A. 33

B. 34

C. 35

D. 36

76. Under the fast track procedure in Lagos, the originating process and other documents to be frontloaded shall be served within___from the date of filing.

A. 2 days

B. 14 days

C. 24 hours

D. 24 days

77. Under the fast procedure in Abuja, all originating processes and proofs of service shall be served within___of filing.

A. 2 days

B. 14 days

C. 24 hours

D. 24 days

78. Under the fast track procedure in Lagos, upon service of the originating processes, the defendant shall file his statement of defence within___and the claimant is entitled to file a reply within__of service of the statement of defence.

A. 30/14 days

B. 30/7 days

C. 21/7 days

D. 7/21 days

79. Under the fast track procedure in Lagos, CMC is to applied for within___days from the close of pleadings.

A. 7

B. 30

C. 14

D. 5

80. Under the fast track procedure in Lagos, where a claimant fails to apply for the CMC notice within the prescribed time, the defendant may apply for an order to____the action.

A. Dismiss

B. Strike out

C. Non-suit

D. Transfer

81(a). In normal trial CMC, your answer in 79 above would be_____

A. 7

B. 30

C. 14

D. 5

81(b). If it were a fast track PTC, your answer in 79 above would be___

A. 7

B. 30

C. 14

D. 5

82. In normal trial PTC, your answer in 79 above would be_____

A. 7

B. 30

C. 14

D. 5

83. Under the fast track procedure CMC, it should be completed within a period of___ and may b extended for another___

A. 3 months/30 days

B. 30 days/14 days

C. 3 months/no stipulated time

D. 30 days/no stipulated time

84. Under the fast track procedure in Abuja, all subsequent processes after the originating process are to be served within____

A. 24 hours

B. 2 days

C. 3 days

D. 4 days

85. Under the fast track procedure in Abuja, appearance is to be entered within___if within jurisdiction and____if outside jurisdiction.

A. 7/30 days

B. 21/30 days

C. 14/30 days

D. 42/30 days

86. Under the fast track procedure in Abuja, commencement to conclusion of trial must be within___days

A. 90

B. 60

C. 30

D. 14

87. In a normal trial in Abuja, PTC is to be completed within___days

A. 90

B. 60

C. 30

D. 14

88. In Lagos, CMC notice and case management information sheet are as in Forms___

A. 17 & 18

B. 18 & 19

C. 19 & 20

D. 20 & 21

89. In Abuja, as in 88 above, the forms are as in Forms___

A. 17 & 18

B. 18 & 19

C. 19 & 20

D. 20 & 21

90. After the CMC/PTC the Judge is to make a/an____

A. Ruling

B. Management report/Report

C. Report/Management report

D. Order as to trial

91. Under the CMC & PTC where appropriate sanctions are meted out for default of attendance by either of the parties, they can apply within___ days from the date of the judgment, to set aside the judgment.

A. 7

B. 14

C. 21

D. 5

92. NO QUESTION

93. Under the fast track procedure in Abuja, judgment is to be delivered within___and the CTC of the judgment is to be issued within____

A. 7/7 days

B. 7/4 days

C. 4/7 days

D. 90/14 days

94. Under the fast track procedure in Abuja, where the trial has commenced and the a party or his counsel is absent, the court shall___

A. Non-suit the matter

B. Hold counsel responsible to his commitment to continuous trial and proceed

C. Dismiss the matter

D. Strike out the matter

95. Under the fast track procedure in Abuja, where trial cannot commence on a date fixed for hearing due to the absence of the claimant, the court shall___

A. Non-suit the matter

B. Dismiss the matter

C. Strike out the matter

D. Continue with hearing of the matter

96. As in 95 above, where it is the defendant that is absent, the court shall_____

A. Non-suit the matter

B. Dismiss the matter

C. Strike out the matter

D. Continue with hearing of the matter

97. Where the court makes an appropriate order as in 95 above, the claimant may apply to relist within___days

A. 5

B. 7

C. 14

D. 21

98. Under the fast track procedure in Abuja, where an application for adjournment is made, an order granting such shall not exceed___days from the date of the order.

A. 3

B. 5

C. 7

D. 14

99. Under the fast track procedure in Abuja, where a matter is adjourned at the instance of a party, such party shall be liable to pay, to the other party, cost of not less than___per day for everyday the matter is adjourned.

A. N500,000

B. N100,000

C. N50,000

D. N10,000

100. Under the fast track procedure in Lagos, the Judge shall endeavor to deliver judgment within__of the completion of trial.

A. 30 days

B. 60 days

C. 90 days

D. 3 months

101. Under the fast track procedure in Abuja, the Registrar shall prepare record of proceedings within___days of conclusion of sittings and parties may apply for it and be issued with it within___days of the application which is as in Form____

A. 14/7/17

B. 3/3/37

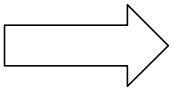
C. 4/5/38

D. 3/7/33

ANSWERS

1. A
2. A
3. B
4. A
5. B
6. B
7. C
8. D
9. A
10. A
11. C
12. A
13. B
14. D
15. C
16. B
17. C
18. B
19. A
20. D
21. A
22. D
23. B
24. A
25. A
26. B
27. B
28. B
29. B
30. A
31. C
32. B
33. B
34. (a) A (b) A
35. B
36. D
37. D
38. A
39. A
40. B
41. A
42. A
43. B
44. B
45. B
46. A
47. A
48. A
49. B
50. D
51. D
52. D
53. D
54. B
55. C
56. B
57. A
58. A
59. A
60. D
61. D
62. C
63. B
64. A
65. A
66. C
67. C
68. A
69. A
70. A
71. D
72. B
73. B
74. C
75. D
76. B
77. C
78. B
79. A
80. A
81. (a) C (b) A
82. A
83. B
84. C
85. A
86. C
87. C
88. A
89. C
90. B
91. A

92. BONUS
93. B
94. B
95. C
96. D
97. B
98. A
99. D
100. B
101. B



IF, IN ALL HONESTY, YOU DO NOT UNDERSTAND ANYTHING IN THIS PART OF THIS NOTE AND YOU WISH TO BE CLEARED; OR YOU WISH TO HAVE A PRIVATE TUTOR GUIDE YOUR READING, WE WOULD BE GLAD TO HELP OUT. YOU CAN CONTACT US USING THE FOLLOWING:

TEL. NO: 07053531239 (WHATSAPP MESSAGES ONLY. NO CALLS)

E-MAIL:
kundycmith@gmail.com

5. COMMENCEMENT OF ACTIONS IN THE HIGH COURT

1. EXPLAIN HOW DIFFERENT TYPES OF PROCEEDINGS ARE COMMENCED AND THE STEPS TO TAKE TO INITIATE OR CONTEST ACTIONS

(a) Venue – ORDER 4 LAGOS 2019; ORDER 3 ABUJA 2018

By virtue of **S. 272 CFRN**, there is only one High Court for state – every state of the federation. However, judicial divisions are created for administrative convenience--**NIGERITE NIG LTD v. DANLAMI NIG LTD.**

The appropriate venue or judicial division for commencing an action depends on the type of action. Thus:

- Actions relating to land, mortgages or charges, or other interests in land or injuries thereto; and all actions relating to personal property distrained or seized shall be commenced and determined in the judicial division in which the land is situate or where the seizure or distrain took place.
- Actions against public officers, actions for recovery of penalties and forfeitures shall be commenced and tried in the judicial division where the cause of action arose.
- Actions for specific performance or for breach of contract may be commenced and tried **in the judicial division in which such contract ought to have been performed or in which the defendant resides or carries on business.**
- Where two or more defendants are resident in different judicial divisions, the action may be commenced in any of those judicial divisions subject to any order or direction of the court as to the most convenient place for holding the proceeding.
- NOTE for the purposes of the above, it has been held that a company resides or carries on business at the place of its central management and control---**KRAUSS THOMPSON ORGANISATION LTD v. UNIVERSITY OF CALABAR; UNIT CONSTRUCTION COMPANY v. BULLOCK.**
- An action commenced in a wrong judicial division may continue to be tried there unless the **Chief Judge** directs otherwise--**ORDER 4 RULE 3 LAGOS 2019, ORDER 3 RULE 6 ABUJA 2018**

(b) Forms/Modes of commencement of action at the HC--ORDER 5 RULES 1 & 5 LAGOS 2019, ORDER 2 RULE 1 ABUJA 2018

In Abuja, the methods of commencing civil actions in the High Court are:

- Writ of summons
- Originating summons
- Petition
- Originating motion (application)

Note that the Lagos rules only provide for two methods of commencing actions, namely:

- Writ of Summons, and
- Originating Summons.

However, it must be noted that in Lagos, notwithstanding the above provisions, civil actions can still be commenced by petition or originating motion where a Law or Rule expressly requires so--**ORDER 5 RULE 1(1) LAGOS 2019.** Note that all the processes used to commence civil proceedings are called originating processes.

1. Writ of Summons –ORDER 5 RULE 1 LAGOS 2019, ORDER 3 RULE 2(1) ABUJA 2018

Writ of summons shall be used for commencing all civil actions in the High Court or FHC except where there is an express constitutional or statutory provision to the contrary. Note the following:

- It is the most common method and the default mode of commencing civil actions in the High Court
- It is used to commence contentious actions where there will be substantial disputes on questions of facts--**DOHERTY V. DOHERTY, NBN V. ALAKIJA, SILVER BIRDS V. AGBAKOBA**
- Where there is doubt as to which method to adopt in commencing the proceedings, then it should be commenced by way of Writ of Summons---**DOHERTY v. DOHERTY**
- Actions commenced by writ of summons usually involves and requires the filing and exchanging of pleadings, calling of witnesses (if any), and a long trial.

(a) Front loading of documents—ORDER 5 RULE 1(2) LAGOS 2019, ORDER 2 RULE 2(2) ABUJA 2018

Front loading is a procedure whereby all relevant processes are filed together with the Writ of Summons. That is, front loading is the requirement of filing upfront, the statement of claim and all other processes along with the writ of summons. Both the claimant and the defendant are under an obligation to front load the documents required to be front loaded.

Advantages of frontloading

- Quick dispensation of justice: The essence of the frontloading process **is to abridge or shorten the time wasted by parties to file, exchange and settle pleadings, join issues and subsequently give oral evidence on the matters contained in their pleadings---OLANIYAN v. OYEWOLE**
- It guards against springing up of surprises on opposing parties since parties know
- It provides an opportunity for counsel to assess their cases before going to the court. By perusing the frontloaded documents, both Court and Counsel are well-prepared and fully aware of the relative strengths and weaknesses of the case for both parties.
- It promotes ADR. That is, it serves as a catalyst for resorting to ADR since both parties know, in advance, the relative strengths and weaknesses of their cases
- It aids the efficient and effective case management by the court as counsel and parties can no longer ask for frivolous adjournments.
- It discourages the presentation of frivolous cases and defences, especially in Abuja and Lagos, where there is the mandatory requirement of filing a Certificate of Pre-action Counselling and Pre-action Protocol Form respectively.

- The system of frontloading saves costs that would otherwise be replicated from filing processes differently.
- It is faster as it is only final address that is not frontloaded.

Almost every High Court of states uses the frontloading system. Even the National Industrial Court has directions on front loading.

Documents to accompany a writ of summons---SLWEP

a) Statement of claim
b) List of witnesses to be called at the trial.
c) Written statements on oath of the witnesses, **except witnesses on subpoena**
d) Every document: Copies of every document to be relied on at the trial
e) Pre-action Protocol Form 01/Pre-action counseling certificate (for Abuja)

Pre-Action Protocol Form 01/ Pre-Action Counseling Certificate Form 6

In Lagos, by Order 5 r 1(2)(e) Lagos 2019, the one required is the **pre-action protocol form 01 and it is to be front loaded by the claimant only.** It is FORM 01 in the appendix to the Lagos rules. The essence is to show the court the claimant has complied with the requirements of the of the rules regarding ADR by showing attempts taken by him to **settle out of court**. NB: It is always on oath, and must have the heading of the court, suit no, parties and signature (of counsel and claimant)

With respect to the pre-action counseling certificate in Abuja, **the certificate shall show that the parties have been appropriately advised as to the relative strength and weaknesses of their cases, and the counsel shall be personally liable to pay the costs of the proceedings where the case turns out to be frivolous. This is the penalty for filing frivolous action**. NB: Filed by the claimant's counsel and defendant's counsel.

NB: Witness statement on oath is like an affidavit, but is different from an affidavit in the sense that it does not become an evidence to be used in the case until adopted, unlike an affidavit that is an evidence once sworn to.

Affixing of NBA Seal by counsel on all court processes filed

- This is pursuant to **RULE 10(1) RPC** and the express provision in Abuja under **ORDER 2 RULE 9 ABUJA, 2018** (not express in Lagos but applies in Lagos State). Implemented by the NBA **from 1 April 2015.** Failure to affix seal on processes is a mere irregularity that can be regularised and it does not render the process void ab initio but only voidable—**SENATOR BELLO SARIKI YAKI V. ATIKU ABUBAKAR BAGUDU**
- Where counsel does not attach stamp and fails to regularise, process becomes invalid and voidable—**OSAKWE V. FCE (ASABA)**
- Where counsel duly pays for seal and NBA fails to make it available, affixing evidence of counsel's payment for the seal will suffice---**RE: ALHAJI SAFURAT OLUFUNKE YAKUBU (2018), TODAY'S CAR LTD V. LASACO ASSURANCE PLC**
- Affixing an expired stamp seal to court processes will not invalidate process but makes it an irregularity that can be regularised—**EMECHEBE V. CETO INT. (NIG) LTD (2018)**

- It shall be mandatory to use NIN for filing and registration of criminal and civil actions in court or other arbitration processes—**REGULATION 1(1) MANDATORY USE OF NIN REGULATIONS 2017**

Form of writ of summons

General form of writ of summons is **Form 1** (L and A) where the writ is within Nigeria—**ORDER 5 RULE 2 LAGOS 2019, ORDER 2 RULE 2(5) ABUJA 2018**

For service out of Nigeria, use **Form 2---ORDER 5 RULE 3 LAGOS 2019, ORDER 2 RULE 2(6) ABUJA 2018**

Contents of a writ of summons

a) Heading of the court where action is brought showing the court and the judicial division where the suit is brought
b) Suit No.
c) Name of defendant and defendant's address
d) time within which the defendant is commanded to enter appearance. In Abuja, appearance is entered within **14 days of service**. In Lagos, defendant enters appearance **within 42 days of service** of writ
e) Date the writ was issued
f) Life span of the writ
g) Particulars of the claim against the defendant and reliefs sought (should be on the reverse/back side)
h) Signature, Name and address of claimant's solicitor within jurisdiction
i) Address of claimant for service of court processes within jurisdiction of the court

Endorsement of claim on a writ

There are two types of endorsement:

- General endorsement
- Special endorsement

General endorsement involves a concise statement of the claimant's claim and relief sought. However, special endorsement contains details of statement of claim (no longer in use because of the system of front-loading)

The endorsement of claim is stating of the particulars of claim, relief or remedies sought on a writ of summons and this must be endorsed at the back or reverse side of the writ---**ORDER 6 RULE 1 LAGOS 2019, ORDER 4 RULE 1 ABUJA 2018.** A writ of summons must be endorsed at the back or reverse side. However, if the claim cannot be conveniently endorsed at the back of the writ, a continuation sheet can be used-- **ALATEDE v. FALODE**

Where a claimant sues, or a defendant or any of several defendants is sued in a representative capacity or in any other capacity, the originating process shall state that capacity---**ORDER 6 RULES 2 AND 3 LAGOS 2019, ORDER 4 RULES 2 AND 3 ABUJA 2018**

A claimant suing in person shall state on the originating process his residential or business address as his address for service and shall include his telephone numbers and e-mail address. If he lives and carries on business outside the jurisdiction, he shall state an address within the jurisdiction as his address for service---**ORDER 6 RULE 6(1)(2) LAGOS 2019, ORDER 4 RULE 6(1) ABUJA 2018**

Where claimant is represented by counsel, the writ shall contain counsel's name, chambers, address, telephone number and e-mail. If counsel is based outside jurisdiction, counsel shall state, in addition, a chambers' address within jurisdiction as address for service and shall include telephone number and e-mail.---**ORDER 6 RULE 6(3)(4)LAGOS 2019, ORDER 4 RULE 6(2) ABUJA 2018**

The name of the counsel that prepared the writ must be stated and must be signed, otherwise the writ becomes a worthless paper. **Do not use the name of the law firm as the signing authority as it is only counsel that must sign. This is so because the law firm was never called to bar---OKAFOR V. NWEKE**

Address for service of the defendant must be stated in the writ and where the address for service of the claimant and the defendant was not stated on the writ/originating process, it will not be accepted by the Registrar for filing and if the address given is illusory, fictitious or misleading, the process will, on the application of the defendant, be set-aside by the court---**ORDER 6 RULE 8 LAGOS 2019, ORDER 4 RULE 8 ABUJA 2018**

Paper to be used in printing an originating process in Lagos shall be **OPAQUE A4 PAPER OF GOOD QUALITY—ORDER 8 RULE 1 LAGOS 2019,** in Abuja, it is just an **A4 PAPER---ORDER 6 RULE 1 ABUJA 2018**

A concurrent writ (a true copy of the original writ with same date) may be issued in Lagos and Abuja—**ORDER 8 RULE 9 AND 10 LAGOS 2019, ORDER 6 RULE 9 ABUJA 2018**

Designation: Claimant/Defendant

2. Originating Summons – ORDER 5 RULES 4 & 5 LAGOS 2019, ORDER 2 RULE 3(1)(3) ABUJA, DIRECTOR OF SSS V. AGBAKOBA, ADELEKE V INAKOJU, DOHERTY V DOHERTY

Advantages of use originating summons

No filing of pleadings, interrogatories etc. Thus, the matter is expeditiously dealt with.

Originating summons is used to commence actions in the following instances:

- Where the principal question in issue is, or is likely to be one of the construction of a written law or instruments, Statute, Will, Deed, Contract, document or some other question of law where there is unlikely to be a substantial dispute of facts; and
- Where a Law or Rule expressly provide for its use. For instance, under Order 57 rule 2 Lagos 2019, an originating summons is required for the commencement of actions for the recovery of premises from a squatter; under. Under Companies Proceedings Rules of 2012, an originating summons is the prescribed method of commencing company

proceedings. **IT MUST BE NOTED THAT where a law or rule expressly requires the use of originating summons in commencing an action, it does not matter that there will be substantial disputes of facts.**

- Enforcement of fundamental rights—**SAUDE V. ABDULLAHI**
- To correct errors in the judgment—**UNILAG V. AIGORO, AGIP (NIG) LTD V. EZENDU**

Originating summons is NOT TO BE USED to commence actions in the following instances:

- Contentious or hostile proceedings
- Actions for title to land—**ORIANWOVO V ORIANWOVO**

Designation: Claimant/Defendant

In Lagos, originating summons is to be accompanied by:---**AEWP**

- Affidavit setting out the facts relied upon
- Exhibits (all) to be relied on
- Written address in support of the application
- Pre- action Protocol Form 01/Pre-action counseling certificate Form 6--**ORDER 5 RULE 5(3) LAGOS 2019, ORDER 2 RULE 3(5) ABUJA 2018**

NB: Forms 3, 4 and 5 are used in Lagos and Abuja.

Contents of originating summons

- Heading of court and suit number
- Names of parties and capacity they are suing
- Title of document "Originating Summons"
- Address of parties for service within jurisdiction
- Time for entering appearance. **Lagos—21 days, Abuja—42 days**
- Nature of the claim and remedies sought
- Questions to be determined
- Date
- Signature

NB: The effect of issuing an originating summons is that it is a command, at the instance of the claimant, ordering the defendant to appear before the court.

NB: Where an action is wrongly commenced by originating summons, the court is not expected to strike it out. In such a circumstance, the trial court shall order pleadings to be filed and exchanged as if it were commenced by writ of summons so that the action may proceed to trial/hearing---**ADEYELU II v. AJAGUNGBADE III**

The above applies only to originating summons and not to any other method of commencing actions. That is, there can only be conversion from originating summons to writ of summons only and not vice versa. Failure to use petition or originating application where expressly required will lead to the action being struck out.

3. Petition –ORDER 2 RULE 6 ABUJA 2018, KASOP V. KOFA TRADING CO

It is an originating process usually used when the law (or rules) provides that it should be used.

It is usually used in commencing the following actions:

- Matrimonial causes—**S. 54 MCA.**
- Winding up of companies—**S. 410 CAMA.**
- Electoral matters--**S. 133(1) ELECTORAL ACT.**

Contents of a petition

- Concise statement of the nature of the claim of the claimant
- Relief or remedy sought
- Date
- Signature

Designation: Petitioner/Respondent

4. Originating Motion or Application –ORDER 2 RULE 6 ABUJA 2018

This originating process is also used when the statute or law provides that it should be used—**KOSAP V KOFA TRADING CO.** It is used in Fundamental Rights Enforcement proceedings---**ORDER 2 RULE 1 FREP**.

Also, it is the accepted mode for applying for the prerogative writs or orders like Certiorari, Mandamus (Judicial review), Quo Warranto, Habeas Corpus, etc—**ORDER 44 RULES 1 AND 5(1) LAGOS 2019, ORDER 44 RULE 1 AND 5(1) ABUJA 2018.** Under CAMA some applications are made by originating application.

Where a statute provides that an application may be made but does not provide for any special procedure, it should be by originating motion. - **AKUNNIA v. AG ANAMBRA**

Designation: Applicant/Respondent

2. COMPLETE A WRIT OF SUMMONS AND DRAFT ORIGINATING SUMMONS AND THE DOCUMENTS TO BE FRONTLOADED (PARTICULARLY THE WITNESS STATEMENT ON OATH)

A. WRIT OF SUMMONS (FORM 1—LAGOS AND ABUJA)

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:……..

BETWEEN

EMEKA HENRY

(trading under the name and style of Emeka Henry & Sons).....CLAIMANT

AND

GOODIES SUGAR PLC.....DEFENDANT

TO: Goodies Sugar Plc of No. 8 Kirikri Apapa

IN THE: Apapa Local Government Area of Lagos State

You are hereby commanded that within **forty-two days (NB: fourteen days for Abuja) 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 of **the claimant**; 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 **20th** day of **January** 20**19**

…….....

Registrar

Memorandum to be subscribed on the writ

N.B. This writ is to be served **within six calendar months (NB: within three calendar months for Abuja) from the date of issuance,** 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 in which the action is brought or by sending them to the Registrar by registered post.

ENDORSEMENTS (to be made at the back of the writ before issue)

The claimant claims against the defendant:

1. **A DECLARATION that the contract between the claimant and the defendant is valid and subsisting**
2. **PAYMENT of the outstanding sum of N35,000,000 (Thirty-Five Million Naira Only) payable from the contract entered into with the defendant and which the defendant has failed to pay.**
3. **INTEREST on the sum of N35,000,000 (Thirty-Five Million Naira Only) at the rate of twenty-one percent per annum until the judgment debt is satisfied.**
4. **GENERAL DAMAGES in the sum of N25,000,000 (Twenty-Five Million Naira Only) for stress, mental torture and inconvenience as a result of the defendant's breach of contract.**

This writ was issued by **K.C Aneke Esq.** of **K.C Aneke & Associates** whose address for service is **No.2 Law School Drive, Victoria Island, Lagos, Lagos State,** legal practitioner for the said claimant who resides at **No. 3 Law School Drive, Victoria Island, Lagos, Lagos State.**

Dated this 20th day of January, 2019

…….

K. C Aneke Esq.

Claimant's counsel

K. C Aneke & Associates

No. 2 Law School Drive,
Victoria Island, Lagos,
Lagos State

07053531239

kundycmith@gmail.com

FOR SERVICE ON:

The Defendant

Goodies Sugar Plc

No. 8 Kirikiri Road, Apapa

Lagos State.

Indorsed as to Service

This writ was served by me…….on the defendant accompanied by:

1. **Statement of claim**
2. **List of witnesses to be called at the trial**
3. **Written statements on oath of the witnesses except witnesses on subpoena**
4. **Copies of every document to be relied on at the trial**
5. **Pre-action protocol Form 01/ Certificate of pre-action counseling Form 6 (for Abuja)**

Personal service on the___day of__20__

Indorsed the ..... day of ..... 20.....

……..

(Signed)

…….

Address for service

PRE-ACTION PROTOCOL FORM 01

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

SUIT NO:....

BETWEEN

ABC ---------- CLAIMANT

AND

XYZ ----------DEFENDANT

STATEMENT OF COMPLIANCE WITH PRE-ACTION PROTOCOL

(FORM 01)

I, Cundy Smith, claimant's legal practitioner of No.2 Law School Drive, Victoria Island, Lagos, Lagos State, make oath and state as follows:

1) I have complied with the directions of the Pre-action Protocol as set out in Order 5 Rule 1(2)(e) of the High Court Rules 2019
2) The claimant and I have made attempts to have this matter settled out of Court with the defendant and such attempts were unsuccessful. Such attempts include:
    a. Negotiation held on the _____ day of _____, _____, which ended in a deadlock
    b. Attempts to reconvene another meeting to try to negotiate, which was never successful
    c. Mediation organised and headed by Prof Joash Amupitan SAN, which also ended in a deadlock.
3) We have by a Written Memorandum to the defendant, set out the claimant's claim and options of settlement.

Dated this _____ day of _____, 2019

BEFORE ME

_____

COMMISSIONER FOR OATHS

PRE-ACTION COUNSELLING CERTIFICATE
IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE MAITAMA JUDICIAL DIVISION
HOLDEN AT MAITAMA

SUIT NO:....

BETWEEN

ABC ----------CLAIMANT

AND

XYZ----------DEFENDANT

CERTIFICATE OF PRE-ACTION COUNSELLING

(FORM 6)

I, Cundy Smith of Star Chambers, No. 3 Maitama Crescent, Abuja, legal practitioner to the claimant/defendant have gone through the facts of the case of the said claimant/defendant and on my honour have appropriately counselled him/her on the relative strengths of his/her case or otherwise and should this turn out to be frivolous, I am prepared to be liable as per the provisions of the Rules of this Court.

Dated this _____ day of _____, 2019

_____ _____

Cundy Smith Esq ABC/XYZ

Legal practitioner to Claimant Claimant/Defendant

B. ORIGINATING SUMMONS (FORM 3---LAGOS AND ABUJA)

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

SUIT NO

BETWEEN

ABC ---------- CLAIMANT

AND

XYZ---------- DEFENDANT

ORIGINATING SUMMONS

BROUGHT PURSUANT TO ORDER 5 RULE 4 OF THE HIGH COURT (CIVIL PROCEDURE) RULES OF LAGOS STATE, 2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

LET XYZ of No 123, Ikoyi, in the Lagos Judicial Division, within **twenty-one (21) days** after the service of this summons on you, inclusive of the day of such service, cause an appearance to be entered for you to this summons which is issued on the application of ABC of No 333 Bourdillon, Lagos, and who will seek for the determination of the following questions:

QUESTIONS FOR DETERMINATION

1. Whether the claimant has a valid contract with the defendant in view of Clause 4 of the agreement between the Claimant and the defendant dated 13/02/2015; OR
2. Whether the provisions of section 145 of the CFRN 1999 as amended imposes a duty or a discretion on the President to transmit a written declaration to the President of the Senate and Speaker of House of Representatives in the event of the President proceeding on vacation or is otherwise unable to discharge the functions of his office.

RELIEFS SOUGHT BY THE CLAIMANT

AND after the determination of the issues, the Claimant prays as follows:

1. A DECLARATION that there is no valid contract between the claimant and the defendant; OR
2. A DECLARATION that section 145 of the 1999 CFRN as amended imposes a duty on the President to transmit a written declaration to the President of the Senate and the Speaker of the House of Representatives whenever he is proceeding on vacation or is otherwise unable to discharge the functions of his office.

Dated this _____ day of _____, 2019

THIS SUMMONS was taken out by K. C Aneke Esq of K. C Aneke & CO of No. 5 Festac Town Lagos., legal practitioner to the above named claimant.

SEALED at the High Court Registry, Lagos.

FOR SERVICE ON:
The Defendant,
XYZ
No 123, Ikoyi,
Lagos.

Comment [C28]: FOR THE SUPPORTING DOCUMENTS OF
AFFIDAVIT
EXHIBITS
WRITTEN ADDRESS (USE THE FORMAT OF SUPPORTING DOCUMENTS IN INTERLOCUTORY APPLICATIONS WITH NECESSARY MODIFICATIONS)
PRE-ACTION PROTOCOL/COUNSELLING (ALREADY DRAFTED)

Comment [C29]: or 30days if outside jurisdiction--SCPA

Comment [C30]: NOTE:
1)The defendant may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms duly completed at the Registry of the High Court of Lagos State or by sending them to that office by Registered Post. (**Note, for Bar Part II, put appropriate name of court.)**
2)If the defendant does not enter appearance within the time prescribed and at the place mentioned above, such order will be made and proceedings may be taken as the judge may think just and expedient.

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

SUIT NO

BETWEEN

ABC ---------- CLAIMANT

AND

XYZ---------- DEFENDANT

ORIGINATING SUMMONS

BROUGHT PURSUANT TO ORDER 2 RULE 3(4) OF THE HIGH COURT (CIVIL PROCEDURE) RULES OF THE FEDERAL CAPITAL TERRITORY, 2018 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

LET XYZ of No 123, Chris Avenue, in the Abuja Judicial Division, within **forty-two days** after the service of this summons on you, inclusive of the day of such service, cause an appearance to be entered for you to this summons which is issued on the application of ABC of No 333 Kene Close, Abuja, and who will seek for the determination of the following questions:

QUESTIONS FOR DETERMINATION

1. Whether the claimant has a valid contract with the defendant in view of Clause 4 of the agreement between the Claimant and the defendant dated 13/02/2015; OR

2. Whether the provisions of section 145 of the CFRN 1999 as amended imposes a duty or a discretion on the President to transmit a written declaration to the President of the Senate and Speaker of House of Representatives in the event of the President proceeding on vacation or is otherwise unable to discharge the functions of his office.

RELIEFS SOUGHT BY THE CLAIMANT

AND after the determination of the issues, the Claimant prays as follows:

1. A DECLARATION that there is no valid contract between the claimant and the defendant; OR

2. A DECLARATION that section 145 of the 1999 CFRN as amended imposes a duty on the President to transmit a written declaration to the President of the Senate and the Speaker of the House of Representatives whenever he is proceeding on vacation or is otherwise unable to discharge the functions of his office.

TAKE NOTE that parties shall maintain status quo

Dated this _____ day of _____, 2019

.....

Registrar

THIS SUMMONS was taken out by K. C Aneke Esq of K. C Aneke & CO of no 5 Festac Town Lagos., legal practitioner to the above named claimant.

FOR SERVICE ON:
The Defendant,
XYZ
No 123, Chris Avenue,

Abuja.

3. EXPLAIN HOW COURT DOCUMENTS ARE BROUGHT TO THE NOTICE OF THE OTHER PARTY

(a) Service of court processes – ORDER 9 RULE 1(1) LAGOS 2019, ORDER 7 RULE 1 (1) ABUJA 2018

Governed by rules of court. Service of court processes is necessary because of the provision for fair hearing in section 36(1) CFRN. Service can be within jurisdiction or out of jurisdiction and by personal service or substituted service.

Originating process is to be served by the following **process servers: a sheriff, deputy sheriff, bailiff, special marshal, or other officer of the court.** Also, law chambers, Courier Company or any other person appointed and registered by a judge to serve court process.

For an individual, he is to be served personally – **ORDER 9 RULE 2 LAGOS 2019 AND ORDER 7 RULE 2 ABUJA 2018**.

NB: For a company, there are two ways of effecting service – through human being **OR** leaving it at the designated place. Service to human being includes director, secretary, trustee or other senior or principal officer of the organization. At the designated place includes registered office, principal office, advertised office, place of business of the organization within jurisdiction. The foregoing provision is subject to the provision of rules regulating the company--**ORDER 9 RULE 9 LAGOS 2019.** Lagos rule is more detailed as Abuja does not envisage human being service but only service by delivery at the head office or any other place of business of the organization within the jurisdiction of the court-- **ORDER 7 RULE 8 ABUJA 2018.**

Exceptions to personal service are:

- Where written authority is given to a legal practitioner by the defendant to accept service and such legal practitioner, together with such authority, enters appearance via a memorandum of appearance, attaching the written authority to the memo—**ORDER 9 RULE 3 LAGOS 2019, ORDER 7 RULE 3 ABUJA 2018** (Abuja does not however require written authority to be attached to the memo)
- Where with the leave of court, an order for substituted service is made---**ORDER 9 RULE 5 LAGOS 2019, ORDER 7 RULE 11(1) ABUJA 2018.** The application for such order is by the claimant by way of MOTION EX PARTE supported with affidavit and written address. It includes:
  1. Delivery to an agent or to an adult at the last known address.
  2. Advertisement in the national daily newspaper
  3. Pasting it at the court or last known residential address of the defendant
- Where parties are represented by counsel, **hearing notices and processes other than originating process** may be served by Email/SMS---**ORDER 7 RULES 16 AND 17 ABUJA 2018**

NB: In **MARK v. EKE,** the Supreme Court held that there is no room for an order of substituted service on a company because the procedure for substituted service is not applicable to a company. In reality, it is applicable to company.

DRAFT PRAYER FOR MOTION EX PARTE FOR LEAVE TO EFFECT SERVICE BY SUBSTITUTED MEANS

"AN ORDER of this Honourable Court granting leave to the claimant to effect substituted service on the defendant by pasting the process at No.2 ABC Road, Lagos, Lagos State, the last known address of the defendant."

(b) Service out of jurisdiction within Nigeria (BAR II EXAM)

Governed by the Sherriff and Civil Processes Act. In other jurisdictions, leave is required to issue the writ (process) out of jurisdiction. This is no longer the case in Lagos and Abuja---**NWABUEZE V. OKOYE, ADEGOKE MOTORS V. ADESANYA, ODUA INVESTMENT V. TALABI**

The writ must be endorsed by the LP of the claimant (for Lagos)/Registrar of the court (for Abuja) to the effect that it is to be served out of jurisdiction---S. 97 SCPA, ORDER 9 RULE 16 LAGOS 2019, ORDER 2 RULE 4 ABUJA 2018

DRAFT

"This writ of summons/originating summons/other originating process is to be served out of Lagos State of Nigeria/the Federal Capital Territory and in the _____ State"

Defendant must be given **not less than 30 days from the date of service**, to enter appearance except a longer period has been prescribed by the rules of court---**S. 99 SCPA**. Thus, since **Lagos has 42 days, go with 42 days and since Abuja has 14 days, which is not a longer period, go with 30 days**)

Effect of non-compliance is that it will be deemed to be an irregularity voidable but not void---**SKEN CONSULT V, UKEY, ADEGOKE MOTORS' CASE**

(c) Service outside Nigeria---ORDER 10 LAGOS 2019, ORDER 11 RULE 19 ABUJA 2018

Reciprocal treatment---no leave of court

No reciprocal treatment---leave of court by way of MEP+A+WA. Process shall be sealed by court for service.

(d) Proof of service

Under the Lagos 2012 rules and Abuja 2018 rules, after service, **the process server shall depose to an affidavit of service** which shall be prima facie evidence of service—**ORDER 7 RULE 13(1) LAGOS 2012, ORDER 7 RULE 13(1)(2) ABUJA, 2018, OKESUJI v. LAWAL.** However, it seems that this requirement has been dispensed with under the new Lagos 2019 rules as ORDER 9 RULE 13 LAGOS 2019 which ought to be the corresponding order and rule, now talks about expenses and service. No corresponding provision is seen at the point of making of this note.

Comment [C31]: PLEASE CONFIRM FROM THE LECTURERS IF THERE IS ANY REASON FOR THE OMISSION OF THE RULE ON PROOF OF SERVICE OR IF IT WAS AN INADVERTENT OMISSION.

Where E-mail was used, attach a print out of the E-mail to the affidavit of service to be filed. The following must be contained in the affidavit of service:

- Date of service
- Time of service
- Place of service
- Mode of service
- Facts of service

- Description of process served

Time and date for service

- Every day between the hours of 6:00am and 6:00pm. Public Holiday and Sunday's are excluded except in exceptional circumstances as may be authorized by the judges--- **ORDER 9 RULE 14 LAGOS 2019, ORDER 7 RULE 15(1)(2) ABUJA 2018**

The following are the means of proving service--MOHAMMED V. MUSTAPHA

- Affidavit of service
- Certificate of service
- Appearance in court by the party served on the return date
- Acknowledgement of service

Setting aside defective writs (BAR II EXAM)

When a writ of summons has been issued, there are possible objections. It could be:

- Objections as to defect in writ; or
- Objections as to defect in service of a writ

A defective writ could be:

- Improper endorsement as to capacity of the parties
- Wrong parties are named
- Not signed or dated
- Writ of summons with no relief
- Writ of summons signed in chamber's name instead of legal practitioner's name

Amendment of a writ of summons

Where the claimant has not served the defendant, it is by MEP+A+WA

Where the claimant has served the defendant, it is by MON+A+WA

DRAFT OF PRAYER TO AMEND WRIT

"AN ORDER of this Honourable Court granting leave to the claimant to amend his writ of summons as stated in the proposed amended writ of summons"

NB: An application should also be brought to amend the statement of claim to reflect the amendment. This is because if there is any difference between the amended writ and the statement of claims, the provisions in the statement of claim supersedes those in the writ--- **OKOMU PALM CO. V. ISERHIENRHEN, KUPOLUYI V PHILIPS**

4. DISCUSS THE PRINCIPLES GOVERNING THE ISSUANCE AND RENEWAL OF ORIGINATING PROCESSES

A writ/originating process is deemed to have been issued only when **it is sealed by the registrar—ORDER 8 RULE 2(1) LAGOS 2019, ORDER 6 RULE 2(1) ABUJA 2018**

Life span/Renewal of originating processes

Generally, 6 months initial validity renewable for another 3 months (Lagos and Abuja)---**ORDER 8 RULE 6(1)(2) LAGOS 2019, ORDER 6 RULE 6(1)(2) ABUJA 2018.** ---Maximum of 2 renewals for both Lagos and Abuja but in Lagos the total period after the 2 renewals shall not be longer than 12 months in total (3 x 2= 6 months max renewal. 6months initial validity + 6 months max renewal=12 months in total) whereas in Abuja, the total period after the 2 renewals shall not be longer than 9 months in total (3 x 2= 6 months max renewal. 6 months initial validity + 6 months max renewal=12 months in total and this is longer than the 9 months provided for, thus, the initial validity period is taken to mean 3 months and as such 3 months initial validity + 6 months max renewal = 9 months in total. This is supported by Form 1 (writ of summons) that provides that the writ shall be valid for the initial period for 3 months and renewal at first instance for another 3 months (obviously with the option of another 3 months renewal)---**ORDER 8 RULE 7 LAGOS 2019, ORDER 6 RULE 7 ABUJA 2018**

Summary

Lagos---6+3+3=12

Abuja—3+3+3=9

NB: The question has been asked as to when an application for renewal should be made, is it before or after expiration of the initial life span of the writ? Thus, in **KOLAWOLE v. ALBERTO**, the Supreme Court stated that the court can grant an application for renewal before or after expiration as it thinks fit. HOWEVER, in Lagos, the provisions of **ORDER 8 RULE 6(2) LAGOS 2019** is clear that the application for renewal must be made before the expiration of the Writ. See also **ALAO v. OMONIYI**

Application for renewal is by MOTION EX PARTE supported by affidavit and a written address.

NB: Renewed writ is as in FORM 6 (Lagos) and FORM 7 (Abuja)

5. DISCUSS AND EXPLAIN THE PRINCIPLES GOVERNING APPEARANCE AND DEFAULT OF APPEARANCE AND JUDGMENT THEREOF

In Nigeria, an action would be deemed to have commenced when the claimant does all that is required of him, by law, to do in order to commence the action. This includes taking out the appropriate writ or originating process, making an application to the Registrar for its issuance and paying the prescribed fees. Once this is done, the action is deemed to have commenced, and what is left to be done is an administrative or domestic affair of the court and its staff--**ALAWODE & ORS V. SEMOH; NICHOLLS V. GENERAL MANAGER, OLUBUSOLA v. STANDARD BANK OF NIGERIA; UBA v. MODE NIG LTD**. Thus, when a litigant has done all that is required of him; he cannot be held accountable for any default in administration on part of the court or Registrar.

Entry of Appearance (Form 11 (Lagos) Form 12 (Abuja))– **ORDER 11 RULE 1 LAGOS 2019, ORDER 9 RULE 1 ABUJA 2018**

A defendant upon being served with a writ of summons will file a memorandum of appearance within the period or return date prescribed in the writ for appearance (L and A= 42 and 14 days respectively). Memorandum of appearance can be:

- Conditional appearance – appearance under protest
- Unconditional appearance.

For a conditional appearance, the word conditional is to be added. The memorandum of appearance must contain address for service for the defendant. This is the importance of a memorandum of appearance.

Note that the defendant enters appearance, not by physically appearing in court, but by completing the prescribed form called Memorandum of appearance and filing it in the court's registry and **shall not later than 7 days thereafter, serve a sealed copy of the memorandum of appearance on a claimant's legal practitioner or on the claimant if he sues in person—ORDER 11 RULE 1(3) LAGOS 2019, ORDER 9 RULE 1(3) ABUJA 2018**

The memo must contain the defendant's address for service. Where it does not contain an address for service, the memo shall not be accepted by the Registrar. Where it contains an address, but the address is illusory, fictitious or misleading, the appearance can be set aside by a judge upon application by the claimant-**ORDER 11 RULE 3 LAGOS 2019, ORDER 9 RULE 3 ABUJA 2018**

NB: Failure to enter appearance within prescribed time attracts a default fee of **N1000 and N200 (L and A respectively) (paid to the court)** for each day of the default---**ORDER 11 RULE 5 LAGOS 2019, ORDER 49 RULE 5 ABUJA 2018. If appearance is not entered by the defendant within the prescribed time limit, a default judgment can be entered against him in default of appearance---ORDER 12 LAGOS 2019, ORDER 10 ABUJA 2018**. NB: No default judgment in declaratory actions as the claimant must prove his case on the merits---**AGBAKOBA V SSS**

Procedure for extension of time

The claimant is to apply for default judgment by MOTION ON NOTICE. The defendant upon service of the application for default judgment can apply for extension of time for appearance – MOTION ON NOTICE.

"AN ORDER for extension of time within which the defendant may enter appearance in this matter"

6. DRAFT THE MEMORANDUM OF APPEARANCE

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE MAITAMA JUDICIAL DIVISION
HOLDEN AT MAITAMA

SUIT NO

BETWEEN

ABC ---------- CLAIMANT

AND

XYZ---------- DEFENDANT

MEMORANDUM OF APPEARANCE

KINDLY cause an appearance to be entered for XYZ, sued as defendant in this action

Dated this ---------- day of ----------, ----------

_____
K. C. Aneke Esq
Defendant's Solicitor
K.C Aneke & Co
No 5 Law School Drive,
Victoria Island,
Lagos.

FOR SERVICE ON:
The Claimant
C/o His Counsel
B. O. Olaniyan
Olaniyan & Co
No 3 Adeyomostreet
Victoria Island,
Lagos.

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE MAITAMA JUDICIAL DIVISION
HOLDEN AT MAITAMA

SUIT NO

BETWEEN

ABC ---------- CLAIMANT

AND

XYZ---------- DEFENDANT

MEMORANDUM OF CONDITIONAL APPEARANCE
KINDLY cause a conditional appearance to be entered for XYZ, sued as defendant in this action

Dated this ---------- day of ----------, ----------

_____
K. C. Aneke Esq
Defendant's Solicitor
K.C Aneke & Co
No 5 Law School Drive
Victoria Island
Lagos

FOR SERVICE ON:
The Claimant
C/o His Counsel
B. O. Olaniyan
Olaniyan & Co
No 3 Adeyomo street
Victoria Island
Lagos.

7. EXPLAIN THE CONSEQUENCES OF NON-COMPLIANCE WITH THE RULES OF COURT

In Lagos, there is a consequence for not front loading, and it is provided that the effect of failure to frontload the required documents would result in the rejection of the Writ for filing at the Registry. That is, the originating process would not be accepted for filing at the Registry--ORDER 5 RULE 1(2) AND ORDER 7 RULE 1(1) LAGOS 2019, JABITHA V. ONIKOYI.

For emphasis, where in beginning or purporting to begin any action there has, by reason of anything done or left undone, been a failure to comply with the front-loading requirements, **THE FAILURE SHALL NULLIFY THE ACTION**.

Under the Abuja Rules, there is no consequence for failure to frontload, only a mere irregularity---**ORDER 5 RULE 1(1)(2) ABUJA 2018, EZOMO V. OYAKHRE, NWABUEZE V. OKOYE.**

Comment [C32]: In **OLANIYAN V. OYEWOLE,** the CA held that failure to front load any of the documents required to be frontloaded should be treated as a mere irregularity. IT DOES NOT APPLY IN LAGOS AS THE CASE WAS DECIDED UNDER KWARA RULES WHICH IS DIFFERENT FROM THE MANDATORY PROVISIONS IN LAGOS

Consequences of failure to serve

Service is a condition precedent to the exercise of jurisdiction by the courts and were a defendant is not served, the court cannot properly assume jurisdiction---**MARK V EKE, NEPA V ONAH,** and non-service is a ground for setting aside a judgment already delivered.

8. EXPLAIN THE STEPS TO BE TAKEN WHERE THE DEFENDANT WANTS TO SET ASIDE THE SERVICE OF THE WRIT OR ORIGINATING PROCESS (ES)

The defendant faced with a defective writ can take any of the following steps-----CNN

1. **CONDITIONAL APPEARANCE:** Enter a conditional appearance or appearance under protest and subsequently file a motion on notice to have the Writ or service set aside. It must be supported by affidavit and written address---**HOLMAN BROTHERS (Nig.) LTD V. KIGO NIG LTD**

Comment [C33]: BAR PART II ANSWER, MOST APPROPRIATE.

Comment [C34]: Especially on grounds of law.

2. **NO APPEARANCE:** Without entering appearance, he can file a motion on notice or summons for the writ to be set aside on the grounds of defect – list the ground(s), affidavit and written address--**SKEN CONSULT v. UKEY**

3. **NOTICE OF PRELIMINARY OBJECTION:** He can proceed with the case but while the case is still pending, he can file notice of preliminary objection listing the ground(s) for the objection with a written address--**AG EASTERN NIGERIA v. AG FEDERATION**

The defendant is to act within reasonable time before he takes any step in the matter--**ARIORI V ELEMO, EZOMO V OYAHKIRE ADEKOGOKE MOTORS V ADESANYA**

9. DICUSS THE ETHICAL IMPLICATIONS OF A LAWYER COMMENCING AN ACTION IN COURT USING THE WRONG PROCEDURE, NONE OR IMPROPER SERVICE OF ORIGINATING PROCESSES, DELAY IN RAISING OBJECTION TO NON-COMPLIANCE---- RULE 14(1), 15, 16(1), 24, 30 RPC

Comment [C35]:
- A legal practitioner is to devote his attention energy and expertise in instituting an action on behalf of his client. Rule 14(1) RPC.
- The legal practitioner in instituting the action and drafting the necessary processes is to act within the bounds of law. Rule 15(1) RPC
- A legal practitioner is not to file a suit on behalf of his client when he knows or ought reasonably to know that such action would serve merely to harass or maliciously injure another. Rule 15(2)(b) RPC
- A legal practitioner should advice his client of the option of ADR mechanisms before resorting to or continuing litigation on behalf of his client. Rule 15(3)(d) RPC
- A legal practitioner is expected to be competent and if he knows he is not competent, he should seek help from other legal practitioner, thus should know when to use writ of summons and other originating processes. Rule 16(1) RPC
- A legal practitioner as an officer of court is not to conduct himself in a manner that may obstruct, delay, or adversely affect the administration of justice. Rule 30 RPC.

10. FAST-TRACK PROCEDURE– ORDER 59 LAGOS 2019, ORDER 37 ABUJA 2018

LAGOS	ABUJA
1. Objective The main objective of the fast-track court and procedure is to reduce the time spent on litigation **TO A PERIOD NOT EXCEEDING NINE (9) MONTHS** from the commencement of the action till the final judgment---**ORDER 59 RULE 1 LAGOS, 2019.**	**1. Objective** The objective is not expressly stated in Abuja, but only to be used where there is an exceptional urgency
2. Appointment of Fast Track Judges Lagos rules did not expressly state this.	**2. Appointment of Fast Track Judges** The Chief Judge shall designate such number of Fast Track Judges as he thinks fit, who may act as **Motion Fast Track judges and/or Trial Fast Track judges**---**ORDER 37 RULE 1 ABUJA 2018**.
	3. Pre-trial conference A Fast Track judge may conduct pretrial conference or settlement of issues subject to Order 35 and in compliance with Order 27 as he considers expedient in the circumstances---**ORDER 37 RULE 2 ABUJA 2018**
3. Coordinators Coordination is left to the Chief Registrar of the High Court and the duties are not expressly stated.	**4. Coordinators** The Chief Judge shall appoint an officer as coordinator for the Fast Track Division and the Coordinator shall: (a) Process Fast Track cases; (b) Monitor the performance of the Fast Track Division and submit weekly and monthly performance appraisal report to the Chief Judge; (c) Make recommendations on how to improve the operation of the Fast Track Division; (d) Publish the weekly Cause List every Friday or on an earlier day if Friday is a public holiday; (e) Manage, coordinate and supervise the operation of the Fast Track Division; and (f) Perform any other function that may be assigned to him by the Chief Judge---**ORDER 37 RULE 3 ABUJA 2018**
4. Cases qualified for fast-track Monetary jurisdiction is wider than Abuja A suit shall qualify for fast-track where: a) The action is commenced by Writ of summons; **AND** b) An application is made to the Registrar by a claimant or counter claimant; **AND** **i)** The claim is a liquidated monetary claim or counter-claim **in a sum not less than one hundred million naira (#100, 000, 000. 00); OR** **ii)** The claim involves a mortgage transaction, charge or other securities; **OR** iii) The claimant is suing for a **liquidated monetary claim** and is **not a Nigerian National or resident in Nigeria** and **such facts are disclosed in the pleadings— ORDER 59 RULE 2 LAGOS 2019**	**5. Cases qualified for fast-track** Subject matter jurisdiction is wider than Lagos Where any of the parties specifically requests **to proceed by way of Fast Track as in Form 32**, the Fast Track Court shall have jurisdiction to hear and determine that case **and any other case requiring exceptional urgency** including but not limited to the following: (a) Banker/ customer disputes; (b) Commerce and Industry; (c) Landlord and tenant; (d) Federal Capital Territory or Area Council Revenue; (e) Where any of the parties specifically requests to proceed by way of Fast Track as in Form 32. (f) Provided that the monetary claim in paragraphs (a) and (b) above **is not less than Fifty Million Naira;** and (g) Any other case which the chief judge may approve—**ORDER 37 RULE 4 ABUJA 2018**
	6. Assignment of cases to FTJ A Fast Track judge may not be assigned more than three cases a week---**ORDER 37 RULE 5 ABUJA 2018**
5. Marking and payment of filing fees When the case satisfies the conditions for qualification for fast track above, the DEPUTY CHIEF REGISTRAR OR ANY OTHER PERSON IN CHARGE OF THE LITIGATION SECTION shall cause the originating process (writ) to be marked "QUALIFIED FOR FAST-TRACK" and **direct the applicant to pay the appropriate filing fees---ORDER 59 RULE 3 LAGOS 2019**	**7. Forwarding and filing fee** The claimant or counterclaimant shall present his originating process prepared by him or his legal practitioner accompanied by: a. Statement of claim b. List of witnesses to be called at the trial, c. Written statement on oath of the witnesses d. Copies of every document or exhibit to be relied on at the trial, e. Certificate of pre-action counseling, and f. A duly completed **application form as in Form 32** obtained from the Division to place the cause or matter on the Fast Track Division

Comment [v36]: THIS QUALIFIES IT FOR FAST TRACK PROCEDURE, THUS IF THE SUM IS 80 MILLION IT WILL NOT QUALIFY EXCEPT OTHER OPTIONS AVAIL IT.

	The Coordinator shall upon receipt of the processes issue an acknowledgement and forward the cause or matter to the chief judge for approval or otherwise as in Form 34 or 35. Where a matter is placed on the Fast Track, a filing fee of N100, 000(One Hundred Thousand naira) shall be paid by the Applicant---**ORDER 37 RULE 6 ABUJA 2018**
	8. Account rendering by coordinator The coordinator shall render monthly account of the monies received by the revenue officer for filing processes, forms or notices as in Form 36---**ORDER 37 RULE 7 ABUJA 2018**
6. Service of originating processes The originating process (writ) and the other frontloaded documents shall be served within FOURTEEN (14) DAYS from the date of filing---**ORDER 59 RULE 4 LAGOS 2019**	**7. Service of originating processes** The bailiff shall serve all processes or notices filed **within 24 hours of filing and file a proof of service.** Where a bailiff is unable to effect service, **a certificate of non-service shall be filed.** Any court official who receives or dispatches a file or process relating to a Fast Track case shall state the date and time of receipt or dispatch. Service of process may be effected on parties or counsel in the court. All proofs of service **must be filed within 24 hours**—**ORDER 37 RULE 8 ABUJA 2018**
7. Defence and Reply Upon service of the originating processes, the defendant shall file his statement of defence **within 30 (THIRTY) DAYS.** The claimant is entitled to file a reply **within SEVEN (7) DAYS** of service of the statement of defence---**ORDER 59 RULE 5 LAGOS 2019**	
8. Case Management Conference/Pre-trial conference **Within SEVEN (7) DAYS of the close of pleadings, the claimant shall apply for CMC Notice as in FORMS 17 and 18 and if** the claimant fails to apply for CMC Notice within prescribed time, the following options are open to the defendant: • The defendant may apply for the CMC Notice himself; or • The defendant may apply for an Order to dismiss the action—**ORDER 59 RULE 6 LAGOS 2019**	
8. Day to day trial The CMC or series thereof shall be held from day to day and shall be adjourned only for the purpose of ensuring compliance with the CMC Orders and **the CMC should be completed within a period of THIRTY (30) DAYS**. However, if it appears to the CMC judge, acting either suo moto or upon application by either party, that an extension is necessary, the CMC may be extended for another **FOURTEEN (14) DAYS** or for such other period **as the CMC judge** may deem fit—**ORDER 59 RULE 7 LAGOS 2019**	
9. Trial directions Upon completion of the CMC and the issuance of the Case Management Report, **the case file shall be forwarded to the Chief Judge or other designated judge for assignment to a trial judge.** At the first appearance of the parties before the trial judge, the court shall give **trial direction and a trial time table—ORDER 59 RULE 8 LAGOS 2019**	

Comment [C37]: Implicit in this is that it is the Chief Judge of a state that assigns cases to a judge except the person assigns another judge.

Comment [C38]: NOTE ORDER 56 RULES 9 – 11 are not really important. BUT read them for Bar II.

10. Day to day trial Unless the court directs otherwise, the trial will be conducted from day to day in accordance with any direction previously made—**ORDER 59 RULE 11 LAGOS 2019**	**8. Day to day trial** Trial shall be conducted on daily basis and parties are bound by hearing dates fixed in advance--**ORDER 37 RULE 9 ABUJA 2018**
11. Adjournments **T**he court shall consider adjournments of the trial as an order of last resort; and where the court has no option but to order an adjournment of the trial, it will do so for the shortest possible time---**ORDER 59 RULE 12 LAGOS 2019**	**9. Adjournments** A judge may not grant an application for an adjournment, unless it is for cogent and compelling reasons. Where an application for adjournment is granted, **THE ORDER SHALL NOT EXCEED THREE DAYS FROM THE DATE OF THE ORDER.** Where a matter is adjourned at the instance of a party, he shall pay cost of not less than ten thousand (N10,000.00) naira per day for every day of the adjournment to each other party---**ORDER 37 RULE 10 ABUJA 2018**
	10. Absence of CPW Where a party or his counsel will be absent from court, the party or his counsel shall promptly inform the court. Where a trial has commenced, the court will hold counsel responsible to his commitment to continuous trial. The court shall proceed, notwithstanding the absence of counsel, parties or witnesses---**ORDER 37 RULE 11 ABUJA 2018**
	11. Timetable The timetable for steps in Fast Track action is as follows: (a) Administrative action by the chief judge after filing of process, form or notice - within 24 hours; (b) Service of process - within 3 days; (c) Memorandum of appearance, defence and accompanying documents - within 7 days, and 30 days outside jurisdiction; (d) Reply to defence - within 7 days; (e) Pre-trial conference, motions and other applications - within 7 days of close of pleadings; (f) Commencement to conclusion of trial - within 30 days; (g) Filing and adoption of final addresses - within 14 days; (h) Judgment - within 7 days; and (i) Issuance of certified true copy of judgment - within 4 days. ---**ORDER 37 RULE 12 ABUJA 2018**
	12. Proof of service Where service has been duly effected and there is proof of service, an extension of the time provided under the timetable for taking steps, shall not be allowed, unless for cogent and compelling reasons. A Party who fails to comply with the period prescribed in the timetable shall not be heard on an interlocutory application, except on an application for extension of time---**ORDER 37 RULE 13 ABUJA 2018**
12. Period for trial and addresses **The ENTIRE PERIOD OF TRIAL, INCLUDING FINAL ADDRESSES, shall not be more than NINETY (90) days from the date the trial directions were made**, provided that when the claimant has concluded his evidence, the judge shall ask the defendant if he intends to call evidence. Note that if the defendant calls evidence, then he shall be the party beginning the final written address. But if the defendant does not call evidence, then the claimant shall be the party beginning the final written address.	

In either case, the "party beginning" shall file his final written address within **FOURTEEN (14) DAYS after the close of evidence;** the "other party" shall file his own final written address within **FOURTEEN (14) DAYS after he receives** service of the party beginning's final written address. Finally, the party who files the first address shall have a right of **Reply on points of law only.** This Reply shall be filed within **SEVEN (7) DAYS** after the service on him of the other party's address---**ORDER 59 RULE 13 LAGOS 2019**	
	13. Appearance default Where trial cannot commence on a date fixed for hearing due to the absence of the claimant, the case shall be struck-out. Where the trial cannot commence on a date fixed for trial due to the absence of the defendant, hearing shall continue and may be concluded without further notice to the defendant. Where a case is struck-out under paragraph (1) above, **the claimant may apply to relist within 7 days.** Where a case is relisted pursuant to sub rule (3) above, the claimant shall pay a cost as shall be determined by the court---**ORDER 37 RULE 14 ABUJA 2018**
	14. Addresses and adoption Addresses, objections and applications, except those arising extempore, shall be in writing and served on the other party. Final addresses shall be deemed adopted in the absence of parties---**ORDER 37 RULE 15 ABUJA 2018**
	15. Record of proceedings The registrar shall prepare record of proceedings **within three days of the conclusion of sittings.** Parties may apply for the record of proceedings upon payment of fees, **to be issued within three days of the application as in Form 37**---**ORDER 37 RULE 15 ABUJA 2018**
13. Delivery of judgment In all fast-track cases, the judge shall endeavor to deliver judgment within **SIXTY (60) DAYS** of the completion of trial---**ORDER 59 RULE 14 LAGOS 2019**. However, this is not mandatory and failure to deliver judgment within the sixty days does not affect the validity of the judgment. This is because of the constitutional provision of NINETY (90) days from the close of evidence and final addresses from counsel for delivery of judgment under **S. 294(1) CFRN**	

1. FORM 32 (APPLICATION TO PLACE MATTER ON THE FAST TRACK DIVISION (O. 37, r. 4 (e))

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO. FT/ / /20

DATE:

BETWEEN

ABC…… …….. …… ……...CLAIMANT

AND

XYZ…….. …… …… ……DEFENDANT

The Hon Chief Judge,

Federal Capital Territory,

Abuja

APPLICATION TO PLACE MATTER ON THE FAST TRACK DIVISION BROUGHT PURSUANT TO ORDER 37 RULE 4(e) OF THE HIGH COURT (CIVIL PROCEDURE) RULES OF THE FEDERAL CAPITAL TERRITORY, 2018

I hereby apply for the above named matter to be placed in the Fast Track Division of the court.

I undertake to comply with all the conditions

……..

Solicitor to Claimant/Claimant

FOR THE COURT

Approved / Refused to be heard in the Fast Track Division

……

Chief Judge

2. FORM 34 NOTICE OF ACCEPTANCE TO PLACE CASE ON FAST TRACK DIVISION O.37 r.6 (2)

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO. FT/ / /20

BETWEEN

ABC……. ……..…… ……...CLAIMANT

AND

XYZ…….. …… …… ……DEFENDANT

NOTICE OF ACCEPTANCE TO PLACE CASE ON FAST TRACK DIVISION PURSUANT TO ORDER 37 RULE 6(2) OF THE HIGH COURT (CIVIL PROCEDURE) RULES OF THE FEDERAL CAPITAL TERRITORY, 2018

PLEASE TAKE NOTICE that following your application in the above-named case has been placed on FAST TRACK LIST. PLEASE NOTE that henceforth this matter shall be dealt with in accordance with FAST TRACK Case Management directions, applications and guidelines.

Dated at Abuja, this …… day of …….. 20…….

……

COORDINATOR

FOR SERVICE ON:

The Claimant

ABC

No. 2 Kene Close, Abuja

3. FORM 35 NON-ACCEPTANCE TO PLACE CASE ON FAST TRACK LIST (O.37 r.6 (2))

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO. FT/ / /20

BETWEEN

ABC……. ……..…… ……...CLAIMANT

AND

XYZ…….. ……. ……. ……DEFENDANT

NON-ACCEPTANCE TO PLACE CASE ON FAST TRACK LIST PURSUANT TO ORDER 37 RULE 6(2) OF THE HIGH COURT (CIVIL PROCEDURE) RULES OF THE FEDERAL CAPITAL TERRITORY, 2018

I refer to your application to place the above-named case on Fast Track list and wish to inform you that the case cannot be placed on Fast Track List. It has accordingly been placed on the general cause list. You may contact the Coordinator for other details on this matter.

Dated at High Court, Abuja this……...day of …….. 20…..……

…….

COORDINATOR

4. FORM 37 APPLICATION FOR COPIES OF PROCEEDING (TRANSCRIPT) (O.37, r.16)

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO. FT/ / /20

DATE:

BETWEEN

ABC……. …….. …… ……....CLAIMANT

AND

XYZ…….. …… …… ……DEFENDANT

The Coordinator,

Fast Track Court,

Federal Capital Territory,

Abuja.

APPLICATION FOR COPIES OF PROCEEDING (TRANSCRIPT) BROUGHT PURSUANT TO ORDER 37 RULE 16 OF THE HIGH COURT (CIVIL PROCEDURE) RULES OF THE FEDERAL CAPITAL TERRITORY, 2018

I, of P.O Box 3567, 0705353123_ Fax Number E-Mail Number, wish to apply for copies of daily proceedings (or state portion required) of this Court in respect of (title of case) Suit No …….pending before (name of Judge)

CERTIFICATION

By signing hereunder, I commit myself to the process of electronic recording of all the proceedings in this case and do hereby certify that I will pay all charges.

Dated at Abuja this……day of……..……. 20…….

……..

SOLICITOR FOR Claimant/Defendant

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Actions relating to land/mortgages/charges/interests in land shall be commenced in___judicial division of the High Court.

A. Where the land is situate

B. Where the cause of action arose

C. Where the defendant resides or carries on business

D. Where the claimant resides or carries on business

2. Actions relating to distrain, seizure of personal property shall be commenced in__judicial division of the High Court.

A. Where the cause of action arose

B. Where the defendant resides or carries on business

C. Where the distrain/seizure took place

D. Where the claimant resides or carries on business

3. Actions against public officers, for recovery of penalties, shall be commenced in___judicial division of the High Court.

A. Where the cause of action arose

B. Where the defendant resides or carries on business

C. Where the claimant resides or carries on business

D. Where the subject matter is situate

4. All these except one are correct about the judicial division where an action for specific performance/breach of contract may be commenced.

A. Where the contract ought to be performed

B. Where the defendant resides or carries on business

C. Where the claimant resides or carries on business

D. None of the above

5. Which of these cases may not be cited in support of the principle that a company resides or carries on business at its central place of management and control?

A. KTO Ltd v. University of Calabar

B. Unit Construction Co. v. Bullock

C. Nigerite Nig. Ltd v. Dalanmi Nig. Ltd

D. A and B

6. All the processes used to commence civil proceedings are called___

A. Originating processes

B. Originating motions

C. Writ of summons

D. Originating summons

7. In commencing contentious actions in the High Court of Lagos State generally,___is used.

A. Originating motion

B. Originating summons

C. Writ of summons

D. Petition

8. Where there is doubt as to which method is to be used in commencing proceedings at the High Court___is to be used.

A. Writ of summons

B. Originating summons

C. Originating motion

D. Petition

9. The following are documents to be frontloaded with a writ of summons except___

A. Statement of claim

B. List of witnesses

C. Written statements on oath of witnesses

D. Final written address

10. In Abuja, the pre-action counseling certificate is filed by___

A. Claimant's counsel

B. Defendant's counsel

C. A or B

D. A and B

11. In Lagos, the pre-action counseling protocol Form 01 is filed by___

A. Claimant's counsel

B. Defendant's counsel

C. A or B

D. A and B

12. The rule that all processes filed must be sealed was implemented by the NBA from__

A. 2-10-2014

B. 1-04-2015

C. 31-03-2016

D. 2-5-2017

13. All these are correct about affixing NBA seal on all court processes except___

A. Failure to affix the seal renders the process void ab initio

B. Failure to affix the seal renders the process voidable

C. Where counsel duly pays for the NBA seal and NBA fails to make it available, affixing evidence of payment for the seal will suffice

D. Affixing an expired stamp seal to the court processes will not invalidate the process but makes it an irregularity that can be regularized

14. The general form of writ of summons is as in Form___

A. 1

B. 2

C. 01

D. 3

15. In 14 above, for out of jurisdiction service, it is in Form____

A. 1

B. 2

C. 01

D. 3

16. Upon service of writ of summons, the time within which the defendant is to enter appearance in Abuja is___while it is___in Lagos.

A. 14/42

B. 21/14

C. 42/14

D. 14/21

17. Where a claimant lives and carries on business outside jurisdiction of the High Court, the claimant is required to state__address for service.

A. Address within jurisdiction

B. Address outside jurisdiction

C. A or B

D. A and B

18. Where the address provided for service is an illusory, fictitious or misleading one, the process will___

A. Not be accepted for filing by the Registrar

B. Be set aside by the court on the application of the defendant

C. A or B

D. A and B

19. The paper to be used in printing an originating process in Lagos is___and___in Abuja.

A. A4/A4

B. Opaque A4/Opaque A4

C. Opaque A4/A4

D. A4/Opaque A4

20. In Lagos,___is used to commence action for recovery of premises from a squatter.

A. Originating summons

B. Writ of summons

C. Originating motion

D. Petition

21. The following are forms of originating summons in Lagos and Abuja except___

A. Form 5

B. Form 1

C. Form 3

D. Form 4

22. The time for entering appearance to an originating summons is___days in Abuja and__days in Lagos.

A. 42/21

B. 21/42

C. 14/42

D. 42/14

23. Wrong use of an originating summons to commence an action would lead to___

A. Dismissal of the action

B. Striking out of the action

C. Non-suiting of the action

D. Conversion of the originating summons to a writ of summons and pleadings ordered to be exchanged

24. Subject to the principles governing enforcement of fundamental human rights, failure to use the appropriate originating process other than an originating summons to commence an action would lead to___

A. Dismissal of the action

B. Striking out of the action

C. Non-suiting of the action

D. Conversion of the originating process to the appropriate originating process and pleadings ordered to be exchanged

25. The accepted mode for applying for prerogative writs is___

A. Originating summons

B. Originating motion

C. Writ of summons

D. Petition

26. Where a statute provides that an application may be made but it does not provide for any special procedure___should be used.

A. Originating summons

B. Originating motion

C. Writ of summons

D. Petition

27. In Abuja, writ of summons is to be served within___calender months from the date of issuance.

A. 6

B. 3

C. 9

D. 12

28. In Lagos, writ of summons is to be served within___calender months from the date of issuance.

A. 6

B. 3

C. 9

D. 12

29. In Lagos and Abuja, a writ of summons to be served outside jurisdiction is to be endorsed by___respectively.

A. Legal practitioner of the claimant/Registrar of the court

B. Legal practitioner of the claimant/Legal practitioner of the claimant

C. Registrar of the court/Legal practitioner of the claimant

D. Registrar of the court/Registrar of the court

30. All these statements are not true about service of a hearing notice/other processes other than originating processes, except____

A. Hearing notice/other processes other than originating processes can only be served personally

B. Hearing notice/other processes other than originating processes can only be served by substituted means

C. Hearing notice/other processes other than originating processes cannot be served by e-mail/SMS

D. Hearing notice/other processes other than originating processes may be served by e-mail/SMS

31. Under the Sheriff and Civil Process Act, where a defendant is outside the jurisdiction of Lagos State, appearance is to be entered within__days, in answer to a writ of summons

A.30

B. 42

C. 14

D. 21

32. As in 31 above, in Abuja, it is___

A.30

B. 42

C. 14

D. 21

33. Under the Sheriff and Civil Process Act, where a defendant is outside the jurisdiction of Lagos State, appearance is to be entered within__days, in answer to an originating summons.

A.30

B. 42

C. 14

D. 21

34. As in 33 above, in Abuja, it is___

A.30

B. 42

C. 14

D. 21

35. The following are correct as to service outside Nigeria except____

A. Leave of court is not needed for a country that reciprocates

B. Leave of court is needed for a country that does not reciprocate

C. Leave of court is by MON+A+WA

D. Leave of court is by MEP+A+WA

36. Generally under the rules, court processes are to be served from___

A. Mon---Sat (5am-8pm)

B. Mon---Sat (6am-6pm)

C. Mon---Sun (5am-8pm)

D. Mon-Sun (6am-6pm)

37. Where an amendment of a writ of summons is sought and the claimant has not served the defendant, it is by__

A. MEP+A+WA

B. MON+A+WA

C. Counter-affidavit

D. Continuation sheet

38. In 37 above, where the claimant has served the defendant, it is by___

A. MEP+A+WA

B. MON+A+WA

C. Counter-affidavit

D. Continuation sheet

39. An originating process is deemed to have been issued only when it is____

A. Endorsed by the legal practitioner of the claimant

B. Sealed by the Registrar

C. Endorsed by the Registrar

D. Sealed by the claimant

40. The maximum life span of a writ of summons after 2 renewals in Lagos is___months

A. 6

B. 9

C. 12

D. 18

41. As in 40 above, for Abuja it is___months

A. 6

B. 9

C. 12

D. 18

42. The renewed writ of summons is as in Forms___in Lagos and Abuja respectively.

A. 1/1

B. 6/7

C. 7/6

D. 2/2

43. Application for renewal is by way of___+A+WA

A. MEP

B. MON

C. Originating motion

D. Originating application

44. An action is deemed to have commenced when___happens.

A. Writ of summons is served

B. Claimant fulfils all requirements of law

C. Originating process is filed

D. Hearing notice is served

45. A sealed copy of a memorandum of appearance is to be served on the claimant by the defendant not later than__days after filing same.

A. 7

B. 14

C. 21

D. 28

46. Memorandum of appearance is as in Forms___for Lagos and Abuja respectively.

A. 12/11

B. 11/12

C. 6/7

D. 7/6

47. Failure to enter appearance within the prescribed time attracts a default fee of__in Lagos and___in Abuja.

A. N200,000/N100,000

B. N1000/N200

C. N100,000/N200,000

D. N200/N200

48. In Lagos, failure of the claimant to comply with the front loading requirement has___effect on the action.

A. Makes the action voidable

B. Nullifies the action

C. Makes the action inchoate

D. All of the above

49. In Abuja, the effect as in 48 above is____

A. Makes the action voidable

B. Nullifies the action

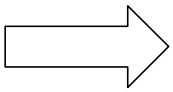
C. Makes the action inchoate

D. None of the above

50. NO QUESTION

ANSWERS

1. A
2. C
3. A
4. C
5. C
6. A
7. C
8. A
9. D
10. D
11. A
12. B
13. A
14. A
15. B
16. A
17. A
18. B
19. C
20. A
21. B
22. A
23. D
24. B
25. B
26. B
27. B
28. A
29. A
30. D
31. B
32. A
33. A
34. B
35. C
36. B
37. A
38. B
39. B
40. C
41. B
42. B
43. A
44. B
45. A
46. B
47. B
48. B
49. D
50. BONUS



6. DEFAULT AND SUMMARY JUDGMENT PROCEDURES (BAR II EXAM FOCUS)

1. LIST TYPES OF AND EXPLAIN THE SCOPE OF THE PRINCIPLES OF DEFAULT AND SUMMARY JUDGMENTS

A default judgment is one given where there is default of appearance or default of defence by the defendant.

(a) Types and scope of default judgment

(i) Default of appearance----**ORDER 12 RULE 1 LAGOS 2019, ORDER 10 RULE 2 ABUJA 2018**

(ii) Default of defence----**ORDER 22 RULE 9 LAGOS 2019, ORDER 21 ABUJA 2018**

(i) Default of appearance

Default of appearance is when the defendant did not file memorandum of appearance within the time prescribed. If a person has been served with originating processes and the person fails to enter an appearance, the claimant's counsel may file an application by way of motion on notice for judgment in default of appearance.

Comment [C39]: Where any defendant fails to appear, a claimant may proceed upon default of appearance under the appropriate provisions of the rules upon proof of service of the originating process

Thus, where no appearance has been entered for a person under legal disability, a claimant shall apply to a Judge for an order that some person be appointed guardian for such defendant and when appointed the person may appear and defend. The application shall be made after service of the originating process. Notice of the application shall be served on the person intended to be appointed the guardian of the defendant—**ORDER 12 RULE 2 LAGOS 2019, ORDER 10 RULE 1 ABUJA 2018**

Where the claim in the originating process is a liquidated demand and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge (court for Abuja) for judgment for the claim on the originating process or such lesser sum and interest as a Judge (court for Abuja) may order---**ORDER 12 RULE 3(1) LAGOS 2019, ORDER 10 RULE 3 ABUJA 2018**

Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear to the process and another or others fail to appear, a claimant may apply to a Judge (court for Abuja) for judgment against those who have not appeared and may execute the judgment without prejudice to his right to proceed with the action against those who have appeared---**ORDER 12 RULE 3(2) LAGOS 2019, ORDER 10 RULE 4 ABUJA 2018**

Where the claim in the originating process is for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages, and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge (court) for judgment. The value of the goods and the damages or the damages only as the case may be shall be ascertained in such manner and subject

to the filing of such particulars as a Judge (court) may direct before judgment in respect of that part of the claim---**ORDER 12 RULES 4 & 5 LAGOS 2019, ORDER 10 RULE 5 ABUJA 2018**

If no appearance is entered within the time prescribed in the originating process in a claim for recovery of land or if appearance is entered but the defence is limited to a part only, a claimant may apply to a Judge (court) for judgment stating that the person whose title is asserted in the originating process shall recover possession of the land, or of that part of it to which the defence does not apply---**ORDER 12 RULE 6 LAGOS 2019, ORDER 10 RULE 8 ABUJA 2018**

Where in an originating process for recovery of land a claimant claims mesne profits, arrears of rent, damages for breach of contract or wrong or injury to the premises, he may apply for judgment as in Rule 6 of this Order for the land, and may proceed to prove the other claims— **ORDER 12 RULE 7 LAGOS 2019, ORDER 10 RULE 9 ABUJA 2018**

Where judgment is entered pursuant to any of the preceding rules of this Order, a Judge may set aside or vary such judgment on just terms upon an application by the defendant. **The application shall be made within a reasonable time, showing A GOOD DEFENCE TO THE CLAIM and a JUST CAUSE FOR THE DEFAULT**---**ORDER 12 RULE 9 LAGOS 2019, ORDER 10 RULE 11 ABUJA 2018**

Comment [C40]: Application for default judgment is motion on notice, supported by affidavit and written address (in practice).

In all claims not specifically provided for under this Order, where the party served with the originating process does not appear within the time prescribed in the originating process, a claimant may proceed as if appearance had been entered---**ORDER 12 RULE 10 LAGOS 2019, ORDER 10 RULE 12 ABUJA 2018**

Notice of any application under this order shall be served on the other party---**ORDER 12 RULE 11 LAGOS 2019, ORDER 10 RULE 13 ABUJA 2018**

(ii) Default of defence

This is where the defendant filed a memorandum of appearance but fails to file his defence within the time prescribed. This is a judgment against the defendant for failure to file a defence.

NOTABLES ON DEFAULT JUDGMENT

If the defendant is served with a motion for default judgment, the defendant will file an application for extension of time to file a memorandum of appearance and to file a defence. **The accompanying documents are statement of defence showing that he has a good defence and an affidavit and written address stating that he has good reasons for the default.** The application must be filed timeously.

Comment [d41]: Where the court has not heard the motion for default judgment, the defendant would file his Memorandum of appearance. The defendant will now be granted an extension of time to file pleading

Default judgments are final judgments but can be set aside by the same court as follows, it can be set aside on **grounds of:**

- **Fraud**
- **Non service; and**
- **Lack of jurisdiction**

Where the conditions are not fulfilled the default judgment is final and the only remedy to the defendant is to file an appeal.

NB: A default judgment **CAN BE SET ASIDE BY ANOTHER JUDGE OF THE SAME COURT** that gave it, and not necessarily the judge that gave it---**ECOTRADE LTD V. MACFOY; EMODI v. KWENTOH**

The default judgment does not apply to all claims. It **DOES NOT APPLY TO ANY CLAIM FOR DECLARATIONS OR DECLARATORY ACTIONS GENERALLY**---**OBAWOLE v. WILLIAMS**. The claimant must set down the case for hearing and prove his case. Then judgment may be given to him as he is entitled.

Comment [C42]: By way of motion on notice praying the court for an order to set down the matter for hearing.

NB: When there is application for default judgment by the claimant and another to regularize by the defendant example the defendant is filing an application for leave of court to file his defence out of time or enter a memorandum of appearance, the court will hear that of the defendant even where the claimant has filed an application for judgment in default of appearance or defence. This is because where there are two pending applications, of which one is constructive to regularize the proceedings and the other destructive to enter default judgment, the court will hear the constructive one to regularize and it does not matter which one was filed and served first--**NALSA & TEAM ASSOCIATES LTD v. NNPC. The court will hear the application that will bring life to the case in order to enhance fair hearing.**

Where the application for extension of time is heard and a ruling is given in favour of the application, the claimant withdraws the application for default judgment and he is entitled to costs from the defendant---NALSA'S CASE.

(b) Types and scope of summary judgment

Comment [C43]: Summary judgments are given when a matter is heard expeditiously without the hurdle of calling witnesses and examining such and without objections, subpoena of witnesses. The only thing the court will determine as to whether to give judgment is to look at the originating processes, affidavit and counter-affidavit and written address.

- Summary judgment on application for account---**ORDER 14 RULE 1 LAGOS 2019, ORDER 12 RULE 1 ABUJA 2018**
- Summary judgment on admission of facts—**ORDER 21 RULE 4 LAGOS 2019, ORDER 20 RULE 4 ABUJA 2018**
- Consent judgment----**RAS PAL GAZI CONST CO LTD V FCDA**
- Summary judgment under **ORDER 13 RULE 1 LAGOS 2019 AND ORDER 11 RULE 1 ABUJA 2018**
- Summary judgment under the undefended list---**ORDER 35 ABUJA 2018**

Comment [C44]: When the defendant admits some facts in his statement of defence, the claimant can apply for summary judgment of those facts admitted

Comment [C45]: A consent judgment is also a form of summary judgment just that it is one entered upon agreement by the parties

(i) Summary judgment under ORDER 13 RULE 1 Lagos and ORDER 11 RULE 1 Abuja

The principal condition is that the claimant must establish that the defendant has no good defence to the claim--- **ORDER 13 RULE 1 LAGOS 2019 AND ORDER 11 RULE 1 ABUJA 2018, SODIPO v. LEMMINKAINEN, UTC NIG. LTD v. PAMOTEI**

Comment [C46]: Must be stated in one of the paragraphs of the affidavit in support of application for SJ. This is usually towards the end of the affidavit.

On the subject matter, **it applies to all subject matter provided that the claimant believes that there is no defence to his claim including declaratory rights. Thus,** NO RESTRICTION to subject matter.

Procedure for applying for summary judgment under order 13 rule 1 Lagos and order 11 rule 1 Abuja

In Abuja, the claimant shall file the following documents

- Originating process;
- Statement of claim;
- The exhibits;
- The deposition of his witnesses;
- Application for summary judgment
- Affidavit in support of application for summary judgment;
- **Written brief** in support of the application

In Lagos-Claimant files following documents:

- The Originating process, that is, a writ of summons;
- Statement of claim;
- List **(and copies)** of documents to be relied upon;
- **List** and depositions of witnesses;
- An application for summary judgment;
- Affidavit in support of the application for summary judgment stating the ground for the belief that the defendant has no defence to the action;
- **Written brief** in support of the application for summary judgment.

NB: Under Order 11 **in Abuja, list of witnesses and** Certificate of Pre-action counseling Form 6 are omitted. Under the new 2019 rules in Lagos, the list of witnesses is now provided for but the pre-action protocol form 01 is still omitted. **For the purposes of Bar Part II, follow the Rules strictly, then write "however, in practice, lawyers in Abuja still file list of witnesses and** Certificate of Pre-action counseling Form 6 in addition. In Lagos, lawyers still file the **pre-action protocol form 01."**

The claimant or any other person that is seised of the facts verifying the cause of action and if it is a liquidated sum, the amount claimed. However, such other person must state that he has the authority to do so---**SODIPO V LEMINKAENAM, EMUWA V CONSOLIDATED DISCOUNTS LTD.** The content of affidavit must state the grounds of the claimant's belief. The affidavit must comply with the provisions of **SECTIONS 115 AND 117 OF THE EVIDENCE ACT.**

The claimant must submit to the registrar enough copies to be available to serve all the defendants--- **ORDER 13 RULE 2 LAGOS 2019 AND ORDER 11 RULE 2 ABUJA 2018**

Comment [C47]: Order 11 Rule 1 of the Abuja Rules uses the word "shall" instead of "may" in the Lagos Rules. Instead of "list of documents to be relied upon" in the Lagos Rules, the Abuja Rules use the term "exhibits". The Abuja Rules require the physical documents to be attached.

Comment [C48]: "I was informed and I verily believe…."

Service of the Court processes on Defendant---**ORDER 9 RULE 1 LAGOS 2019; ORDER 7 RULE 1 ABUJA 2018**

- Sheriff
- Deputy sheriff
- Bailiff
- Special marshall
- Other officer of the court
- Any law chambers registered to serve processes
- Courier company registered with the court
- Any other person to serve court processes and such person shall be a process server.

Options open to the defendant

- Defend or not defend

Defending the application

If he decides to defend, the defendant in Abuja shall file processes **within 21 days** while the defendant in Lagos shall file his processes **within 42 days** after service.

Steps to be taken by the defendant who intends to defend not later than the time prescribed for defence **---ORDER 13 RULE 4 LAGOS 2019; ORDER 11 RULE 4 ABUJA 2018**

The defendant in Lagos or Abuja shall file the following processes

- Statement of defence;
- Deposition of witnesses;
- List **(and copies)** of documents to be used in his defence (Lagos). The exhibits to be used in his defence (Abuja);
- Counter affidavit;
- **Written brief** in reply to the application for summary judgment.

Hearing of application for summary judgment---ORDER 13 RULES 5 AND 6 LAGOS 2019 AND ORDER 11 RULES 5 AND 6 ABUJA 2018

- Each party shall be at liberty to advance oral submissions to expatiate their written brief before the decision of the court.
- Where it appears to the judge/court that the defendant has a good defence and ought to be permitted to defend the claim, the defendant may be granted leave to defend, thus the matter proceeds to trial---**ORDER 13 RULE 5(1) LAGOS 2019 AND ORDER 11 RULE 5(1) ABUJA 2018.** Where the court grants an unconditional leave to defend the matter, the claimant has no right of appeal--**S. 241(2)(a) CFRN, NBN VS WEIDE & CO, UAC NIGERIA LTD V ODEYEMI**. However, where the leave to defend is on a condition, then the claimant can appeal to the court of appeal as of right.

Comment [C49]: If he does not defend the action by filing appropriate processes, the court may summarily enter judgment as in terms of the claimant's statement of claim.

Comment [C50]: L-42 days, A-21 days---**ORDER 17 RULE 1(2) LAGOS 2019; ORDER 15 RULE 1(2) ABUJA 2018**

Comment [C51]: What amounts to a good defence will depend on the circumstances of each case. The defence must not be a sham, frivolous or worthless. Thus the mere fact that the defendant filed all necessary processes does not guarantee that he would be given leave to defend the action.

The level of defence to be filed at this stage, must not be a defence that is substantial and must win the case. At this stage, the defendant is required to show prima facie good defence or a defence that will show triable issues---**FEDERAL MILITARY GOVERNMENT V SANNI.**
SEE OCEANIC BANK INTERNATIONAL PLC V CORPORETI SUPPORT SERVICES LIMITED **where** the statement of defence and counter-affidavit of the defendant admitted that the defendant took a loan from the appellant but stated that the appellant had been applying illegal, oppressive and punitive charges in violation of Central Bank of Nigeria (CBN) guidelines and regulations which charges the respondents claim they have protested through letters written to the appellant vide Exhibit MN1 and MN2 to the counter affidavit.
Held: That the defence set up by the defendant was bona fide and a good defence

- Where it appears to the judge/court that the defendant has no good defence to the claim the judge/court may enter summary judgment against the defendant-- **ORDER 13 RULE 5(2) LAGOS 2019 AND ORDER 11 RULE 5(2) ABUJA 2018**

- Where it appears to the court that defendant has a good defence to a part of the claim the court may enter judgment for the part of the claim and grant leave to defend the part which there is a defence-- **ORDER 13 RULE 5(3) LAGOS 2019 AND ORDER 11 RULE 5(3) ABUJA 2018**

- Where there are several defendants and it appears to the court that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend, the former may be permitted to defend and the court shall enter judgment against the latter---**ORDER 13 RULE 6 LAGOS 2019 AND ORDER 11 RULE 6 ABUJA 2018**

- Where provision is made for written briefs under this rule, each party shall be at liberty to advance before the court oral submission to expatiate his written brief---**ORDER 11 RULE 7 ABUJA 2018.** This is not expressly stated in Lagos, but there is a general provision that allows parties 20 mins to make oral arguments---**ORDER 35 RULE 4(1) LAGOS 2019, ORDER 33 RULE 4 ABUJA 2018**

- Where defendant files defence but fails to appear in court on the hearing date, the court is entitled to look at the documents he has filed and proceed to determine whether or not the defendant has a good defence. Where he has a good defence, he will be granted leave to defend but where he does not have a good defence, judgment will be entered against him as a final judgment.

  NB: The defence put forward by the defendant in the statement of defence and other processes, including the counter-affidavit must condescend to particulars and must not be a sham.

  NB: If the statement of defence and counter affidavit state, for instance, that the defendant is not indebted to the claimant in the amount claimed, or any part thereof, it should proceed to state why the defendant is not indebted, and state the real nature of the defence relied upon.----**UNIVERSITY OF BENIN V KRAUS THOMPSON ORGANIZATION LTD &ANOR; WOODGRANT LTD V SKYEBANK PLC**

  Application for Extension of Time by Defendant

  Note that a defendant who is out of time may apply **by motion on notice supported with affidavit for extension of time.** Where the defendant files the relevant documents out of time, it is expected that he should apply for extension of time to regularize same as the court would not shut its eyes to a good defence simply because the defence filed offends procedural rules---**F.S.B INT. BANK LTD V IMANO NIGERIA LTD &ANOR**

Effect of judgment under order 13 Lagos and order 11 Abuja

- Where he has been served and he fails to wishes not to defend or he has filed his defence which means he has joined issues, the court having considered the merits will deliver a

summary judgment which is final on its merits and cannot be set aside unless on appeal--**IRON PRODUCTS LTD V SENTINEL ASS. CO.** However, where the defendant has not filed any defence, the summary judgment can only be set aside based on the ground in **ORDER 22 RULE 12(2) LAGOS 2019**

NB: The judgment obtained here is a final judgment on the merit and can only be set aside on appeal--**IRON PRODUCTS LTD v. SENTINEL ASSOCIATION CO. LTD, ACB LTD v. GWAGWADA**

(ii) Summary judgment under the undefended list procedure---ORDER 35 ABUJA 2018

Summary judgment under the undefended list procedure applies only to actions for **recovery of debt or liquidated money demands--DENTON-WEST V MOMAH**

Whenever the amount to which the claimant is entitled can be ascertained by calculation or fixed by any scale or other positive data, it is said to be liquidated or made clear---**EKOODUME V. UME NNACHI; NWORAH & SONS CO. LTD V AFAM AKPUTA, DENTON-WEST JCA V. CHUKA MOMAH SAN**

The principal requirements are:

- The claimant must believe that the defendant has no defence to the claim; and
- The claimant is claiming for recovery of debt or liquidated money demand.

Procedure for bringing the application (Mode of application)

1. Writ of summons FORM 1

2. Affidavit in support of the writ of summons stating:

   a. In the deponent's belief, the defendant does not have a good defence--**EDEN V CANNON BELL LTD.**
   b. The grounds upon which the claim is based--**AHMED V. TRADE BANK NIG PLC**

Steps to be taken by the court after filing the writ and affidavit--ORDER 35 RULE 1(1)(2) ABUJA 2018

- The judge in chambers will establish whether the Defendant will not have a good defence to the action.
- Where the judge in chambers believes that there is no defence to the suit, the judge in chambers shall enter the suit for hearing under the undefended list and the writ of summons will be marked "undefended list"
- A return date for hearing shall be stated on the writ of summons for service on defendant together with the affidavit
- The writ of summons that has been entered under the undefended list together with the affidavit will be served on the defendant.

Comment [C52]: EXAM PURPOSES
FRAUD
NON-SERVICE, OR
LACK OF JURISDICTION

Comment [C53]: •The Supreme Court held in Nworah v Akputa that where a legal practitioner serves a client a bill of charges without any prior agreement with the client as to professional fees, the sums stated in the bill of charges cannot be said to be liquidated sum to entitle the legal practitioner to claim under the undefended list.

Comment [C54]: A claimant shall deliver to a 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 2018**

Defending the application

Where a party is served with the writ and affidavit delivered to the registrar, and the party wishes to defend, such party shall **before (not within) 5 days to the day fixed for hearing**, file

- A notice in writing that he intends to defend the suit, together with
- An affidavit disclosing a defence on the merit,

the court may give him leave to defend upon such terms as the court may think just. **Where leave to defend is given under this Rule, the action shall 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 ABUJA 2018**

Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3(1) or is not given leave to defend by the court, the suit shall be heard as an undefended suit and judgment given accordingly and any judgment given to the defendant in default of defence under the undefended list will be treated as judgment on the merit and it will not be set aside by the court unless on appeal--- **ORDER 35 RULE 4 ABUJA 2018, AHMED V TRADE BANKNIG PLC.** However, where the defendant is unable to file before 5 days, he may bring a **motion on notice for extension of time supported by an affidavit and written address.**

A court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4-- **ORDER 35 RULE 5 ABUJA 2018**

Orders that the court can make

- **Where leave to defend is given under this Rule, the action shall 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 2018**
- Where the defendant neglects to file a notice of intention to defend or fails to show a good defence the court will refuse leave to defend the action and the court will enter summary judgment under the undefended list--**BATURE V SAVANNAH BANK**
- Where a defendant files only a notice of intention to defend without a supporting affidavit? The court will grant an adjournment to file his affidavit---**JOHN HOLT V FAJEMIROKUN.**

Effect of judgment

Any judgment given by the court under the undefended list either in default or after hearing the parties, is final and can only be set aside on appeal--**BATURE V SAVANNAH BANK, LEVENTIS MOTORS LTD V MBONU.** No right of appeal against decision of high court granting unconditional leave to defend— **S. 241(2)(a) CFRN**, **NBN V WEIDE & CO, NISHIZAWA LTD v. JETHWANI.**

NOTABLES

- A defendant can bring an application for default judgment. Thus, where the claimant fails to take further steps, the defendant can bring an application that the matter be struck out

Comment [C55]: BULLET INT NIG LTD V ADAMU.

Comment [C56]: In practice a memorandum of appearance (conditional or otherwise) is filed too.

Comment [C57]: What defendant's affidavit must state is a prima facie good defence or triable issue and not a defence that will succeed at the end of the day----ARGO MILLERS V CONTINENTAL MERCHANT BANK, UNN V ORAZULIKE TRADING CO.

Comment [C58]: No default judgment under the undefended list procedure

for want of diligent prosecution, where the court grants such order, judgment is given in favour of the defendant but the claimant can relist.

- Where there is a conflict in the affidavit of both parties, the court must enter the suit on the general cause list and the case would have to be heard in the ordinary way---**JIPREZE v. OKONKWO**
- When a suit on the undefended list comes to court for the first time, it is for **hearing** and not for mention--**BEN THOMAS HOTELS LTD v. SEBI FURNITURE LTD; OLUBUSOLA STORES LTD v. STANDARD BANK LTD.**

2. DISTINGUISH SUMMARY JUDGMENTS FROM DEFAULT JUDGMENTS

Comment [C59]: MEAN BA
•**MERIT:** Summary judgment is judgment on the merit while default judgment is not;
•**EVIDENCE:** Summary judgment is given based on evidence while default judgment is given as a consequence of failure of a party to take prescribed steps;
•**APPEAL:** A party aggrieved with a summary judgment usually will appeal while in default judgment the party may apply to set aside within a reasonable time upon good cause shown
•**NATURE (SOUGHT/ACT OF THE DEFENDANT:** Summary judgment involves the claimant who upon instituting the action decides to seek for summary judgment. In default judgment, it is the act of the defendant that gives rise to it.
•**BELIEF OF NO DEFENCE:** In summary judgment, claimant believes that the defendant does not have any reasonable defence to the action while there is no such in default judgment.
•**APPLICATION:** The summary judgment in Lagos applies to all claims while the default judgment does not apply to claim for declaration of rights.

NB: Differences between a summary judgment under orders 13 and 11 L & A and undefended list procedure. (Look at these areas of differences below)

- Subject matter restriction
- Processes to be filed
- General cause list
- Jurisdiction where applicable
- Documents examined to determine the existence of good defence
- Steps to take when defendant intends to defend

3. DRAFT AND ARGUE APPLICATIONS FOR SUMMARY JUDGMENTS

DRAFTING OF NOTICE OF INTENTION TO DEFEND

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

SUIT NO

BETWEEN

FEDERAL CAPITAL DEVELOPMENT AUTHORITY---------- CLAIMANT

AND

MALLAM TUKUR BWARI----------DEFENDANT

NOTICE OF INTENTION TO DEFEND

TAKE NOTICE that the defendant in this suit intends to defend the suit at the hearing.

Dated this _____ day of _____, _____

_____
K.C Aneke Esq
Defendant's solicitor
K. C Aneke & Co
No. 6 Maitama,
Abuja.

ON NOTICE TO:
The Claimant,
Federal Capital Development Authority
C/o its Counsel
A.B Smart
No 3, Maitama
Abuja.

4. DISCUSS THE ETHICAL ISSUES THAT MAY ARISE IN RESPECT OF DEFAULT AND SUMMARY JUDGMENT PROCEDURES

Ethical Duties of a Lawyer in a Default Judgment Procedure

- Counsel must act diligently in his client's case by acting timeously in filing his documents
- Counsel must ensure that there has been a proper service of the originating process(es) before bringing an application for judgment in default of appearance or defence
- He is a minister in the temple of justice and must make good representation to the court
- Avoid sharp practices by springing surprises at the counsel on the other side.
- Not depose to an affidavit.

Ethical Duties of a Lawyer in a Summary Judgment Procedure

- Where a case is not suitable for summary judgment procedure, initiating proceedings under such procedure may waste time and entail cost
- Defendant should not contest a claim that is clearly not contestable. Instead counsel should advice the client to apply for instalmental payment of the judgment sum.
- Failure to file memorandum of appearance of pleading within time may entail cost.
- Failure to seek extension of time when time has elapsed may render a process filed out of time incompetent and rob the court of jurisdiction.
- Where a motion for extension of time is filed, documents exhibited in the affidavit in support of the motion, shall be properly marked as exhibits in accordance with the rules of court.
- Where defence counsel perceives that the proper procedure for initiating summary judgment proceedings has not been followed, he ought to file a memorandum of conditional appearance, otherwise, his client may be deemed to have waived the right to complain by taking a step in the proceedings---**ASOMOTEL KADUNA LTD V. DEYEMO**
- Counsel must read and understand the meaning and import of rules of court and not misconceive them---**OBARO V HASSAN**

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Where a defendant is a person under legal disability and no appearance is entered within the prescribed time, the claimant shall___

A. Apply to the Judge/Court for an order appointing a guardian

B. Apply to the Judge/Court for default judgment

C. Apply to proceed with the matter as if appearance had been entered

D. All of the above

2. Default judgment may be entered in all but one of the following

A. Recovery of possession of land

B. Declaration of title to land

C. Actions for recovery of debt

D. None of the above

3. The time for the filing of a statement of defence in Abuja is___days from the date of service of the originating process

A. 14

B. 21

C. 42

D. 30

4. The time for the filing of a statement of defence in Lagos is___days from the date of service of the originating process

A. 14

B. 21

C. 42

D. 30

5. All these but one are grounds for setting aside a default judgment

A. Fraud

B. Non-service

C. Lack of jurisdiction

D. None of the above

6. All these are correct except___

A. Where there is an application for default judgment and a latter application for extension of time to enter appearance/file a defence, the court is to hear the latter application first

B. Where the court rules in favour of the application for extension of time, the claimant is to withdraw the application for default judgment

C. Where the court rules in favour of the application for extension of time, the claimant is entitled to costs from the defendant

D. None of the above

7. Generally, in declaratory actions, where there is default of appearance or defence, the claimant shall not do the following except___

A. Set down the case for hearing and prove his case

B. Apply for default judgment

C. Apply for dismissal of the defence of the defendant

D. None of the above

8. The following statements but one are true about summary judgment under Order 13 Lagos and Order 11 Abuja

A. The claimant must establish that the defendant has no good defence to the claim

B. It has no subject matter restriction and applies to declaratory rights

C. It has subject matter restriction and does not apply to declaratory rights

D. All of the above

9. Where a party is served with the writ and affidavit for a claim under the undefended list procedure and the party wishes to defend, such party shall file a notice of intention to defend and affidavit in support___days to the day fixed for hearing.

A. Within 5

B. Before 5

C. 5

D. All of the above

10. Any judgment given under the undefended list procedure will be treated as judgment___

A. On the merits

B. Not on the merits

C. That may be set aside by the court that gave it

D. None of the above

11. Where a suit on the undefended list comes to court for the first time, it is for___

A. Hearing

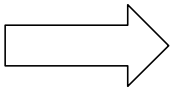
B. Mention

C. Plea taking

D. All of the above

ANSWERS

1. A
2. B
3. B
4. C
5. D
6. D
7. A
8. C
9. B
10. A
11. A



7. INTERLOCUTORY APPLICATIONS

1. EXPLAIN THE MEANING OF INTERLOCUTORY APPLICATIONS AND LIST EXAMPLES

Interlocutory applications are applications made by either party to any action during the pendency of a court action.

Examples of Interlocutory Applications

- Application for extension of time.
- Application for joinder of parties, third party proceedings.
- Application to appoint a representative for representative action
- Application for judicial review.
- Application for summary judgment.
- Application to appoint guardian ad litem
- Application for substituted service etc

There must in existence, an action before the court as interlocutory applications cannot stand on their own. Parties can apply for interlocutory application at any time before delivery of judgment. In other words, it can be applied for at any stage of the proceedings before the judgment is given. Once an action has been commenced, all subsequent applications are referred to as interlocutory applications. Parties in interlocutory applications are known as APPLICANT – the party making the application, RESPONDENT - the party against whom the application is made.

In some special cases an interlocutory application may be filed along with the originating process. The MAJOR DIFFERENCE between Originating processes and interlocutory applications is that originating processes are used in instituting the action while an interlocutory application is used to take further steps in proceedings during the pendency of the court action. Also, originating processes are personally served as a general rule, whereas personal service of an interlocutory application is not mandatory.

Reasons for interlocutory applications

- In most cases, interlocutory application is applied for in order to maintain the status quo.
- Speedy determination of action. Example is an application made for default judgment when the defendant failed to enter an appearance.
- When there is need to plead facts not earlier pleaded but subsequently discovered after pleadings have been exchanged. The leave of the court is needed for application for amendment of pleadings.
- Some are condition precedent to the proper commencement of the substantive action. Example leave to bring an action in a representative capacity.
- For the purpose of obtaining temporary relief in addition to the final claims as may be contained in judgment.

- For the purpose of nipping the substantive action in the bud and remedy defects in substantive action. Interlocutory applications before the court as a general rule are meant to be determined before the substantive action.

Functions of interlocutory application

- To take requisite procedural steps prescribed in the rules preparatory to trial.
- To compel compliance with the stipulations of the rules.
- To seek leave to comply with the rules/court order.

General Rules

- Nomenclature- Applicant/ Respondent.
- The court is under the duty to entertain all interlocutory application no matter how frivolous the application may be--**ABIOLA V 7 UP LTD**
- No decision on the substantive matter at the interlocutory stage.
- Once a court has jurisdiction to entertain a matter, and an application is brought before it by virtue of a particular law, the fact that a wrong law is cited is not fatal to the application as the court is minded to do substantive justice and not concerned with technicalities--**FALOBI V FALOBI**

Outcomes of an interlocutory application

- A ruling is made by the court
- Order sought granted- application succeeds with order granted.
- Order refused- application dismissed.
- Application may be struck out, when the application is not contested and the merits have not been gone into and the party making such application withdraws it, the application will be struck out.
- Note the process of drawing up an order.

Types of Interlocutory applications (how interlocutory applications are made)

- Motion
- Summons
- Interlocutory applications

2. EXPLAIN AND DISCUSS THE PRINCIPLES AND SCOPE OF THE FOLLOWING EXAMPLES OF INTERLOCUTORY APPLICATIONS AND RELIEFS: INTERIM AND INTERLOCUTORY INJUNCTIONS, MAREVA INJUNCTION AND ANTON PILLER INJUNCTION

Injunction is an equitable remedy which is granted at the discretion of the court. It is an order of court prohibiting a particular person from doing an act. Injunctions can also be preservative reliefs meant to maintain the status quo between the parties pending the final determination of the suit. There are different types of injunction namely:

1. Interim injunction

An interim injunction is a temporary relief by way of an injunction **granted to preserve the status quo UNTIL A NAMED DATE** or **UNTIL A FURTHER ORDER OF THE COURT** or **UNTIL A MOTION ON NOTICE FOR AN INTERLOCUTORY INJUNCTION CAN BE HEARD---KOTOYE v. CBN**. **It is granted in situations of EXTREME URGENCY and upon an ex parte application.** The affidavit in support must disclose the urgency otherwise it will not be granted.

Interim injunctions are granted pending the determination of the motion on notice for interlocutory injunction and so, their prayers are always couched:

"AN ORDER of interim injunction restraining the defendant/respondent, his privies and agents… pending the determination of the motion on notice for interlocutory injunction"

Thus, the application for interim injunction is always accompanied by the motion on notice for interlocutory injunction and as such when listing the accompanying documents, they are: motion ex parte, affidavit, exhibits (if any) written address, motion on notice, affidavit, exhibits (if any), and written address.

In Lagos and Abuja, an order for an interim injunction subsists for **seven (7) days with an option of extension for another 7 days but such must be made within the subsisting 7 days---ORDER 43 RULE 3(3)(4) LAGOS 2019, ORDER 43 RULE 3(2) ABUJA 2018**

Since an interim injunction is by way of motion ex-parte, the respondent only gets to know of the order of interim injunction upon being served with the order of interim injunction, the respondent has the option of asking the court to vary or discharge such order---**ABIOLA V. 7 UP LTD**

The application for the variation/discharge of an interim injunction is by way of motion on notice supported by an affidavit and a written address. The prayer is couched:

"**AN ORDER varying/discharging the interim injunction granted on ……"**

The grounds for applying for the variation of an interim injunction are:

- Failure or default in giving security for costs or undertaken as to damages
- Where there was suppression or misrepresentation of facts. That is, the applicant did not disclose material facts to the court
- Where it was obtained by fraud
- Where it was irregularly obtained.

Procedure for filing of interim injunction

- File the originating process and documents to be frontloaded
- File two applications. One is an application for an order of interim injunction by way of MEP+A+WA, the other an application for an order of interlocutory injunction by way of MON+A+WA
- An affidavit of urgency (highlight the urgency of your matter here so that the CJ can assign it to a judge without delay)----**KOTOYE V CBN**

2. Interlocutory injunction

An order of interlocutory injunction is usually granted **PENDING THE DETERMINATION OF THE SUBSTANTIVE SUIT**. This is the main distinctive feature between interlocutory injunction and interim injunction. Interim order of injunction is pending the hearing of an application on notice while interlocutory injunction is granted after the parties have been heard and subsists pending the determination of the substantive suit---**KOTOYE v. CBN.** Application for interlocutory injunction is by way of MON+A+WA

Note that an injunction cannot be granted against a completed act because equity does not act in vain, except in the cases of mandatory injunctions.

Conditions for the grant of an injunction (whether interim or interlocutory)---OBEYA MEMORIAL HOSPITAL v. AGF-----Real BAD LUCK

- **Real urgency (**where it is an interim injunction)
- **Balance of convenience**
- **Alternative remedies:** Existence of alternative remedies
- **Damage:** Irreparable loss or damage
- **Legal right existence:** Existence of a Legal right
- **Undertaken as to damages**
- **Conduct of the parties**
- **Knotty issue:** Substantial issue to be tried (triable issue)

3. Mareva injunction

A mareva injunction is sui generis because it is targeted at property, not persons. It is granted over assets, things or simply, the 'res'. This is an injunction that is used to **RESTRAIN A DEFENDANT WHO IS OUTSIDE JURISDICTION OR OUTSIDE THE COUNTRY**, but has assets within the country or within jurisdiction from removing his assets or disposing of them within the jurisdiction of the court. This injunction originated from and was named after the case of **MAREVA COMPANIA NAVAEIRA S.A. v. INTERNATIONAL BULK CARRIERS LTD**

Comment [C60]: The nature and purpose of mareva injunction was stated in R. BENKAY NIG LTD v. CADBURY NIG PLC that a mareva injunction or order is a security for judgment. It preserves the res just as ordinary injunctions do, but in addition, it secures assets for the execution of the anticipated judgment.

Conditions for grant of MI----CAR BUD--- SOTUMINU v. OCEAN STEAMSHIP (NIG) LTD, EFE FINANCE HOLDING LTD v. OSAGIE

Comment [C61]: Mareva injunction is not granted as a matter of course. The conditions which must be fulfilled before a mareva injunction would be granted were outlined in SOTUMINU v. OCEAN STEAMSHIP (NIG) Ltd

- **Cause of action:** That he has a cause of action against the defendant which is justiciable in the jurisdiction of the state or under common law
- **Assets particulars:** That he has given full particulars of the defendant's assets within the court's jurisdiction.
- **Real and imminent risk:** That there is a real and imminent risk of the defendant removing his assets from jurisdiction and thereby rendering nugatory any judgment which the plaintiff may obtain.
- **Balance of convenience:** That the balance of convenience is on the side of the applicant; and
- **Undertaking as to damages:** That he is prepared to make an undertaking as to damages

- **Disclosed fully:** That the applicant has made a full disclosure of all material facts relevant in the application.

An application for Mareva injunction is by way of MEP+A+WA. In order for the application to succeed, the affidavit must disclose the conditions above.

4. 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, documents or articles in the possession of the respondent, which are in violation of a copyright. It was first made in the case of **ANTON PILLER KG v. MANUFACTURING PROCESSES LTD**.

Application for anton piller injunction is by MEP+A+WA. There must be full disclosure by the applicant.

The conditions which must be fulfilled before an anton piller injunction can be granted--- **FERODO LTD v. UNIBRO STORES---PDP Failure**

- **Possession:** The applicant must show that the property is in the possession of the defendant
- **Destruction possibility:** The defendant is likely to destroy the property before the application on notice can be made
- **Property is needed as evidence:** The claimant needs the property as evidence and his case will be frustrated without them.
- **Failure to grant the order will be detrimental** to his case.

3. EXPLAIN THE MEANING OF A MOTION AND LIST THE CONTENTS OF A MOTION

A motion is an application, usually written, made to the court for the grant of an order in terms of the prayers sought in the application. It is made by an applicant notifying the respondent of the prayers sought by the applicant as well as the date for hearing thereof

A motion may be brought by either party at any stage of the proceedings.

Motions are filed with an affidavit deposed by the applicant or someone who is seised of the facts**.** This person must have the consent and authority of the applicant to depose to the affidavit. In **ENUMA V. CONSOLIDATED DISCOUNTS LTD,** the court held that the affidavit in support of an application for summary judgment need not be deposed to by the plaintiff. aim except as regards the amount of damages claimed.

Where applicant seeks to rely on points of law or documents to be relied on are already before the court, there would be no need for an affidavit.

The existence of a substantive cause or matter is an essential requirement for making an application by motion – **NIGERIA CEMENT CO. LTD V. NRC.** The hearing of any motion may, from time to time, be adjourned upon such terms as the court may deem fit.

The applicant is bound by the prayers in his motion as claimant is bound by the case put forward in the statement of claim---**EKPEYONG V. NYONG, COMMISSIONER OF WORKS, BENUE STATE V. DEVCON LTD.** The court cannot go outside the terms of the motion, however misconceived these may be, it is bound by the terms or prayers in the motion – **GOVT. OF GONGOLA V. TUKUR**

There are certain documents that should accompany a MOTION/APPLICATION – **ORDER 43 RULE 1(1) & (2) LAGOS 2019, ORDER 43 RULE 1 ABUJA 2018**

- An affidavit
- Written address
- Exhibit (when necessary)

The application shall state the rule of court or law by which the application is brought. However, if the application does not state the Rule or Law under which the application is brought. It does not also matter whether the application is brought under a wrong law as long as it does not affect the jurisdiction of the court or the nature of the reliefs sought---**FALOBI v. FALOBI.**

Where there are two applications before the court, one to regularize or save the proceedings (constructive) and the other to strike out the case (destroy), the court will hear that one seeking to regularize the proceedings---NALSA & TEAM ASSOCIATES v. NNPC. However, where any of the motions challenges the jurisdiction of the court, that motion must be taken first.

An interlocutory order abates or terminates with the substantive suit or appeal---**OKAFOR v. AG ANAMBRA.** If the applicant intends such order to be effective after the determination of the substantive suit, he cannot come by way of an interlocutory application. He must claim such a relief as a perpetual order in his writ of summons or other originating process.

If a motion is brought in the absence of a pending action or as a means of commencing an action, then it is no longer an interlocutory application, but an originating application.

Contents of a motion

1. Heading of the court in which the action is brought
2. The suit number
3. The names of the parties and capacity
4. Types of motion - MOTION ON NOTICE OR EX PARTE
5. Order or rule under which it is made. Note that the Omnibus clause has no effect as it cannot grant the applicant any order or relief not expressly prayed for.
6. The relief or order that is being sought
7. The date of application
8. Signature, name, address, of the legal practitioner or applicant who prepared the motion. For signature, note OKAFOR v. NWEKE. FURTHER NOTE: The legal practitioner must identity himself with a chambers.
9. Address of defendant for service (MOTION ON NOTICE)

Motions are of two types viz. **motion *ex parte*** and **motion on notice**. Motions are generally made on notice but exceptional cases where it is made ex parte.

1. Motion Ex Parte

Generally, motion ex parte does not require notice to be given to the other party as ex parte means **one party or on one side.** In one word, motion ex parte is a motion filed by one party to the proceeding and to be heard on behalf of that party alone. The other party cannot participate in the proceedings even when he is present. Where the other party is present in court, he may be seen, but cannot be heard---**ABIOLA V. 7 UP LTD, UCHENDU V. OGBANI**

The instances where motion ex-parte may be used where stated in **LEEDO PRESIDENTIAL MOTEL LTD v. BANK OF THE NORTH** as follows:

- Where from the nature of the application, the interests of the adverse party will not be affected (application for substituted service), (application for service out of jurisdiction).
- In situations of real urgency where time is of the essence of the application; such as where irreparable loss or serious mischief may be occasioned by following the due process of putting the other party on notice. For instance, where your house is about to be demolished.
- Where its use is expressly required by any Law or Rule. For instance, it is a mandatory originating process in applications for the prerogative writs such as mandamus, certiorari, habeas corpus etc; it is required by the Rules for third party proceedings, substituted service, renewal of a writ, application for leave to issue a process etc.

Outcomes of a motion ex parte

a. It may refuse or grant such ex parte
b. Direct that the motion be made on notice
NOTE LAGOS PROHIBITS THE JUDGE FROM MAKING AN ORDER TO SHOW CAUSE
a. Grant an order to show cause.-

2. Motion on Notice

When an application is made through motion on notice, the other party is put on notice of the application. This is to prevent surprises from being sprung on the other party. Secondly, to give notice of what is to be done in court pursuant to section 36(1) 1999 Constitution - principle of fair hearing.

When application made by motion on notice is served on the other party, there must be at least **TWO (2) CLEAR DAYS** between the service of motion on notice and the day named in the notice for hearing of the motion UNLESS A JUDGE GRANTS SPECIAL LEAVE TO THE CONTRARY---**ORDER 43 RULE 4 LAGOS 2019, ORDER 43 RULE 6 ABUJA 2018.** FAILURE TO GIVE TWO CLEAR DAYS RENDERS THE MOTION UNRIPE FOR HEARING----**LOXROY NIG LTD v. TRIANA LTD** where 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. (Note that in the FHC, it is seven (7) clear days.)

Note that by **ORDER 43 RULE 1(2)(b) LAGOS 2019,** every motion must be served on the other party **within five (5) days of filing** and where the application is not served within the specified period, the judge may strike out the application. By **ORDER 43 RULE 1(3) LAGOS**

Comment [C62]: However, in practice, where a party against whom an order is sought ex parte appears in court and seeks the leave of court to participate or be heard. Where the judge is satisfied that there is a good ground to do so, the party against whom the order is sought may be allowed to participate or be heard and such a situation is called an "OPPOSED EX PARTE MOTION". This situation is not a motion inter partes. Another situation, which is a motion inter partes, is where the party against whom the order is sought files a counter affidavit and is allowed to participate, then the hearing effectively becomes interpartes.

Note: in either of the cases above, the defendant does not have an automatic right to be heard or to be put on notice in any of the above circumstances. It is entirely within the discretion of the court.

Comment [C63]: MOTION ITSELF

2019, where the other party intends to oppose to the application, he shall file his written address and counter affidavit **within seven (7) days of the service on him of the application**. A right of reply exists **within seven (7) days after service of the counter affidavit---ORDER 43 RULE 1(4) LAGOS 2019**.

Comment [C64]: 5-7-7

Upon service of a motion on notice, the respondent is to file his counter affidavit. However, a counter affidavit will not be necessary in the following instances:

Comment [C65]: This is because an **unchallenged affidavit** is deemed admitted and the court is to act on it---EZEUDU v. JOHN. It could be that there is no counter affidavit at all, or some paragraphs are not denied etc

- Where the respondent is not opposing the application, he does not need to file a counter affidavit
- Where the respondent is opposing on points of law only.
- Where the facts in the affidavit in support of the motion are manifestly self-contradictory that no reasonable court would rely on it
- Where the facts deposed to in the affidavit are not sufficient to sustain the prayers sought in the application

The applicant must formally move his application or else the court will not act on it and it will be struck out---**LOXROY NIG LTD v. TRIANA LTD**. However, where the application is an exparte application, it need not be formally moved because it is an ex parte application and is not contentious---**INAH v. UKOI**

Recipients of motion on notice

1. The respondent or his legal practitioner must be served with the application in order for him to be aware of the application.

2. Any person who is not a party to the proceeding but will be affected by the result of the proceeding must be served with the motion on notice. Such party is called a "PARTY ON NOTICE". He is not the respondent, he is only a party on notice.

NOTE: an interlocutory application there is no requirement for personal service unlike an originating process that must be served personally.

4. DISCUSS THE PRINCIPLES REGARDING AFFIDAVIT EVIDENCE

On evidence at the hearing of a motion, the general rule is that affidavit evidence is relied on.

A motion requires affidavit except the matters are strictly on point of law or it relates to documents already in the possession of the court.

Affidavit is a statement made on oath by the deponent from his personal knowledge or belief or from information he believes to be true- **JOSIEN HOLDINGS V LORNAMEAD**. It shall contain only statement of facts----**S. 115(1) EA 2011**

Before an affidavit is admitted, it must have been sworn to before the persons specified in **S. 109 EA 2011**. These persons are: **a judge, officer and other person duly authorized to take affidavit**. The commissioner for oath falls under this category. Even though the commissioner for oath is not the only person before whom an affidavit can be deposed to, in practice, it is the commissioner for oath that administers oath. An affidavit as a matter of law must be sworn to as an unsworn affidavit is an ordinary paper---**MARAYA PLASTICS INDUSTRIES LTD**

&ANOR V. INLAND BANK OF NIGERIA PLC. Without oath, therefore there is no affidavit. The above is a general rule and there are exceptions provided for in section 120(2) of the Evidence Act. Thus an affidavit may not be sworn to on:

- Religious grounds or want of religious grounds.
- Age of the person – immaturity.

The above must be indicated by the officer taking the oath. The person deposing to an accused is the deponent.

Contents of an affidavit

- Heading of the court
- Suit number
- Parties and their capacity.
- Title – Affidavit in support of motion
- The particulars of deponent
- **Statement of facts—S. 115 EA 2011** stated therein, well numbered in paragraphs
- Signature of the deponent
- Attestation of the fact that it was sworn to, where it was sworn to
- Date
- Signature of commissioner for oath or particulars of person administering the oath

NB: The source of statement of facts which could be personal knowledge or otherwise should be stated. Where it does not come from personal knowledge it must be stated to have come to the knowledge of the deponent from another person.

An affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered, or before his legal practitioner, or before a partner or clerk of his legal practitioner---**S. 112 EA 2011**

There are instances where an affidavit would be defective—**S. 113 EA 2011.** A defective affidavit is an affidavit that does not comply as to form of an affidavit. The question is, can a defective affidavit be used in the court? **A defective affidavit can still be admitted by the court provided that the affidavit was administered by the relevant authority**. There is however a danger in filing a defective affidavit in that section 114 of Evidence Act provides that a defective or erroneous affidavit may be amended and re-sworn with the leave of court on such terms as to time, costs, or otherwise as seen reasonable. This was restated in **C & C LTD v. ALTIMATE INV. LTD**

An affidavit is not to contain extraneous matter by way of **objection, opinion, prayer, legal argument or conclusion (OOPLAC)** otherwise the court shall strike out the defaulting paragraphs– **S. 115(2) EA 2011, SHIVERO V STATE, BAMAIYI V STATE.**

The test for what is appropriate and not extraneous is to asked oneself whether or not such matters are matters that are suitable for a witness in a witness box to state or whether it is that ought to be presented before the court by counsel. The former would not be extraneous and the later would be---**BAMAIYI V STATE.**

When fact is from another person, the particulars of the person shall be stated and the time, place and circumstances of the information shall also be stated – **S. 115 (3) & (4) EA 2011**. **He must state that he verily believes the informant.**

Conflicts in Affidavits – **S. 116 EA 2011**

Where there are conflicts in affidavits, the court may do any or all of the following

- Call for oral evidence to resolve an irreconcilably conflict in affidavits--**S. 116 EA 2011, FALOBI V FALOBI,**

Exceptions

- Documentary evidence
- Judicial notice
- Resolvable by law
- Manifestly untrue affidavit
- Infinitesimal/narrow/insignificant conflict---**EZECHUKWU V. ONWUKA**

When an illiterate or a blind person depose to an affidavit, the fact that such person is an illiterate shall be stated there and there must be a jurat – **S. 119(1) EA 2011**

"Sworn to at the High Court Registry this __day of__20_after the contents have been read out to the deponent by me Aneke Kenechukwu (Sworn Interpreter) and the deponent thereby made his thumb print impression after he had understood the contents"

BEFORE ME

COMMISSIONER FOR OATHS

A legal practitioner handling the action on behalf of the applicant can depose to an affidavit as no law provides otherwise. However where there are affidavit and counter-affidavit which are held to be contradictory, there would be need for the court to call oral evidence. When the legal practitioner is then called as a witness, problem would arise as to who will examine and re-examine. Secondly, it is unethical for a legal practitioner to be a witness for his client pursuant to **RULE 20 RPC**. Thus, it is not advisable for lawyers handling the matter to depose to such affidavit---**ELABANJO V TIJANI**

Further and better affidavit

This is an addition to the affidavit already filed in court. It is possible that an applicant in filing an affidavit omitted some important facts or when there are new facts which are to be brought to the attention of the court. Thus, in such cases, there is need to file a further and better affidavit. It can also be used to introduce new document. **There is also further and further and better affidavit.**

Counter-affidavit

This is the affidavit deposed to by the respondent challenging or countering the facts deposed to by the applicant. Counter-affidavit is important when the respondent intends to contradict the

Comment [C66]: In practice, if one of those affidavits is supported by real and cogent documentary evidence, the court will resolve the conflict from the documentary evidence attached to the affidavits where available and sufficient to do so--NWOSU v. IMO STATE ENVIRONMENTAL SANITATION AUTHORITY,

Comment [C67]: Also, the language in which the affidavit was deposed should be attached to that translated into the language of the court – English language

affidavit of the applicant and if it is not filed it would be deemed that the respondent has admitted the facts in applicant's affidavit. There are however instances when there would be no need to file a counter-affidavit namely:

- Where the respondent is not opposing the application, he does not need to file a counter affidavit
- Where the respondent is opposing on points of law only.
- Where the facts in the affidavit in support of the motion are manifestly self-contradictory that no reasonable court would rely on it.
- Where the facts deposed to in the affidavit are not sufficient to sustain the prayers sought in the application.

In the written address of the respondent the respondent can point out to the judge that certain paragraphs deposed to be expunged or struck out because of violation of section 115

After the traditional introductory paragraph, the next should read:

"I have seen and read the affidavit in support of__sworn to by__on the __day of __20_"

Then the subsequent paragraph should identify the paragraph you wish to counter and individually substantiate your paragraphs with facts relating to the untruthfulness of those paragraphs in the affidavit that you disagree with.

Exhibits

Where a piece of Paper is attached to an affidavit, it is a certificate of exhibit. It is always at the back page of an affidavit. This is for authentification to prevent the possibility of the exhibit been subsequently changed to another thing altogether.

The certificate of exhibit identifies or connects the exhibit with the relevant paragraph of the affidavit.

Draft:

This is the document referred to as exhibit a in paragraph 10 of the affidavit of h.b sworn to at the high court registry, Ikeja on the ……day of …. 2019

BEFORE ME

…….

COMMISSIONER FOR OATHS

Affidavit is needed in the following application

- Originating motion/application, summons, petition excluding election petition.
- In all interlocutory applications whose grounds are on facts
- In the commencement of claim under the undefended list procedure
- Where the court orders it.

Types of affidavit includes

- Affidavit in support of application
- Affidavit of urgency
- Affidavit of service
- Counter-affidavit
- Further and better affidavit
- Further, further and better affidavit
- Affidavit for the record.

Difference between witness statement on oath and affidavit: an affidavit which is a supporting documentary evidence used when an interlocutory application is brought before the court. This saves the time of the court as witnesses will not be called.

On the other hand, a witness statement of oath is evidence of persons called during the proper trial of the suit and it only becomes evidence when it is adopted as evidence-in-chief , while an affidavit becomes evidence upon it being sworn on oath at the Registry and filed.

Steps in moving a motion---ABARA EWaMPP

1. **Announce appearance:** My Lord, K. C Aneke, appearing for the claimant/applicant.
2. **Before this HC clause:** My Lord, before this Honourable Court is an application for an order of interim injunction dated and filed the__day of__2019.
3. **Authority for the application clause:** My Lord, the motion is brought pursuant to__and under the inherent jurisdiction of this court
4. **Relief clause:** My lord, we seek the following reliefs: An order of interim injunction…..pending the determination of the motion on notice for interlocutory injunction before this Honourable court
5. **Affidavit clause:** My lord, in compliance with the rules of this Honourable Court, our motion is supported by an 11 paragraph affidavit sworn to by the claimant/applicant. We rely on all the paragraphs of the affidavit particularly paragraphs 4-10.
6. **Exhibit introduction clause:** My lord, accompanying the affidavit is an exhibit marked EXHIBIT A.
7. **Written address:** My lord, we have also filed a written address in support of our application. We wish to adopt same as our oral argument before this Honourable Court.
8. **Move clause:** "We **thereby move as per the terms of the motion"**
9. **Prayer clause:** We humbly pray this Honourable Court to grant the order of interim injunction
10. **Please the court clause:** May it please this Honourable Court.

5. DRAFT AND ARGUE SIMPLE MOTIONS (AFFIDAVITS IN SUPPORT INCLUSIVE)

Just like your normal motion, but know the right prayers. Use "ON NOTICE TO" for MON and not "FOR SERVICE ON". Affidavit preamble should observe NNaSTR (Name, Nationality, Sex, Trade/profession, Residence)

Comment [C68]: "Good advocate will spell out the contents of the affidavit and a bit of the written address adopted"

Comment [C69]:
1.**AN ORDER** granting leave to the Applicants to sue for themselves and on behalf of the Odofin family of Ikotun Lagos State.
2.**AN ORDER** joining ABC Insurance PLC as a third party in this suit
3.**AN ORDER** joining ABC Insurance Plc as Co-defendant in this suit
4.**AN ORDER STRIKING OUT NIGERIAN DEPPOSIT INSURANCE CORPORATION AS CO-DEFENDANT IN THIS SUIT**
5.**AN ORDER** joining the Nigerian Deposit Insurance Corporation as Co-defendant in this suit
6.**AN ORDER OF ANTON PILLAR PERMITTING THE APPLICANT TO ENTER AND REMOVE** from the premises of the defendant at Idumota, Lagos to remove copies of the books "How to pass your exams" published by the claimant and to keep them or bring them to court pending the determination of the suit.
7.**AN ORDER OF INTERIM INJUNCTION** restraining the defendant/respondent, their agents, servants, privies, or any persons acting for them or on their behalf from destroying the 500 (five hundred) tons of Cashew nut worth N10,000,000 (ten million naira), supplied by the claimant/applicant as agreed under a contract signed by both parties pending the hearing and determination of the Motion on Notice for interlocutory injunction.
8.**AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the Defendant/Respondent from transferring its money to another bank pending the determination of this suit.
9.**AN ORDER OF MAREVA INJUNCTION** restraining the defendant/respondent from transferring its money from the jurisdiction of this honorable court

6. EXPLAIN THE TYPES AND CIRCUMSTANCES OF UNDER WHICH INTERPLEADER SUMMONS ACTION MAY BE INSTITUTED

Types of interpleader

- Stakeholder interpleader
- Sheriff interpleader

(a) Stakeholder interpleader

This is where a person who is under a liability for a debt over which he has no personal interest and which is subject to competing claims and over which he is likely to be sued or has already being sued, will seek relief by taking out an interpleader summons. In such a dilemma, if he pays to the wrong person, he may be compelled to pay twice. Mr A is the landlord of property and he has 2 sons (B & C) and he has a tenant, Mr D. Mr A dies and B and C both approach D to pay the rent to each of them separately. D is indebted to pay rent but with two persons claiming receipt of the rent, D approaches the court to decide who he should pay rent to. The interpleader procedure is a platform that allows him to call on the courts to ask the adverse claimants to establish their claim.

Where the applicant has not yet been sued but suspects that he is to be sued, the expectation must be well founded---**DIPLOCK V. HAMMOND.**

For the applicant to succeed in such application, he must establish by affidavit evidence—No CD

a) **NO INTEREST:** That he claims no interest in the subject matter in dispute other than for charges or costs;

b) **COLLUSION ABSENCE:** That he does not act in collusion with any of the claimants; and

c) **DISPOSAL OF SUBJECT MATTER:** Applicant is willing to pay or transfer the subject matter into court or to dispose of it as the Judge may direct---**ORDER 47 RULE 2(2) LAGOS 2019, ORDER 48 RULE 2 ABUJA 2018**

(b) Sheriffs interpleader

This arises where a third party claims that the property on which execution is levied or about to be levied belongs to him and not to the judgment debtor. By this procedure, the third party and the judgment debtor are called upon to substantiate their respective claims to enable the court decide whether to release the property from attachment or proceed with the sale. The essence of this proceeding is to determine whether the property belongs to the judgment debtor or not – **NWEKESON V. ONUIGBO**

Interpleader proceedings enables the Sheriff to ask the court to determine whether the goods or property belong to the judgment debtor or the rival claimant. When a court delivers a judgment you now have a judgment creditor and judgment debtor. The sheriff protects the third party from possible litigation from the judgment creditor or the rival claimant – **HOLMAN BROTHERS NIG. LTD. V. COMPASS TRADING CO. LTD**

Circumstances of under which interpleader summons action may be instituted

Relief by way of interpleader may be granted **where the person seeking relief "the applicant" is UNDER LIABILITY FOR ANY DEBT, MONEY, GOODS, OR CHATTELS, FOR OR ON WHICH HE IS, OR EXPECTS TO BE SUED BY TWO OR MORE PARTIES " the claimants" making adverse claims.** But where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, the provisions of Section 34 of the Sheriffs and Civil process Act and the rules made under it shall apply--- **ORDER 47 RULE 1 LAGOS 2019, ORDER 48 RULE 1 ABUJA 2018**

The applicant shall not be disentitled to relief by reason only that the titles of the claimants have no common origin, but are adverse to and independent of one another--- **ORDER 47 RULE 3 LAGOS 2019, ORDER 48 RULE 3 ABUJA 2018**

Where the applicant is a defendant, application for relief may be made at any time after service of the originating process--- **ORDER 47 RULE 4 LAGOS 2019, ORDER 48 RULE 4 ABUJA 2018**

The applicant may take out **a summons** calling on **the claimants** to appear and state the nature and particulars of their claims and to maintain or relinquish them---**ORDER 48 RULE 5 ABUJA 2018**

If the application is made by a defendant in an action the court may stay all further proceedings in the action--- **ORDER 47 RULE 5 LAGOS 2019, ORDER 48 RULE 6 ABUJA 2018**

If the claimants appear in pursuance of the summons, the court may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of, or in addition to the applicant or that an issue between the claimants be stated and tried, and in the latter case may direct which of the applicants is to be claimant or defendant--- **ORDER 47 RULE 6 LAGOS 2019, ORDER 48 RULE 7 ABUJA 2018**

Where the question is a question of law and the facts are not in dispute, the court may either decide the questions without directing the trial of an issue or order that a special case be stated for the opinion of the court. If a special case is stated, Order 30 shall as far as applicable apply--- **ORDER 47 RULE 7 LAGOS 2019, ORDER 48 RULE 8 ABUJA 2018**

If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons or having appeared, neglects or refuses to comply with any order made after his appearance, the court may make an order declaring him and all persons claiming under him, forever barred against the applicant and persons claiming under him but the order shall not affect the rights of the claimants as between themselves--- **ORDER 47 RULE 8 LAGOS 2019, ORDER 48 RULE 9 ABUJA 2018**

The court may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just---**ORDER 47 RULE 9 LAGOS 2019, ORDER 48 RULE 10 ABUJA 2018**

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO……..……

BETWEEN

MR. LANRE AKPAN……APPLICANT

AND

1. MR. TITUS AJASA]

2. MR. CHINEDU SMART]…….…….....CLAIMANTS

INTERPLEADER SUMMONS BROUGHT PURSUANT TO ORDER 43 RULE OF THE HIGH COURT (CIVIL PROCEDURE) RULES OF LAGOS STATE, 2012 AND UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT.

LET Titus Ajasa and Chinedu Smart of No 45 Hopewell Avenue Victoria Island and No 23 step close Victoria Island, Lagos respectively within twenty-one (21) days after service of this Summons on them, inclusive of the day of such service, cause an appearance to be entered for him to this Summons which is issued upon the application of Lanre Akpan, whose address is at No. 53, Ajah, Lagos for the determination of the following questions:

1. Whether or not the Applicant has satisfied the necessary requirements for interpleader proceedings to be maintained and for this Honourable Court to grant him the main reliefs sought.

Upon the determination of the above question, the applicant shall seek the following relief:

1. The charges and costs of repairing the vehicle.

Dated this…… day of ……., 2019

……
K. C Aneke
Applicant's Counsel
K. C Aneke & Co.
No 2. Law School Drive
Victoria Island, Lagos
0705353123_
kundycmith@gmail.com

FOR SERVICE ON:

1. 1ST CLAIMANT

Mr. Titus Ajasa

No. 3 Law School Drive

Victoria Island, Lagos

2. 2ND CLAIMANT

Mr. Chinedu Smart

No. 4 Law School Drive

Victoria Island, Lagos

7. EXPLAIN AND DISCUSS ETHICAL AND CONSTITUTIONAL ISSUES INVOLVED IN MAKING INTERLOCUTORY APPLICATIIONS, FOR EXAMPLE ABUSE OF EX-PARTE INJUNCTIONS, SWEARING OF AFFIDAVITS BY COUNSEL, AND SUPPRESSION OF FACTS IN EX PARTE APPLICATIONS, LATE FILING OF COUNTER AFFIDAVITS TO MOTIONS IN ORDER TO FRUSTRATE APPLICANTS AS WELL AS EFFECTING SERVICE OF ANTO PILLAR ORDERS

- **Abuse of Ex parte Injunction:** **Rule 30 RPC** states that a lawyer is an officer of the court and accordingly, he shall not act or conduct himself in any manner that may obstruct, delay, or adversely affect the administration of justice by bringing frivolous applications. Counsel shall not mislead the court – He shall deal candidly and fairly with the court—**RULE 32 RPC.** Counsel should not perform an act which is an abuse of court process or act which is dishonourable---**CHIEF E. N. OKONKWO AND ORS.V. AG LEVENTIS**
- **Swearing of Affidavit by Counsel:** It is unethical for a counsel to swear an affidavit on behalf of his client. According to **Rule 20(1) RPC**, a lawyer shall not accept to act in any contemplated or pending litigation if he knows or ought reasonably to know that he will be called as a witness. It is unethical for Counsel to swear to affidavits himself. Affidavits should be deposed by the Litigants themselves, or at best by a Litigation Secretary or another Lawyer in the office of the Counsel, this is to avoid a situation a situation where Counsel may be called upon to give evidence in support the facts deposed to in the affidavit--**RULE 20 RPC – HORNE V RICKARD, OBADARA V PRESIDENT WEST DISTRICT MAGISTRATE COURT**
- **Suppression of Facts in Ex Parte Applications:** It is also unethical for Counsel to mislead the Court by deliberately suppressing facts in making ex-parte applications. *Ex parte* application requires full disclosure of facts to be made to the court as default of this will be a ground for setting aside any order made on the basis of the application--**BLOOMFIELD V. SERENY**
- **Bringing Application under Wrong Order or No Order**: The ethical issue involved as to bringing application under wrong order or no order amounts to incompetence and lack of dedication and preparation in **Rule (14 & 16) of the RPC** which amounts to professional negligence on the part of the counsel but it would not affect the substance of the case.
- **Delay in Filing Counter Affidavit:** This would amount to negligence on the part of the respondent's counsel as the judge would act on the unchallenged or un-contradicted evidence and deem them to be admitted and treated as such.
- A counsel in filing counter-affidavit must only reply to that which is in the affidavit and not to include fresh facts or ridicule an affidavit.
- Delaying the action by bringing many interlocutory applications so that the matter does not go to trial----**PERE ROBERTO NIGERIA LTD V ANI**

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. In Lagos and Abuja, an order for an interim injunction subsists for___days with an option of extension for another___days made within the subsisting time frame.

A. 14/7

B. 14/14

C. 7/14

D. 7/7

2. Where there are two motions before the court, one challenging the jurisdiction of the court, marked A, and the other seeking to regularize same, marked B, the court is to first hear____

A. B

B. A

C. B and A

D. B or A

3. A motion brought in the absence of a pending action or as a means of commencing an action is referred to as___

A. Interlocutory motion

B. Originating application

C. Interlocutory application

D. All of the above

4. When an application by way of MON is served on the other party, there must be at least___between the service of the MON and the day named in the notice for hearing the motion

A. 2 days

B. 2 clear days

C. 7 days

D. 7 clear days

5. NO QUESTION

6. Failure to give the required time as in 4 above renders the motion___

A. Void

B. Voidable

C. Unripe for hearing

D. Inchoate

7. In Lagos and Abuja, every motion must be served on the other party within___days of filing and where the other party intends to oppose the application, the party shall file a written address and counter-affidavit within__days of service on him of the application. A right to reply shall exist within__days after the service of the counter-affidavit.

A. 21/21/7

B.5/7/7

C. 14/14/7

D. 7/5/5

8. Any party who is not a party to the proceeding but is to be affected by the proceeding, when such a party is served with a MON, such a party is referred to as__

A. Respondent

B. Party joined

C. Party on notice

D. All of the above

9. Where an affidavit contains extraneous matter by way of objection, opinion, prayer, legal argument or conclusion, the court shall___

A. Admit the affidavit and determine the weight to attach to it

B. Dismiss the affidavit

C. Strike out the defaulting paragraphs

D. All of the above

10. Where a piece of paper/document is attached to an affidavit, it is identified or connected with the relevant paragraphs using____

A. Exhibit list

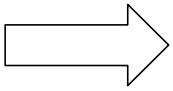
B. Certificate of exhibit

C. Instrument of exhibit

D. All of the above

ANSWERS

1. D
2. B
3. B
4. B
5. BONUS
6. C
7. A
8. C
9. C
10. B



8. PLEADINGS

1. EXPLAIN AND DISCUSS THE PRINCIPLES RELATING TO THE FUNCTIONS AND DRAFTING OF PLEADINGS

(a) Functions of pleadings-----PINGOS

- **Permanent records:** Pleadings constitute permanent records of issues raised and determined by the court in each case and forms the basis on which a plea of estoppel per rem judicatam can be raised to bar subsequent re-litigation of the case.
- **Issue definition:** Pleadings define the issues in dispute between the parties and narrows down the issues by highlighting the facts which are established as between the parties----**HIGHGRADE MARITIME Ltd v. FBN Ltd, NIPC v THOMPSON ORGANISATION**
- **Notice:** Pleadings generally serve as notice. This is because by means of pleadings, each party gives a fair notice to the other party, of the case he intends to put up in court. This enables the other party to prepare his own case and prevent trial by ambush or trial or trial by the springing up of surprises---**GEORGE v. DOMINION FLOUR MILLS LTD**
- **Guide:** Pleadings guides the courts as to the real issues between the parties and the court is bound and guided by the pleadings in determining whether it has jurisdiction to entertain the matter----**IFEAJUNA V IFEAJUNA, BALOGUN V ADEJOBI**
- **Onus determination:** Pleadings help determine the parties on whom the onus of proof lies. Example: if claimant alleges a fact and the defendant denies such fact, the burden of proof is on the plaintiff or claimant. If however defendant admits and raise new facts giving him defense (confession and avoidance), the burden of proof is on the defendant---**BAKARE v. ACB LTD; OKOYE v. NWANKWO**
- **Steps determination:** Pleadings determine steps to be taken by the parties. For instance, claimant claims against defendant the sum of N10m in one transaction and N45m in another transaction. The defendant admits the sum N10m in the first transaction, the claimant on that admission can file an application by motion on notice for summary judgment on admission of facts.

(b) Formal requirements of pleadings/Principles relating to drafting of pleadings

- Every pleading must be properly headed
- Pleadings are arranged in paragraphs and numbered consecutively
- Facts must be consistently pleaded thus if parties are referred to as claimant or defendant from paragraph one, such must continue till the last paragraph.
- No metaphor is allowed. Sentences must be direct and blunt
- Pleadings must contain the reliefs which a party seeks.
- Plead facts positively, precisely, distinctly, briefly and in the active voice.
- There must be consistency in the nomenclature to avoid ambiguity. Pleadings should be clear and concise.
- Pleadings should be printed legibly

Comment [C70]: Pleadings are written statements of fact set out in summary form which is filed and exchanged by the parties in a civil action commenced by writ of summons. Pleadings usually contain the material facts which the party serving it intends to use in proof of his case.
Pleadings are not used in the Magistrate courts. They are used only in actions commenced by writ of summons. However, it must be noted that the court may order pleadings to be filed and exchanged in an action wrongly commenced by originating summons where there are disputes of facts-----**ADEYELU II v. AJAGUNGBADE III**

- Pleadings must be dated
- Signature of the claimant's counsel or the claimant himself – SLB Consortium v NNPC (legal practitioner should sign the document in the name he is called to the bar), before adding the firm's name, then state claimant or defendant's counsel
- Address of defendant or claimant for service
- Avoid the use of pronouns
- Dates, sums and numbers shall be written in figures and in words.
- When documents are pleaded, there is no need to state that the document is hereby attached as Exhibit A. Just state that the document will be relied on at trial. This is because unlike affidavits, pleadings do not constitute evidence.

Examples of pleadings

- Statement of claim
- Statement of defence
- Reply. This is the second pleading filed by claimant to defendant to respond to new matters in SOD.
- Counter-claim
- Defences to counter-claim
- Further and better particulars

Comment [C71]: PLEASE NOTE: **Statements in a statement of claim are called AVERMENTS while statements in an affidavits are called DEPOSITIONS. Pleadings are settled.**

Comment [C72]: Statement of defense and counter-claim are to be in one document and numbered consecutively. If statement of defense stops in paragraph (10), counter-claim will start from paragraph (11), but the heading COUNTER CLAIM will separate paragraphs (10) and (11). For reply and defense to counter-claim, it must be in the same document and numbered accordingly as stated above.

2. EXPLAIN THE PROCEDURE FOR FILING (WHEN AND HOW TO FILE), SERVICE, CLOSE AND DEFAULT OF PLEADINGS, AMENDMENT OF PLEADINGS AND FILING OF FURTHER AND BETTER PARTICULARS

(a) Procedure for filing, service and close of pleadings

- **Claim:** Statement of claim is filed by the claimant along with the writ of summons and documents to be frontloaded (state them in exam)
- **Defence:** A defendant shall file his statement of defence, set-off or counterclaim, if any not later than 21 days (Abuja) after service on him of the OP and FLDs (within 42 days in Lagos)
- **Reply if any:** A claimant shall within 14 days (L and A) of service of the statement of defence and counterclaim, if any, file his reply and defence if any to such defence or counterclaim----**ORDER 17 RULE 1(2) LAGOS 2019; ORDER 15 RULE 2 ABUJA 2018**
- **Close of pleadings:** In Lagos, where **the defendant fails to file a statement of defence within the forty two (42) days** prescribed by the Rules, pleadings shall be deemed closed (not in Abuja Rules). Also, pleadings **will be deemed to be closed on the expiration of 7days from the service of a Reply or Statement of defence** as the case may be. In the case of a counter claim, unless the claimant files a defence to the Counter Claim, **on the expiration of 14 days after the service of the counter claim or such other** time as the court may allow for filing Reply thereto, the facts contained in the counter claim shall be deemed to have been admitted but the court may, at any subsequent time, give leave to the claimant to file a Reply (same in Abuja). If a pleading subsequent to a Reply is ordered, then pleadings shall be deemed closed on the expiration

Comment [C73]: This is the stage at which pleadings are no longer allowed except with the leave of court. The close of pleadings is very important because it is at that stage that the issues would be deemed to have been joined between the parties. That is, at the close of pleadings, the parties would be said to have joined issues.

Comment [C74]: 42-7-14

of the time limited by the court for doing so (same in Abuja)---**ORDER 17 RULE 18 LAGOS 2019 AND ORDER 15 RULE 19 ABUJA 2018**

- **Extension of time:** Where pleadings have closed, the only way the defendant or claimant can re-open same is by an application for extension of time. The court may in its discretion extend the time for filing pleading **if an application for extension of time by way of motion on notice, affidavit and written address is filed**, disclosing cogent reasons for failure to file and exchange pleadings within time.

Comment [C75]: Note that in Lagos 2019, by Order 48 r 4, the defaulting party shall also pay default fees of **N1000** for each day of the default.
Note that the time for filing, service and exchange of pleadings does not run during the periods of vacation of the courts, except if the court orders otherwise.

(b) Default of pleadings

Where the claimant fails to file SOC and other accompanying document with the originating process, the writ of summons will not be accepted for filing at the Registry. Even if erroneously accepted, court may strike it out---**JABITHA v. ONIKOYI**. The failure to file the SOC along with the writ may nullify the action.

Where the claim is for the recovery of debt or a liquidated money demand and the defendant fails or defaults to file his statement of defence, then the claimant can apply for default judgment. However, if the claim is not for recovery of debt or for an unliquidated money demand, and the defendant defaults, the claimant cannot apply for default judgment, but will apply to **set the matter down for trial.**

Note that the party in default can always bring an application for extension of time within which to file his pleadings

Pleadings filed out of time and/or without the leave of court is only voidable and not void thus can only be set aside by way of timeous objection by the other party---UBA LTD &ORS V. NWORA.

(c) Amendment of pleadings----ORDER 26 LAGOS 2019, ORDER 25 ABUJA 2018

The amendment of pleadings is more like an exception to the rule that parties are bound by their pleadings because they can always amend their pleadings. The issue of amendment is to allow the court to determine the real issue between the parties in the interest of justice subject to the rules of the court--**OJA V OGBONI**

Instances where amendment would be allowed

- Where the amendment sought is necessary for the purpose of determining the real questions or issues raised in the proceedings. This is because the purpose of amendment is to assist the court to determine the real issue between the parties in the interest of justice subject to the rules of the court--**AKANINWO v. NSIRIM**
- Where the amendment would aid or serve substantial justice---**AJA v OGBONI; ADEKEYE v. AKIN-OLUGBADE**
- It will settle the controversy between the parties and related issues.
- When it will bring pleadings in line with evidence already adduced and on the record--**SPDC v AMBAH; EDOIGIAWERIE v. AIDEYAN**
- To introduce a claim or relief that is covered by evidence and does not go outside the cause of action---**IBANGA v. USANGA.** This is common in reliefs that go together in a cause of action. **In land matters, a claimant is expected to seek declaration of title to**

Comment [C76]: Snap test

land, damages for trespass and perpetual injunction against further acts of trespass. If one of the above claims is missing, the court would readily grant amendment to pleading in order to avoid/prevent multiplicity of actions.

- To correct a misnomer in the name of parties to the suit. For instance, if PLC is omitted from a public company's name, amendment can be sought to reflect this or to reflect the capacity of a party---**OTAPO v. SUNMONU; OKECHUKWU & ORS v. NDAH**

Instances where an amendment may be refused

- Where it would present a completely different case or cause injustice to the other party or where the application is brought mala fide--**BAMISIEBI v. OTE; IWEKA v. SCOA**
- When it will necessitate the hearing of fresh or further oral evidence, especially on appeal.
- Where it will not cure the defects in the pleading or procedure sought to be amended
- Where it is inconsistent and useless.
- Where it would amount to overreaching the other party or an abuse of court process---**AKININWO V NSIRIM**
- Where the amendment is immaterial---**AWACHIE v. CHIME**
- Where the amendment seeks to include facts not in existence at the time of commencement or time of initial filing of pleadings. This is because amendment is retroactive and relates back to date of commencement of proceedings---**GOWON v. IKE-OKONGWU**
- Statute barred claim. An amendment will not be allowed where it would include a statute barred claim. Thus, in an action limited by statute, the amendment must be made within and not outside the limitation period. If the amendment is after the limitation period, it will not be allowed----**OSEYOMON v. OJO; ROTIMI v. MCGREGOR**
- An amendment will not be allowed where it will operate to change the cause of action--**OKOLO v. UBN**

Stages of amendment (when can an amendment be made?)

A party may amend his originating process and pleadings **at any time BEFORE THE CLOSE OF CMC and NOT MORE THAN TWICE during the trial BEFORE JUDGMENT.** Thus, in Lagos, either party can amend any number of times before close of CMC, but only twice during trial and before judgment—**ORDER 26 RULE 1 LAGOS 2019**

A party may amend his originating process and pleadings **at any time BEFORE THE PTC and NOT MORE THAN TWICE during the trial but BEFORE THE CLOSE OF THE CASE---ORDER 25 RULE 1 ABUJA 2018**

Mode/Procedure for amendment

- Oral application----**LAWAL v. AREA PLANNING AUTHORITY**. Used to amend minor typographical errors, if the other party does not object
- By motion on notice: Motion on notice, supported by an affidavit, a written address and the proposed amendment attached as an exhibit. Used for substantial amendments which may involve objections and consequential amendments.

In Lagos, the application should also have the following attached

- The proposed amendment must be attached as exhibit in the affidavit
- List of additional witnesses, if any
- Written statements on oath of the additional witnesses, if any
- Further written statements on oath of existing witnesses, if necessary
- Copy of any document to be relied on, if any.

Note that in both Lagos and Abuja, the proposed amendment should be attached to the affidavit, highlighting or underlining the areas of the amendments made or being sought to be made. The amended copy is headed: "PROPOSED AMENDED STATEMENT OF CLAIM/ DEFENCE"

A party who has obtained an order for leave to amend his pleading must amend the pleadings within the time specified for that purpose **and if no time limit was prescribed, then within seven (7) days from the date of the Order.** The effect of failure to comply is that the defaulting party shall pay a default fee of **N1000 (One thousand naira)** for each day of the default---**ORDER 26 RULE 4 LAGOS 2019**

If a party who has obtained an order to amend does not do so within the time limited for that purpose , or if no time is limited, then within 7 days from the date of the order, such party shall pay an additional fee of N100 (One hundred naira) for each day of default---**ORDER 25 RULE 4 ABUJA 2018**

Upon amendment, a copy of the amended pleading is to be filed in the Registry and additional copies served on all the parties to the action. **These, including the endorsing of the pleading as amended, are the post amendment procedures.**

Comment [C77]:
Question: state the procedure after an order for amendment has been given.
Answer: **endorse it as amended....., file in the court's registry and serve on all parties.**

After the amendment, the amended pleading shall be endorsed as follows:

> **"AMENDED THIS _____ DAY OF _____, _____ PURSUANT TO THE ORDER OF HON. JUSTICE ABC ____ dated the day _____ day of _____, _____"**

Effect of amendment of pleadings

An amendment is retrospective and relates back to the date of the original document amended. So, once amended, it is the amended pleadings that define the issues between the parties--**KATTO v. CBN; AGBAHOMOVO v. EDUYEGBE; OYINLOYE v. ESINKIN**

It would be wrong for a judge to base his findings on facts contained in a pleading that has been amended.

A judge may at any time correct clerical mistakes in judgments or orders or errors arising from any accidental slip or omission upon application.

An amendment is retrospective in that it refers to the original pleading. Only facts in existence at the date of the original pleading can be contained in the amended one. For instance, pleadings filed in 1st January 2012, and amended in 31st December 2012 will be deemed to have been in existence in 1st January 2012. Only facts that were in existence in 1st January 2012 can be

brought in---**OGUMA V. IBERA.** In **GOWON V. IKE OKONGWU,** the court stated that it is the law that an amendment relates back to the original pleading and the amendment sought to be filed in this case seeks to incorporate a cause of action which arose after the statement of defence was filed. Such an amendment generally should not be allowed.

The place of endorsement must be either at the top or foot of the front page of the amended pleading.

When an order for amendment is made, cost is usually given to the other party.

(d) Filing of further and better particulars

An application for a further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading requiring particulars shall be made to the Judge/Court **at the first CMC/PTC.** The Judge/Court may grant such application upon such terms as may be just/it thinks fit---**ORDER 15 RULE 4 LAGOS 2012 AND ABUJA 2018**

NOTABLES

Statement of claim

This is the first pleading in every case and it initiates the machinery of pleadings. It has three (3) parts namely: the introductory averments (also called "matters of inducement"), the body and the reliefs. Note that any SOC without a relief is incomplete and incompetent. Anything not prayed for cannot and will be not be granted because as was held in **AG ABIA & ORS v. AG FEDERATION,** "the court is not a father Christmas to dole out gifts not asked for by children. Even father Christmas is generous with his gifts only on Christmas day. On the lighter mood, today is not 25th of December". However, the exception is ancillary or consequential orders and reliefs---**AMAECHI v. INEC**

On the relationship between the writ of summons and the SOC:

The writ initiates the proceedings, states the nature of the claim and the reliefs sought from the court. While the statement of claim elaborates or amplifies the claims earlier set out in the writ.

The relationship between the statement of claim and the writ of summons is that the statement of claim supercedes the writ of summons----**ELF NIGERIA LTD v. SILLO**

There are three (3) implications of this:

- The statement of claim and the reliefs in it can be altered, modified, or extended without any need to amend the reliefs contained on the Writ of summons.
- Any relief in the writ of summons which is omitted in the SOC is deemed abandoned and any relief which is not in the writ of summons, but is claimed in the SOC is deemed to have been properly claimed before the court.
- In the event of any conflict between the reliefs claimed in the writ and the reliefs claimed in the SOC, the latter shall prevail and supercede.

However, notwithstanding the above, the claimant cannot use the SOC to completely change the cause of action on the writ without amending the writ. This is because the writ of summons

controls the statement of claim and defines its scope in the sense that it determines the cause of action. Thus, the SOC cannot include a relief which would have the effect of extending or altering the cause of action as contained on the writ, without amending the writ---**EKPAN V UYO.**

To avoid the above, some lawyers would claim in statement of claim as per the writ of summons. This has its advantages and disadvantages. Its disadvantages is that the writ of summons is incorporated into the statement of claim and both will be read together and if there is conflict, the statement of claim will not supersede----**OKOMU PALM OIL CO. LTD V ISERHIENRNHIEN**

Parts of statement of claim

- Heading of court
- Suit number
- Introductory part – description of claimant/plaintiff, description of defendant and what gave rise to the cause of action.
- Body of claim – this is the fulcrum of the case. All the dos and do nots earlier stated are to be observed here.
- Relief claim – this is because the court will not grant to parties reliefs not sought. The court can grant less but not more---**EKPEYONG V. NYONG.** Ancillary reliefs can be granted, that is, reliefs consequential or that give effect to the main reliefs –**AMAECHI V. INEC**. Claimant usually insert the word AND such order or orders the Honorable court may deem fit to make in the circumstances –**ADEGBOYEGA V. IGBINOSUN, GAFARI V. UAC, METAL CONSTRUCTION'S CASE.** All reliefs sought should be stated because once decision has been made on that cause of action, any relief not sought would be res judicata.

Statement of defence

There are different ways in which a defendant can answer to a statement of claim namely:

- Admission of allegation of fact in the SOC.
- Denial/traverse
- Confession and avoidance
- Objections on point of law
- Plea of set off; and
- Counter-claim

1. Admission: this is when the defendant admits what is contained in the statement of claim. In such a case, the claimant can bring an application for summary judgment based on admission of facts. This is because facts admitted need not be proved and are taken as established at the trial---**S. 123 EA 2011; EGBUNIKE v. ACB LTD**

Comment [C78]: Note that if the defendant admits part of the claim, the claimant can bring an application for interlocutory judgment in respect of the sum admitted, then set down the matter for hearing in respect of the outstanding.

DRAFT

THE DEFENDANT ADMITS THE FACTS AVERRED IN PARAGRAPHS I, 2, 3 AND 4 OF THE STATEMENT OF CLAIM

2. Traverse: this is a categorical and unequivocal denial of a statement of fact contained in the statement of claim. When facts are not admitted, they should be expressly denied either General or specific denial. Specific denial discloses surrounding circumstances that support the denial. Whatever is not traversed or denied expressly or by necessary implication, is deemed to have been admitted and discharges the claimant from the burden of proving them by evidence--**PHOEBUS ECONOMIDES v. S. THOMOPULOUS & CO LTD.**

DRAFT

THE DEFENDANT DENIES THE ALLEGATIONS OF FACTS STATED IN PARAGRAPH 2 AND 3 OF THE STATEMENT OF CLAIM (used to deny allegations that the defendant personally knows to be true)

THE DEFENDANT DOES NOT ADMIT THE ALLEGATIONS OF FACT IN PARAGRAPH 2 OF THE STATEMENT OF CLAIM (used when the truth or otherwise of the allegation would not necessarily have been to the defendant's personal knowledge)

The two basic rules in traverse are:

a) The traverse or denial must be specific and not evasive. By this rule of pleading, any material fact not specifically denied or denied by necessary implication is deemed to have been admitted except as against an infant, lunatic or person of unsound mind (persons under legal disability).

b) The denial must be of the substance of the allegation, unambiguous and not a literal denial. Any traverse that is not of the substance of the allegation or is literal, must necessarily leave with it a positive proposition and **any traverse that leaves with it a positive proposition that the defendant may have done more or less than what was actually alleged** is called a **Negative Pregnant Traverse.**
To avoid the unintended consequences of such positive propositions left by negative pregnant traverses, words like "or at all", "or any" etc are used.

GOOD DRAFT

THE DEFENDANT DENIES THAT HE OFFERED A BRIBE OF N23,000,000(TWENTY THREE MILLION NAIRA ONLY) TO THE CLAIMANT OR ANY SUM AT ALL ON 18TH JANUARY, 2016 OR ANY DATE WHATSOEVER

THE DEFENDANT DENIES THAT HE FLOGGED THE CLAIMANT'S RIGHT HAND OR ANY PART OF THE CLAIMANT'S BODY.

Types of traverse/denial

- **General traverse:** It is used to avoid inadvertent admissions---**BENSON v. OTUPOR**. By its contents, it is expressed to deny every fact except those expressly admitted. However, in truth, it does not deny every fact because material facts must be specifically denied----**LEWIS & PEATS v. AKHIMIEN**. The general traverse is drafted thus:

"SAVE AND EXCEPT as is herein expressly admitted, the defendant denies each and every allegation of fact stated in the claimant's statement of claim as if each were herein set out and traversed seriatim"

- **Defendant not in a position to admit or deny:** This type of traverse has been held not to amount to proper traverse **and that facts so traversed are deemed admitted and established at the trial----LEWIS & PEATS (NRI) LTD v. AKHIMIEN; OSENI v. DAWODU.** Such an averment is bad because it is evasive. However, a defendant can state such ONLY if he states why he is not in a position from other surrounding circumstances stated in the statement of claim.

DRAFT

THE DEFENDANT IS NOT IN A POSITION TO ADMIT OR DENY THE ALLEGATION OF FACT STATED IN PARAGRAPH 10 OF THE STATEMENT OF CLAIM BECAUSE THE DEFENDANT IS NOT AWARE OF THE CLAIMANT'S CHIEFTAINCY CONFERMENT.

- **Traverse of Allegations partly true and partly false**

DRAFT

THE DEFENDANT ADMITS PARAGRAPH 10 ONLY TO THE EXTENT THAT THE DEFENDANT'S NAME IS DELE OKORONKWO BUT DENIES EVERY OTHER ALLEGATION OF FACT CONTAINED IN THE SAID PARAGRAPH.

3. Confession and avoidance: this is a type of averment in the SOD where the defendant admits an allegation in the SOC, **but proceeds to avoid the legal consequences by alleging new facts which give an entirely different consequence to such admission and** the new facts may constitute a defence to a particular allegation or to the entire action. The burden of proving the new facts rests on the defendant.

DRAFT

THE DEFENDANT ADMITS THAT THE CLAIMANT'S GOODS WHERE FORCEFULLY WITHHELD BUT THE DEFENDANT AVERS THAT THE DEFENDANT HAS A LIEN OVER THE GOODS.

THE DEFENDANT ADMITS THAT THE CLAIMANT WAS EVICTED WITHOUT A LAWFUL COURT ORDER BUT THE DEFENDANT AVERS THAT THE CLAIMANT WAS A TRESPASSER.

4. Objection on points of law: this could be through preliminary objections or proceedings in lieu of demurrer. This is an application inviting the court to determine a point of law before trial. It could be when the action is statute barred, jurisdiction, locus standi, etc.

5. Set-off: it is a shield not a sword---**FIRST BANK PLC V I.A.S.C.A Ltd.** This applies **solely to monetary claims**. It is a monetary claim by the defendant against the claimant which the defendant raises as a defence to an equally monetary claim by the claimant.

Comment [C79]: Matters that need not be specifically traversed: INTRODUCTORY AVERMENTS, MATTERS OF LAW, DAMAGES OR QUANTUM AMOUNT OR RELIEF

Effect of a general traverse
- Puts the claimant to the proof of the facts alleged in the Statement of claim
- Not sufficient enough to deny an averment that should be specifically pleaded.
- Matters not subject of general traverse must be specifically denied

Comment [C80]: In **UGOCHUKWU v. CCB (Nig) LTD**, the supreme court held that in order to determine whether such a traverse amounts to an admission or a proper traverse, the court should consider all the other averments in the statement of defence; and, where there was a general denial followed by an averment that the defendant is not in a position to admit or deny a fact in the SOC, it should constitute a proper traverse.

Comment [C81]:
- Example slander of calling one a prostitute. The defendant can admit that yes he called her a prostitute and plead justification to such slanderous words.
- Second example: Detinue which is unlawful withholding the property of another. Admit such but aver that the defendant has lien over the goods.
- License to trespass because the defendant was put in possession
- Defence of illegality to contract.

The defendant cannot use a set off in an action for a **declaratory relief only. It can only be** used where there are monetary claims.

The effect of a set off is that if it succeeds, it mitigates the defendant's liability to the amount of the set-off. That is, it reduces the claimant's claim by the amount of the set off. **The parties must be the same and it must be specifically pleaded.**

Where the amount of the set off exceeds the amount claimed by the claimant, the court may enter judgment for the balance in favour of the defendant if claimed in a counter-claim by the defendant/counter-claimant.

The set off can only be raised against the claimant personally. Thus, if the set off is a debt or damages accruing to the defendant from the claimant in a representative capacity, the defendant cannot plead it against the claimant in a personal capacity. Similarly, where the debt accrues to the defendant in a representative capacity, he cannot claim it against the claimant in a personal capacity.

A set off is a **cross claim**. Thus, its life is tied to that of the substantive suit. Where the substantive suit dies, the set off also dies or fails or abates. This must be distinguished from a counter claim which is a **cross action.**

6. Counter-Claim: Not limited to monetary claims. Other parties can be added to a counter claim unlike a set- off.

A CC is by nature, a cross action raised in the defendant's SOD against the claimant. That is a counter claim shall have the effect as a cross action so as to enable the court pronounce a final judgment in the same proceedings.

A CC is an independent action which for convenience of procedure is combined in another action. It is not a defence, but an action itself. Accordingly, as an independent action or a cross action, the fate of a counter claim does not depend on the substantive suit or claim. The counter claim may still proceed even if the substantive suit or claim has been withdrawn, dismissed or struck out---**GOWON v. IKE-OKONGWU**

The guiding rule of a counter claim is that it must be an action in which the defendant himself can sue as claimant. The claimant in the substantive action must be a defendant to the counter claim. It is possible to include persons who are not parties to the substantive suit in the counter-claim.

A counter claim must be in respect of a cause of action accruing to the defendant **at the time of or prior to the issuance of the writ.** If it accrues after the issuance of the writ, it will not be allowed----**GOWON v. IKE-OKONGWU**

A counter claim is available for all actions and for all claims, whether in law or in equity, whether arising from the same transaction or the same series of transactions or not.

Since a counter claim is a cross-action raised in the statement of defence in the substantive action, it must be one capable of being tried in the same action and by the same court. If the matter is being tried by the **High Court, the counter claim should not allege facts that vest**

jurisdiction on the FHC. In such a case, the court may strike out the counter claim for lack of jurisdiction or it may order separate actions as the justice of the case may demand.

Since the counter claim is a cross action, the defendant occupies the same position as the claimant as far as the counter claim is concerned. It must be pleaded separately, and in separate paragraphs in the statement of defence. It must also contain a prayer or relief; **otherwise it would be deemed to have been abandoned**-----**ISICHEI v. ALLAGOA.**

Reply

This is the second pleading usually filed by the claimant when new issues arise from the defendant's statement of defence. If the claimant fails to file a reply to respond to the new issues, he will be deemed to have admitted them and will not be allowed to lead evidence in rebuttal of them during the trial----**SPASCO v. ALRAINE**

A reply is not filed as a matter of course. This is because the rule is that when there is no new issue in the statement of defense, then there is no need to file a reply---**MBA v. AGU; OBOT v. CBN.** Another reason why a reply is not filed as a matter of course is because of the IMPLIED JOINDER OF ISSUES. Of all the types of pleadings, the rules expressly provide that there shall be no express or implied joinder of issues on a statement of claim or counter claim.

The traverse in a reply is drafted thus:

"The claimant joins issues with the defendant upon his defence"

"The claimant joins issues with the defendant upon paragraphs ….."

Defence to counter-claim

This is filed by the claimant in reply to the defendant's counter-claim. Failure to file it means that claimant has admitted the facts contained in the counter-claim. Statement of defence and counter-claim are contained in one document. Also, the reply and defence to counter-claim is contained in one document.

3. DRAFT PLEADINGS, ESPECIALLY A STATEMENT OF CLAIM AND STATEMENT OF DEFENCE (AND OBSERVING ETHICS AND RULES OF PROFESSIONAL RESPONSIBILITIES IN DRAFTING PLEADINGS)

Comment [C82]: A reply may also contain a defence to a counter claim or set off. In such a situation, it is headed: "REPLY AND DEFENCE TO COUNTER CLAIM OR SET OFF". It shall be in separate paragraphed parts of the same document. Numbering continues after appropriate heading.

Comment [C83]:

Formal parts of pleadings

- Heading of court together with judicial division. Note the following are the judicial division in Lagos namely Lagos, Ikeja, Ikorodu, Badagry, Epe, Lagos,
- Suit number
- Parties
- Title E.g. STATEMENT OF CLAIM
- Body of the pleading divided into paragraphs and numbered consecutively. Numbers and dates are to be written in figures and in bracket amount in words (for sum) E.g. N5, 000, 000 (five million)
- Date and signature, name, address of person who drafted it.
- Address for service on the parties.
- Dates , sums and Nos in figures but may be expressed in words.

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

SUIT NO……..

BETWEEN:
MRS KAYUBA ADA …….. CLAIMANT
AND
AGRICULTURAL BANK PLC …… DEFENDANT

STATEMENT OF CLAIM

1. The Claimant is a business woman and an exporter residing at No. 20 Bush Close Area 2 Ikoyi, Lagos
2. The Defendant is a public limited company incorporated in Nigeria under the Companies and Allied Matter Act CAP C20 Laws of the Federation 2004 with registration number 8788 carrying on the business of banking with its registered office address at No. 1 Ahmadu Bello Way, Area 1 Ikoyi, Lagos
3. The Claimant entered into a contract with the defendant on the 15th day of March 2019 for the supply of 500 tons of cashew nuts worth N10, 000, 000.00 (Ten Million Naira) for onward exportation to Malaysia.
4. The term of the contract between the claimant and defendant was that a down payment of N3, 000, 000.00 will be made before the exportation and the balance sum of N7, 000, 000.00 (Seven Million Naira) will be paid when the goods reaches Malaysia.
5. The Claimant has received the down payment of N3,000,000 (Three Million Naira) and has supplied the goods to its destination in Malaysia on the 30 of November 2010, the bill of exchange and Lading is hereby pleaded.
6. A certificate of inspection was delivered to the Claimant by Mr Ayoade Aruna in Malaysia stating that the cashew goods were of satisfactory quality
7. The Claimant has written two letters of demands to the defendant dated the 10th day of January 2011 and 2nd day of May 2011 respectively for the balance of N7,000,000 (Seven Million Naira) which the defendant has refused to pay, the letters of demand are pleaded.
8. WHEREOF THE CLAIMANT CLAIMS AS FOLLOWS:
   a) The sum of N7,000,000.00 (seven million naira only) being the outstanding balance of the contract sum
   b) The sum of N3, 000, 000 as general damages
   c) The sum of N4,000,000 as special damages (state particulars for special damages)
   d) Interest at the rate of 10%(per cent) per annum on the balance until balance is satisfied
   e) The costs of this action

DATED THIS…….. ……..DAY OF ___ 2019.

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VICTORIA ISLAND, LAGOS.
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FOR SERVICE ON:
THE DEFENDANT
AGRICULTURAL BANK PLC
NO 1 MAITAMA WAY
VICTORIA ISLAND
LAGOS

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

SUIT NO……..

BETWEEN:
MRS KAYUBA ADA …… CLAIMANT
AND
AGRICULTURAL BANK PLC …… DEFENDANT

STATEMENT OF DEFENCE AND COUNTER-CLAIM

SAVE AND EXCEPT as is herein expressly admitted, the defendant denies each and every allegation of fact as contained in the Claimant's Statement of Claim as if each paragraph were set out and traversed seriatim.

1. ……
2……

COUNTER-CLAIM
AGRICULTURAL BANK PLC …… COUNTER-CLAIMANT
AND
1. MRS KAYUBA ADA
2. ODO ETEBO ……DEFENDANTS

Comment [C84]: THIS FORMAT IS USED ONLY WHERE THERE IS A THIRD PARTY TO THE COUNTER-CLAIM

3…….
4……..
5……..

DATED THIS …….DAY OF ……..2019

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FOR SERVICE ON:
DEFENDANTS' COUNSEL
DAVID AKPEJI ESQ
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16 OZUMBA MBADIWE, ROAD,
VICTORIA ISLAND, LAGOS.

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

SUIT NO: .....

BETWEEN
MISS TADE GOLD - - - - - - - CLAIMANT
AND
1. MR OLA RASCAL
2. MR TONY BIGGIE - - - - - - - DEFENDANTS

PROPOSED AMENDMENT TO THE STATEMENT OF CLAIM

Comment [C85]: The prayer for the MON

1.**AN ORDER** granting leave to amend the claimant's statement of claim dated and filed on the 4th day of February 2017 as underlined in the annexed proposed statement of claim and annexed herewith as Exhibit A

1. The Claimant is an Engineer, residing at No. 6 Alubarika close, GRA, Ikeja, Lagos.
2. The 1st Defendant is a cashier, residing at No. 9 Pako Lane GRA, Ikeja, Lagos.
3. The 2nd Defendant is a police officer, with the Nigeria Police Force, residing at No. 39, Pako Lane GRA, Ikeja Lagos.
4. The Claimant avers that on October 1st, 2018, she was approached by the 1st defendant to be his lover.
5. The Claimant further avers that she turned down the 1st Defendant's request.
6. The Claimant avers that on her way back from church on the 7th of October, 2018, she was seriously beaten by the 1st and 2nd Defendants in Alubarika Close, GRA Ikeja, Lagos.
7. The Claimant further avers that as a result of the serious beating meted on her, she sustained some serious injuries.
8. **The Claimant avers that her pair of glasses, Apple laptop and Apple I-pad got broken in the course of the assault."**
9. The Claimant avers that she was immediately rushed to Tender Care Medical Centre, a hospital at No. 17 Daniel Close, GRA Ikeja Lagos, where she was admitted for 5 weeks for medical treatment.
10. The Claimant further avers that she paid, as hospital bill, the sum of N2, 500, 000 (Two Million Five Hundred Thousand Naira) for surgery performed on her broken leg and other medical treatment.
11. **The Claimant avers that she replaced her broken Apple laptop and Apple I-pad at the cost of N550, 000 (Five Hundred and Fifty Thousand Naira), each.**
12. The Claimant further avers that she spent the sum of N150, 000 (One Hundred and Fifty Thousand Naira) as cost of getting a new pair of glasses.
13. The Claimant shall, during the trial, rely on the following document:
    a. The medical report issued by a medical doctor;
    b. Receipt of the sum of N2,500,000.00 being the bill charged by the hospital;
    c. Receipt of purchase of the new Apple laptop;
    d. Receipt of payment of the new Apple-I-pad.
    e. Receipt of purchase of the new pair of glasses;
    f. Bill of charges issued to claimant by Precision Chambers.
14. **WHEREOF THE CLAIMANT CLAIMS AS FOLLOWS**
    a) The sum of N2, 500, 000.00 being the sum paid as hospital bill for surgery performed on her broken leg and other medical treatment.
    b) The sum of N550, 000.00 being the sum paid as cost for replacing her Apple lap top.
    c) **The sum of N550, 000.00 being the sum paid as cost for replacing her Apple I-pad.**
    d) The sum of N150, 000.00 being the sum paid as cost for getting a new pair of glasses
    e) The sum of N10,000,000 being the sum paid as cost of litigation.
    f) The sum of N50, 000,000,00 as general damages for the pains she suffered, emotional trauma and mental torture.

AMENDED THIS _____ DAY OF_____2019 PURSAUANT TO ORDER OF HONOURABLE JUSTICE AYO ADEWOLE DATED THE _____DAY OF _____2019.

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VICTORIA ISLAND, LAGOS.

Professional responsibility in pleadings

- Need to avoid preparing and filing frivolous pleadings---**RULE 14 RPC**
- Need not to advance a claim or defence that is unwarranted---**RULE 15(3)(c) RPC**
- Need to disclose all necessary facts---**RULE 15(3)(e) RPC**
- Need not to plead false facts---**RULE 15(3)(f) RPC**
- Responsibility for litigation---**RULE 24(2) RPC**

4. LIST AND EXPLAIN THE CONTENTS OF PLEADINGS

- **Material facts:** Pleadings should contain only concise statement of material facts---**AGU v. IKEWIBE**. In order to determine the material facts, the substantive law regulating the cause of action should be looked at. In a negligence case, the facts in statement of claim must disclose the existence of duty, its breach and consequential damages before they can be regarded as material facts.
- **Facts, but not law or legal arguments:** Pleadings should not contain statements of law---**FCDA v. NNAIBI; MARTIN v. FEDERAL ADMINISTRATOR GENERAL.** However, by way of an exception, a party can plead facts from which the court will make an inference in law. For instance, when the cause of action is already statute barred (proceedings in lieu of demurrer). The points of law are those that would affect the merit of the case or dismiss the case. Other points of law which can be pleaded include customary law, foreign law, Islamic law etc.
- **Facts, but not Evidence:** Pleadings should contain only statements of material facts and not the evidence by which such facts are to be proved or established---**OKAGBUE v. ROMAINE**
- **Reliefs Sought:** Pleadings must contain the reliefs being sought by the parties. The reliefs are appropriately the last paragraph in the SOC or SOD or CC. A court will not grant reliefs not sought by the parties---**EKPEYONG V. NYONG**

5. EXPLAIN AND DISCUSS FACTS THAT MUST BE SPECIFICALLY PLEADED

- Defamation – in libel and slander, the claimant must specifically plead the defamatory words---**OKPOSO V BENDEL NEWSPAPERS**
- Matters on performance, release, any relevant statute or limitation, fraud or any fact showing illegality must be specifically pleaded. Matters ex facie illegal need not be pleaded.
- Adultery
- Foreign law and customary law even though laws are regarded as facts that need to be specifically pleaded.
- Bona fide purchaser for value without notice
- The plea of estoppels, laches and acquiescence or such other equitable remedies must be pleaded.
- Any matter likely to take the other party by surprise.
- Illegality--**ADEOYE V JUNADU**
- Limitation of Action
- Particulars of fraud must be specifically pleaded.
- The plea of res ipsa loquitur must be specifically pleaded either by reference to the maxim or pleading facts justifying the application.
- Any reliance on family tradition and history relating to chieftaincy or land matters must be pleaded. In this like, history must be traced even though caught by the hearsay will amount to an exception.
- Reliance on negligence, the particulars of negligence must be specifically pleaded. **MANAGEMENT ENTERPRISES V OTUSANYA**.
- Special damages must be specifically pleaded. **Special damages are any item of injury that can be assessed in monetary terms. General damages are subject to the discretion of the court.**
- Insanity in probate matters
- Statutory defences – immunity
- Condition precedent
- Set off
- Fundamental breach of terms in a contract.
- Documents that are material facts to the establishment of a fact must be pleaded.

Comment [C86]: E.g.
1. The claimant avers that defendant is the manufacturer of pure water with NAFDAC no: 7771

2. The claimant states that he drank the pure water made by the defendant company.

3.The claimant avers that after taking the water, the claimant started throwing up and was rushed to the nearby hospital.

4. The claimant states that the claimant was confirmed to have contacted bacteria from the water leading to renal failure.

Comment [C87]:
Example of specifically pleaded special damages:
The claimant claims N5, 000, 000 (Five million naira) as special damages:
Particulars of special damages:
- The loss of a brand new Toyota Hilux – N2, 000, 000
- Medical expenses incurred – N500, 000
- .....

TOTAL=

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Statements in a statement of claim are called___

A. Averments

B. Depositions

C. Settlements

D. All of the above

2. Statements in an affidavit are called___

A. Averments

B. Depositions

C. Settlements

D. None of the above

3. In L & A, the defendant is to enter his defence within 42 days and 21 days respectively, the claimant may reply (if new issues are raised) within___days of the service of the statement of defence.

A. 7

B. 14

C. 21

D. 5

4. Generally, in L & A, pleadings are deemed to be closed on the expiration of___days from the service of a reply or statement of defence.

A. 7

B. 14

C. 21

D. 5

5. In Lagos, where the defendant fails to file a statement of defence within__days, pleadings shall be deemed to closed.

A. 7

B. 14

C. 42

D. 21

6. In the case of a counter-claim, where the claimant fails to file a defence to the counter-claim, the facts contained in the counter-claim shall be deemed to have been admitted on the expiration of___days after the service of the counter-claim.

A. 7

B. 14

C. 42

D. 21

7. Where pleadings are closed in Lagos, the party in default shall pay default fee of__for each day of the default.

A. N1000

B. N200

C. N100

D. N100,000

8. Pleadings filed out of time/without the leave of court is___

A. Void

B. Voidable

C. Inchoate

D. Null

9. In land matters, a claimant is expected to seek____

A. Declaration of title to land

B. Damages for trespass

C. Perpetual injunction against further acts of trespass

D. All of the above

10. In L & A, a party may amend his originating process and pleadings in any of the following except___

A. Any time before the close of CMC/PTC

B. Not more than twice during trial

C. After judgment/closing of the case

D. None of the above

11. Where a party obtains an order for the leave to amend his pleadings and no time limit is prescribed, the party is to amend the pleadings within___days from the date of the order.

A. 7

B. 14

C. 21

D. 5

12. The default fee as in 11 above is___in Lagos and___inAbuja.

A. N200/200

B. N1000/N100

C. N100/N200

D. N100/N100

13. An endorsement of a pleading as to its amendment should be in all but one of the following places:

A. At the top of the front page

B. At the foot of the front page

C. At the top of the second page

D. None of the above

14. An application for further and better particulars, of any matter stated in any pleading requiring particulars, shall be made to the judge/court at___

A. Trial

B. First CMC/PTC

C. Close of pleadings

D. None of the above

15. The first pleading in every civil matter per se is____

A. Writ of summons

B. Statement of claim

C. Originating summons

D. A or C

16. The introductory averments in a statement of claim are called matters of____

A. Inducement

B. Incitement

C. Averment

D. Advancement

17. A statement of claim without a relief is____

A. Incomplete

B. Incompetent

C. Void

D. A and B

18. The following but one are matters that need not be specifically traversed.

A. Introductory averments

B. Matters of law

C. Damages/quantum amount/relief

D. None of the above

19. The following but one are true about a set-off

A. It applies to all claims

B. It applies only to monetary claims

C. It is a cross-claim

D. It must be specifically pleaded

20. A counter-claim must be in respect of a cause of action accruing to the defendant in any of the following except___

A. The time of issuance of the writ

B. Any time prior to the issuance of the writ

C. Any time

D. None of the above

21. Of all the types of pleadings, the rules expressly provide that there shall be no express or implied joinder of issues on a___

A. Statement of claim

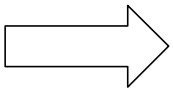
B. Statement of defence

C. Reply

D. Further and better particulars

ANSWERS

1. A
2. B
3. B
4. A
5. C
6. B
7. A
8. B
9. D
10. C
11. A
12. B
13. C
14. B
15. B
16. A
17. D
18. D
19. A
20. C
21. A



9. PRE-TRIAL AND TRIAL PROCEEDINGS

Comment [C88]:
It is pertinent to mention that some of these applications may terminate the proceedings before trial. Such include Notice to admit, case management conference, striking out of pleadings, withdrawal or discontinuance of action.

1. EXPLAIN AND DISCUSS THE PRINCIPLES RELATING TO PROCEEDINGS IN LIEU OF DEMURRER, STRIKING OUT OF PLEADINGS WHERE NO REASONABLE CAUSE OF ACTION IS DISCLOSED, CONSOLIDATION/DECONSOLIDATION OF ACTIONS, INTERROGATORIES/DISCOVERY OF DOCUMENTS/INSPECTION OF DOCUMENTS, NOTICE TO ADMIT, SETTING DOWN MATTERS FOR TRIAL, TRANSFER OF ACTIONS, WITHDRAWAL OR DISCONTINUATION OF ACTION

(a) Proceedings in lieu of demurrer----ORDER 24 LAGOS 2019 AND ORDER 23 ABUJA 2018

No demurrer shall be allowed, what exists now is proceedings in lieu of demurrer. Thus, any party may by his pleading raise any point of law and the court may dispose of the point so raised before, at or after ("after" is only in Abuja) the trial.

Where in the opinion of a court or judge , the decision on the point of law substantially disposes of the whole action or of any distinct part thereof, the court may then dismiss (dismissed is used only in Abuja) the action or make such other orders as may be just (both L and A)

The defendant is expected to enter appearance and file a statement of defence, pleading the point of law to be relied on and thereafter, bring a proper application either by way of a preliminary objection + WA, with no affidavit (if strictly on points of law) OR by way of MON + A+ WA, if on mixed law and facts, asking the court to set down that point for hearing---**OKOYE V. NCF, STATE V. ONAGORUWA, KOTOYE V. SARAKI**

The rule on proceedings in lieu of demurrer does not restrain a defendant from raising the issue of jurisdiction. Thus, the defendant may still raise preliminary objections before pleadings are exchanged on grounds of substantive jurisdiction. This is because jurisdiction is not procedural as it goes to the root of the action.

In Lagos, the provision on proceedings in lieu of demurrer does not prejudice the provisions of the ACA or any law that requires a defendant to apply for stay of proceedings before filing a SOD or other statement of case on merits.

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

BETWEEN

ABC……CLAIMANT/RESPONDENT

AND

XYZ……DEFENDANT/APPLICANT

PRELIMINARY OBJECTION BROUGHT PURSUANT TO ORDER_RULE_ OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES, 2012/2019 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the_ day of _ 20_ at the hour of 9 O'clock in the forenoon or so soon thereafter, as counsel, on behalf of the defendant/applicant, may be heard praying the court for the following:

1. AN ORDER STRIKING OUT THIS SUIT for disclosing no reasonable cause of action.

2. AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of this case

GROUNDS FOR THE OBJECTION

1. Immunity

2. Locus standi

3. Non-service of pre-action notice

4. Statute of limitation

5. Illegality etc

Dated this_day of_20_

……

K.C Aneke

Defendant/Applicant's counsel

K.C Aneke & Co.

No. 2 Law School Road,

Victoria Island, Lagos.

Email: kundycmith@gmail.com

Tel. No: 07053531239

ON NOTICE TO:

The Claimant

C/o his counsel

Cundy Smith

Cundy & Associates

No. 3 Law School Road,

Victoria Island, Lagos

(b) Striking out of pleadings where no reasonable cause of action is disclosed---ORDER 17 RULES 15 & 17 LAGOS 2019; ORDER 23 RULE 3 AND ORDER 15 RULES 16 & 18 ABUJA 2018

A court or judge may order any pleadings to be struck out on the ground that it discloses no reasonable cause of action or answer, or where a pleading is shown to be frivolous or vexatious

A pleading will be struck out in any of the following instances:

- Where a pleading discloses no reasonable cause of action or defense
- Where a pleading is frivolous, scandalous or vexatious; or
- Where a pleading may prejudice, embarrass or delay the fair trial of the action
- Where a pleading is otherwise an abuse of the process of the court----**AGF V. A.G ABIA STATE**

Procedure

Under the above rules, application is by way of MON+A+WA setting out the grounds upon which the order is asked for. In Lagos, application may be made at the CMC or at any stage of the proceedings. In Abuja, it can be brought at the PTC or at any stage of the proceedings---**ORDER 17 RULES 15 & 17 LAGOS 2019; ORDER 23 RULE 3 AND ORDER 15 RULES 16 & 18 ABUJA 2018**

Other possible orders of the court

- Where the pleadings are found to be either of the foregoing, the court can dismiss, stay proceedings or enter judgment accordingly.
- Where the claimant's statement of claim discloses no reasonable cause of action, the defendant can apply for an order dismissing the claim.
- Where the defendant's statement of defense discloses no reasonable defense, the claimant can apply for judgment to be entered for him.
- Where the statement of claim is an abuse of court process, the defendant can apply for an order staying proceedings or dismissal.
- If paragraph in statement of defense or statement of claim is scandalous, embarrassing, vexatious, application can be for the paragraphs to be struck out.
- Order of amendment can be made
- Other orders on terms and conditions as the court deems fit

(c) Consolidation and deconsolidation of actions---ORDER 41 RULE 7 LAGOS 2019; ORDER 41 RULE ABUJA 2018

Consolidation is the process whereby two or more actions pending before a court but within the same jurisdiction are by order of court, joined and tried together at the same time.

In L & A

- The judge/court may suo moto or on application of either party (by way of MON+A+WA) consolidate several actions pending before him/it where it appears that

Comment [C89]:

Where the pleading discloses no reasonable cause of action or defence

A pleading discloses no reasonable cause of action if it is such that no one can understand the claim or defence which it seeks to establish or where it is unsustainable, unarguable and incontestably bad---**TIKATORES PRESS LTD v. UMAR.** However, if the allegations in the pleading show a real controversy that is capable of leading to the grant of a relief, then the pleading cannot rightly be said to disclose no reasonable cause of action. The weakness of the case is not a relevant consideration when the question is whether or not the pleading (SOC or SOD) has disclosed a reasonable cause of action. Thus, no matter how weak the case of party may appear on the pleading, so long as it raises some issues capable of being considered by the court, it would be held to have disclosed a reasonable cause of action or defence---**MOBIL PRODUCING (NIG) ULTD v LASEPA, SPDC V ONASANYA**

Comment [C90]: A paragraph in pleading may be scandalous, that is untrue or vexatious – annoying. Pleadings may prejudice, and delay the fair trial of the action.

Comment [C91]:

Abuse of court process

There is an abuse of court process when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, such as instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues---**IKINE V EDJERODE**

Comment [C92]: AG OGUN STATE V. AGF

the issues are the same in all the actions, and can be tried properly and determined at the same time.

- Where actions are pending before different judges, a party desiring shall first apply to the chief judge for transfer of the matter to a judge before whom one of the matters is pending.

Conditions to satisfy upon application for consolidation

- That there are two or more actions between the same claimant and the same defendant.
- That the actions are pending before the same High Court, but different judges.
- That some of the issues in the action are common and can be properly tried and determined at the same time.
- The reliefs claimed arise out of the same transaction.

Advantage of consolidation

- It saves time
- It saves cost of litigation.
- Speedy dispensation of trial-----**DIAB NASR V COMPLETE HOME ENTERPRISES NIG. LTD**

Effect of consolidation

As soon as a suit is consolidated, apart from the fact that the suits retain their individualities, in terms of claims, the consolidated suit assumes a new character to the extent that the judge before whom the consolidated suits are tried assumes full control of the proceedings.

Where a judge hears consolidated actions, he must deliver judgments in each of the suits. Where he delivers one judgment in respect of all, he would be wrong----**KALU V CHIMA.**

Where judgment is delivered and a party is not satisfied with the judgment, he may appeal against the judgment as it affects him in one consolidated suit. He need not appeal against all the cases consolidated unless his complaints cover all the other cases---**KALU V CHIMA.**

To deconsolidate means to separate suits that have already been consolidated, for the purposes of having the suits tried differently. This usually happens where the consolidation was done in error or when it is found out that the consolidation ought not have been done in the first place. Any of the parties can apply for deconsolidation, the judge may suo moto order the deconsolidation of the suits in the interest of justice---**ATAH V. NNACHO**

(d) Interrogatories (discoveries of facts), discovery of documents and inspection of documents

Sometimes, certain facts or documents necessary for the proof of the case or defence may be within the exclusive knowledge or possession of the opponent. To be able to get such facts or documents to assist a party in preparing his case or defence, and for the purpose of knowing the extent to which the fact or document support the case of the opponent, a party is empowered to:

a. Cause his opponent to disclose to him certain facts by answering questions posed to him in the form of interrogatories.
b. Cause his opponent to disclose to him material documents in the possession of the opponent before the trial so that he can inspect them and make copies of same, if necessary for his case. This involves production and inspection of documents.

The foregoing procedures are called discoveries. From the above, there are two types of discovery:

- Discovery of facts (called interrogatories)
- Discovery of documents, which include the production and inspection of documents.

1. Interrogatories (Discovery of Facts)---ORDER 29 LAGOS 2019; ORDER 28 ABUJA 2018

In any cause or matter, any party may deliver written interrogatories for the examination of the opposing party or parties and such interrogatories when delivered shall have a note at the end of it stating which of the interrogatories each person is required to answer. **Interrogatories shall be delivered within 7 days of the close of pleadings** and shall form part of the agenda of CMC/PTC---**ORDER 29 RULE 1 LAGOS 2019; ORDER 28 RULE 1 ABUJA 2018**

Interrogatories shall be as in **Form 19/21** (L & A respectively) with such modifications or variations as circumstances may require---**ORDER 29 RULE 1(1) LAGOS 2019; ORDER 28 RULE 2 ABUJA 2018**

Where a party to a cause or matter is a limited or unlimited company, body corporate, firm, enterprise, friendly society, association or any other body or group of persons, whether incorporated or unincorporated, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposing party may deliver interrogatories to any member or officer of such party----**ORDER 29 RULE 2 LAGOS 2019; ORDER 28 RULE 3 ABUJA 2018**

An objection to answering any one or more of several interrogatories on the ground that it is or they are scandalous or irrelevant may be taken (in the affidavit in answer) at the CMC/PTC---**ORDER 29 RULE 3 LAGOS 2019, ORDER 28 RULE 4 ABUJA 2018**

Interrogatories shall be answered by affidavit to **be filed within 7 days**, or within such other times as the court may allow. **2 copies of the affidavit in answer shall be delivered to the registrar---ORDER 29 RULE 4 LAGOS 2019; ORDER 28 RULE 6 ABUJA 2018**

An affidavit in answer to interrogatories shall be as in **Form 20/22** (L & A) with such modifications or variations as circumstances may require---**ORDER 29 RULE 4 LAGOS 2019; ORDER 28 RULE 6 ABUJA 2018**

Where any person interrogated omits to answer or answers insufficiently, the CMC/pre-trial judge shall on application issue an order requiring him to answer or answer further as the case may be---- **ORDER 29 RULE 5 LAGOS 2019; ORDER 28 RULE 7 ABUJA 2018**

Interrogatories are either to extract facts or to cause the opponent to admit facts---**FAMUYIDE v. IRVING & CO LTD**

Interrogatories must be relevant to the case at hand and must be admissible, otherwise, it will not be allowed---**ABUBAKAR v. YAR'ADUA; ONYUIKE v. VOICE OF THE PEOPLE LTD.**

Therefore, interrogatories will not be allowed in the following instances/ the following matters will not be allowed on interrogatories:

- Interrogatories or matters relating to the credibility of witnesses
- Interrogatories or matters relating to the evidence of the interrogated party
- Interrogatories or matters relating to the contents of documents
- Fishing interrogatories
- Scandalous questions
- Questions that are in form of cross examination
- Oppressive interrogatories. See **FAMUYIDE v. IRVING & CO LTD.**

The consequences of failure to answer or answer fully to interrogatories are:

- Where he answers in part or insufficiently, court can order him to answer fully---**ORDER 29 RULE 5 LAGOS 2019; ORDER 28 RULE 7 ABUJA 2018**
- Where he fails or refuses to answer at all, in Lagos, he will be liable to attachment--**ORDER 29 RULE 9 LAGOS 2019**. In Abuja, 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. A legal practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects without reasonable excuse to give notice to his client, shall be liable to pay cost at the discretion of the court--**ORDER 28 RULES 11 & 12 ABUJA 2018**

SAMPLE INTERROGATORIES AND ANSWER TO INTERROGATORIES

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS.

SUIT NO:

BETWEEN

ABC ----------CLAIMANT

AND

XYZ----------DEFENDANT

INTERROGATORIES

BROUGHT PURSUANT TO ORDER_RULE_OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES, 2019

TAKE NOTICE that interrogatories are being submitted on behalf of the above-named defendant for examination of the above named claimant, and the following questions are to be answered:

1. Did you….?
2. How did you….?
3. When?

Dated this_____day of _____2019

_____

K. C Aneke

Counsel to the Defendant

K. C Aneke & Co.

No. 2 Law School Road,

Victoria Island,

Lagos.

Email: kundycmith@gmail.com

Tel No. 07053531239

FOR SERVICE ON:

The Claimant

C/o his counsel

Cundy Smith

Cundy Smith & Associates

No. 3 Law School Road,

Victoria Island,

Lagos.

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

BETWEEN

ABC ----------CLAIMANT

AND

XYZ----------DEFENDANT

ANSWERS TO INTERROGATORIES FILED ON THE _DAY OF_2019

The answer of the above named claimant ABC to the interrogatories for his examination by the above named defendant.

In answer to the said interrogatories, I, the above named Claimant, ABC, make oath and state as follows:

1. That……
2. That
3. I solemnly depose to this affidavit, believing same to be the truth and in accordance with the Oaths Law of Lagos State

…….

DEPONENT

Sworn to at the High Court registry, Lagos

this_____day of_____2019

BEFORE ME

…….

COMMISSIONER FOR OATHS

2. Discovery of documents and inspection of documents

A party **may in writing (letter) request any other party to any cause or matter 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 the CMC/PTC. 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 judge/court** may allow and it shall be dealt with at CMC/PTC--**ORDER 29 RULE 6(1) LAGOS 2019, ORDER 28 RULE 8(1) ABUJA 2018**

Every affidavit in answer to a request for discovery of documents shall be accompanied by copies (office copies in Lagos) of documents referred to---**ORDER 29 RULE 6(4) LAGOS 2019, ORDER 28 RULE 8(2) ABUJA 2018**

The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in **Form 21/23** (L & A respectively) with such modifications or variations as circumstances may require--- **ORDER 29 RULE 6(5) LAGOS 2019, ORDER 28 RULE 8(3) ABUJA 2018**

Comment [C93]:
In the regime of front loading of documents and statement of witnesses on oath, is discovery still material?
ANS: Parties only front load documents and facts that would help his case and not those that will be against it. Thus, the regime of front loading have not obviated discovery.

Comment [C94]: called the AFFIDAVIT AS TO DOCUMENTS

K. C ANEKE & CO

BARRISTERS AND SOLICITORS

No. 2 Law School Drive, Victoria Island, Lagos

Website: www.kcaneke.com

Email: kundycmith@gmail.com

Tel No: 07053531239

OUR REF: **YOUR REF:** **DATE: 20 February 2019**

Cundy Smith, Esq.

Cundy Smith & Associates,

No. 3 Law School Road,

Victoria Island,

Lagos.

Dear Sir,

REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO ORDER_RULES_OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2019.

We write on behalf of XYZ, our client in suit no LA/0233/2018 pending before the High Court of Lagos State.

Pursuant to the above provisions of the High Court of Lagos State (Civil Procedure) Rules 2012, we request your client to make discovery of the document which are within his possession, namely:

1. The **COPY OF RECEIPT** referred to in paragraph11 of the statement of defence **dated 27th day of February 2019** and marked "EXHIBIT A."

Thanks for your corporation as we expect your early response.

……..

K. C Aneke

Principal partner

For: K. C Aneke & Co.

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

BETWEEN

ABC ----------CLAIMANT

AND

XYZ----------DEFENDANT

AFFIDAVIT AS TO DOCUMENTS

I, the above-named claimant, ABC, make oath and state as follows:

1. That I have in my possession or power the documents relating to the matters in question in this suit outlined in the first and second parts of the first schedule
2. That I object to produce the said documents outlined in the second part of the said first schedule (state grounds of objection).
3. That I have had, but have not now, in my possession or power the documents that relate to the matters in question in this suit outlined in the second schedule.
4. That the last-mentioned documents were last in my possession or power on (state when and what has become of them and in whose possession now are).
5. That to the best of my knowledge, information and belief I do not have and never had in my possession, custody or in the possession, custody or power of my legal practitioner or agent or of any other person(s) on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract of such document, or other document(s) whatsoever, relating to the matters in question in this suit, or any of them or where any entry has been made relative to such matters, or any of them, other than the documents outlined in the first and second schedule.
6. I solemnly depose to this affidavit, believing same to be the truth and in accordance with the Oaths Law of Lagos State

……

DEPONENT

Sworn to at the High Court registry, Lagos

this_____day of_____2019

BEFORE ME

…….

COMMISSIONER FOR OATHS

(e) Notices to admit

1. Notice of admission

Any party to a proceeding may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of the other party---**ORDER 21 RULE 1 LAGOS 2019, ORDER 20 RULE 1 ABUJA 2018**

2. Notice to admit documents

Either party may by notice in writing file and serve, **not later than 7 days before the first CMC/PTC**, require any other party to admit any document and the party so served shall **not later than 4 days after service** give notice of admission or non-admission of the document, **failing which he shall be deemed to have admitted it unless the court otherwise orders**---**ORDER 21 RULE 2(1)(2) LAGOS 2019, ORDER 20 RULE 2(1) ABUJA 2018**

When a party decides to challenge the authenticity of any document, he shall **not later than 7 days of service of that document** give notice that he does not admit the document and requires it to be proved at the trial---**ORDER 21 RULE 2(3) LAGOS 2019, ORDER 20 RULE 2(2) ABUJA 2018**

NB: Under the old 2012 Lagos rules, where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than N5,000 shall be paid by the party who has challenged it, unless at the trial or hearing the judge/court certifies that there were reasonable grounds for not admitting the authenticity of the document---- **ORDER 19 RULE 2(3) LAGOS 2012, ORDER 20 RULE 2(3) ABUJA 2018 (under the 2019 Lagos rules, there is no sanction as it relates to documents)**

3. Notice to admit facts

Either party may **not later than 7 days** before the first CMC/PTC, by notice in writing filed and served, require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall **not later than 4 days after service** give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless the

court otherwise orders---**ORDER 21 RULE 3(1)(2) LAGOS 2019, ORDER 20 RULE 3(1) ABUJA 2018**

Any admission made under such notice shall be deemed to be made only for the purposes of that particular proceedings and not as an admission to be used against the party or any other party than the party giving the notice---**ORDER 21 RULE 3(3) LAGOS 2019, ORDER 20 RULE 3(2) ABUJA 2018**

Where there is a refusal or neglect to admit the facts **within 4 days after service of such notice** or within such further time as maybe allowed by the court, the cost of proving such fact or facts which shall not be less than a sum of N5, 000 (however under the 2019 Lagos rules, no exact amount is stated as **"the cost of proving such fact shall be paid by the party refusing or neglecting...unless the judge directs otherwise"**---**ORDER 21 RULE 3(4) LAGOS 2019** there is thus discretion to go below/above the N5,000 threshold) shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the court certifies that the refusal to admit was reasonable or unless the court at any time otherwise orders or directs---**ORDER 20 RULE 3(3) ABUJA 2018**

The judge/court may, on application, at CMC/PTC or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties---**ORDER 21 RULE 4 LAGOS 2019**, **ORDER 20 RULE 4 ABUJA 2018**

Where a notice to admit or produce comprises documents that are not necessary, the cost occasioned thereby which shall not be less than N5, 000 (the 2019 Lagos rules provides for N10, 000 (Ten thousand naira)--- **ORDER 21 RULE 5 LAGOS 2019**) shall be borne by the party giving such notice---**ORDER 20 RULE 5 ABUJA 2018**

(f) Setting down matters for trial---ORDER 27 RULE 1(2) LAGOS 2019, ORDER 32 RULE 1 ABUJA 2018

Upon completion of pleadings, either party may apply to the registrar to set down the case for trial where trial date has not been fixed by the trial judge. The registrar shall upon such

application, cause hearing notices to be issued to all parties in this suit (no express provision in Lagos because it is in the CMC)----**ORDER 32 RULE 1 ABUJA 2018**

(g) Transfer of actions---ORDER 40 RULE 1 LAGOS 2019; ORDER 41 RULE 1 & 6 ABUJA 2018

Where the Chief Judge has in exercise of any power conferred on him by any relevant enactment, ordered the transfer of any action or matter from a lower court to the High Court, a copy of the order duly certified by the registrar shall immediately be sent to the registrar of the lower court who shall transmit to the High Court the documents referred to in the relevant law and other necessary documents and processes----**ORDER 40 RULE 1 LAGOS 2019; ORDER 41 RULE 1 ABUJA 2018**

However, the difference in L & A is that in Abuja where a court has no jurisdiction in a cause or matter the judge may by order transfer the cause or matter to a court with competent jurisdiction---**ORDER 41 RULE 6 ABUJA 2018** (no such provision in Lagos, hence the cause or matter shall be struck out)

Instances where there can be a transfer order

- Lack of jurisdiction
- Conflict of interest
- Where a law provides

(h) Withdrawal or discontinuance of action---ORDER 25 RULE 1(1) LAGOS 2019; ORDER 24 RULE 1(1) ABUJA 2018

The claimant may at any time **before receipt of the defence or after the receipt , before taking any other proceeding in the actio**n, **by notice in writing duly filed and served,** wholly discontinue his claim against all or any of the defendants or withdraw/discontinue any part or parts of his claim. He shall pay the defendant's costs of action, or if the action be not wholly discontinued, the costs occasioned by the matter withdrawn---**ORDER 25 RULE 1(1)(2) LAGOS 2019; ORDER 24 RULE 1(1) ABUJA 2018**

A discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent claim---**ORDER 25 RULE 1(3) LAGOS 2019; ORDER 24 RULE 1(2) ABUJA 2018**

Where a defence has been filed, the clamant may with the leave of the judge/court discontinue the proceedings or any part on such terms and conditions as the judge/court may order---**ORDER 25 RULE 2(1) LAGOS 2019; ORDER 24 RULE 1(3) ABUJA 2018**

Where proceedings have been stayed or struck out upon a claimant's withdrawal or discontinuance under this Order, no subsequent claim shall be filed by him on the same or substantially the same facts until the terms imposed on him by the judge/court have been fully complied with---**ORDER 25 RULE 2(2) LAGOS 2019; ORDER 24 RULE 1(4) ABUJA 2018**

The court may in the same manner and discretion as to terms, upon the application of a defendant order the whole or any part of his alleged grounds of defence or counter- claim to be withdrawn or struck out---**ORDER 24 RULE 1(5) ABUJA 2018**

When a cause is ready for trial, it may be withdrawn by either claimant or the defendant upon producing to the registrar a consent in writing signed by the parties and thereupon the court shall strike out the matter without the attendance of the parties or their legal practitioner---**-ORDER 25 RULE 3 LAGOS 2019; ORDER 24 RULE 2 ABUJA 2018**

Comment [C95]: No SOD=No leave of court (Notice of discontinuance)
SOD= Leave of court (MON+A+WA)

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

BETWEEN

ABC……CLAIMANT

AND

XYZ……DEFENDANT

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the claimant in this matter wholly withdraws the matter against the defendant.

Dated this 21st day of February, 2019

……

K.C Aneke

Claimant's counsel

K.C Aneke & Co.

No. 2 Law School Road,

Victoria Island, Lagos.

Email: kundycmith@gmail.com

Tel. No: 07053531239

ON NOTICE TO:

The Defendant

C/o his counsel

Cundy Smith

Cundy & Associates

No. 3 Law School Road,

Victoria Island, Lagos

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

BETWEEN

ABC……CLAIMANT/APPLICANT

AND

XYZ……DEFENDANT/RESPONDENT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 23 RULE 1(1) OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES, 2012 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the_ day of _ 20_ at the hour of 9 O'clock in the forenoon or so soon thereafter, as counsel, on behalf of the claimant, may be heard praying the court for the following:

1. AN ORDER of this Honourable Court granting leave to the claimant/applicant to withdraw this matter wholly against the defendant/respondent.

2. AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of this case.

Dated this 21st day of February 2019

……

K.C Aneke

Claimant/Applicant's counsel

K.C Aneke & Co.

No. 2 Law School Road,

Victoria Island, Lagos.

Email: kundycmith@gmail.com

Tel. No: 07053531239

ON NOTICE TO:

The Defendant/Respondent

C/o his counsel

Cundy Smith

Cundy & Associates

No. 3 Law School Road,

Victoria Island, Lagos

2. EXPLAIN AND DISCUSS THE GENERAL PRINCIPLES, OBJECTIVES AND SCOPE OF CASE MANAGEMENT CONFERENCE AND SCHEDULING & PRE-TRIAL CONFERENCE AND SCHEDULING

Procedure----AIT AR

LAGOS	ABUJA
(a) Case Management Conference (CMC) and Scheduling	**(b) Pre-Trial Conference (PTC) and Scheduling**
APPLICATION BY WAY OF A LETTER ADDRESSED TO THE PRESIDING JUDGE THROUGH THE REGISTRAR: **Within 14 days after close of pleading**, the claimant is to apply for the issuance of a CMC notice - Form 17 **(**hearing notice for CMC**)---** **ORDER 27 RULE 1(1) LAGOS 2019.**	**APPLICATION BY WAY OF A LETTER ADDRESSED TO THE PRESIDING JUDGE THROUGH THE REGISTRAR:** The claimant shall apply **within 7 days after close of pleadings** for the issuance of a pre-trial Conference Notice as in Form 19--- **ORDER 27 RULE 10(1) ABUJA 2018**
ISSUANCE OF FORMS 17 & 18 BY THE JUDGE: The Judge will then issue Form 17 and Form 18 (Case management information sheet) for the following purposes: i. Disposal of matters which must or can be dealt with on interlocutory application; ii. Giving such directions as to future course of the action as appears best adapted to secure its just, expeditious and economical disposal; iii. Promoting amicable settlement of the case or adoption of ADR---**ORDER 27 RULE 1(2) LAGOS 2019.**	**ISSUANCE OF FORMS 19 & 20 BY THE JUDGE:** Upon application by a claimant under sub-rule 1 above, 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 for the purpose set out below :--- **ORDER 27 RULE 10(2) ABUJA 2018** a. Disposal of matters which must or can be dealt with on interlocutory application; b. Giving such direction as to the future course of the action as appear best suited for just, expeditious and economical disposal; c. Promoting amicable settlement of the case or adoption of alternative dispute resolution. d. Fix trial dates. NOTE (NOT IN LAGOS): The court may, having regards to the circumstances of the case dispense with the Pre-Trial conference

Comment [C96]: BAR II EXAM

Comment [C97]: It is a mechanism that enables the case management judge to assume adequate control over the proceedings preparatory to trial. Counsel in CMC is not to be robed. No formality.

There is a case management conference judge who is different from a trial judge (if the matter goes to trial).

Comment [C98]: If the claimant did not apply for issuance of Form 17, **the defendant may apply for the CMC notice or apply for an order of dismissal of the claimant's claim/action---ORDER 27 RULE 1(3) LAGOS 2019**

Comment [C99]: If the claimant does not make the application in accordance with sub-rule 1 of this rule, the defendant(s) may do so or apply for an order to dismiss the action----**ORDER 27 RULE 10(3) ABUJA 2018**

Comment [C100]: **The questions contained in Form 18 are to be answered by the claimant.**

	whenever it considers it expedient to do so---**ORDER 27 RULE 11 ABUJA 2018** At the pre-trial conference, the court shall enter a scheduling order for:---**ORDER 27 RULE 12 ABUJA 2018** a. Joining other parties; b. Amending pleadings or any other processes; c. Filing motions; d. Further pre-trial conferences; and e. Any other matters appropriate in the circumstances of the case.
TIME FOR CONCLUSION OF CMC The CMC is to be completed **within 3 months of its commencement unless** extended on application of either party. It shall be held from day to day or adjourned only for purposes of complying with CMC orders---**ORDER 27 RULE 3 LAGOS 2019.**	**TIME FOR CONCLUSION OF PTC** The pre-trial conference or series of pre-trial conferences with respect to any case shall be completed **within 30 days of its commencement, unless extended by the judge,** and the parties and their legal practitioners shall co-operate with the court in working within the time table. As far as practicable, pre-trial conference shall be held from day to day or adjourned only for the purpose of compliance with pre-trial conference orders---**ORDER 27 RULE 14 ABUJA 2018**
AGENDA The agenda of the CMC is contained in **ORDER 27 RULE 2 (a)-(n) LAGOS 2019.** The agenda includes: • Formulation and settlement of issues • Amendment and further and better particulars • Interrogatories, discovery etc	**AGENDA** At the pre-trial conference, the court shall consider and take appropriate action on any of the following, or aspects of them, as may be necessary or desirable:---**ORDER 27 RULE 13 ABUJA 2018** a. Formulation and settlement of issues; b. Further and better particulars; c. Amendments; d. The admission of facts, documents and other evidence by consent; e. Control and scheduling of discovery, inspection and production of documents; f. Narrowing the field of dispute between

	experts witnesses, by their participation at pre-trial conferences or in any other manner; g. Hearing and determination of objections on point of law; h. Giving orders or directions for separate trial of a claim, counterclaim, set-off, cross-claim or third party claim or of any particular issue in the case; i. Settlement of issues, enquires and accounts under Order 28; j. Securing statement of special case of law or facts under Order 29; k. Determining the form and substance of the pre-trial order; and l. Such other matters as may facilitate the just and speedy disposal of the action. The court shall direct the pre-trial conference with due regards to its purpose and agenda as provided under this Order, and shall require parties or their legal practitioners to co-operate with it effectively in dealing with the conference agenda--- **ORDER 27 RULE 17 ABUJA 2018**
REPORT After the CMC, the judge is to make a case management report and the report shall guide the subsequent course of the proceeding subject to modifications by trial judge-**ORDER 27 RULE 4 LAGOS 2019.**	**REPORT** After a pre-trial conference or series of pre-trial conferences, the court shall issue a Report. This Report shall guide the subsequent course of the proceedings unless modified by the trial judge--- **ORDER 27 RULE 15 ABUJA 2018**
SANCTIONS FOR FAILING TO PARTICIPATE IN CMC---ORDER 27 RULE 5 LAGOS 2019 Where a party or his counsel fail to attend CMC or obey a scheduling order or is substantially unprepared to participate in the	**SANCTIONS FOR FAILING TO PARTICIPATE IN PTC** If a party or his legal practitioner fails to attend the pre-trial conference or obey a scheduling or pre-trial order or is substantially unprepared to participate in the conference or fails to

Comment [C101]:
The report is to contain the following:
- Name of court
- Parties
- Heading of the CMC report
- Nature of the claim (claimant's claim)
- Issues for determination: issues formulated by claimant, issues formulated by defendant, that adopted by CMC judge.
- Areas covered (agenda)
- Witnesses to be called by each party
- Accommodation to chief judge/head judge
- Date
- Signature of CMC judge

conference or fails to participate in good faith, the CMC judge shall: • If it is the claimant, **DISMISS** the claim. • If the defendant, **enter a judgment against him where appropriate** However, parties can apply **within 7 days of making the judgment t**hat it be set aside. The application is to be accompanied by undertaking to participate effectively in the CMC---**ORDER 27 RULE 6(1)(2) LAGOS 2019**	participate in good faith the court shall:---- **ORDER 27 RULE 16 ABUJA 2018** a. In the case of the claimant dismiss the claim; b. In the case of a defendant enter final judgment against him. Any judgment given under this rule may **be set aside upon an application made within 7 days of the judgment or such other period as the pre-trial judge may allow not exceeding the pre-trial conference period.** The application shall be accompanied by an undertaking to participate effectively in the pretrial conference. If a party or legal practitioner fails to attend the Pre-Trial Conference or obey a Scheduling Order or is substantially unprepared to participate in the conference or fails to participate in good faith, the judge shall:---- **ORDER 27 RULE 18 ABUJA 2018** a. In the case of the claimant dismiss the claim b. In the case of a defendant enter judgment against him where appropriate.

Comment [C102]: However, the appropriate action to take is to strike out the action, as the merits of the case has not been considered BUT FOR BAR II EXAM STATE DISMISSAL AS THE ORDER TO BE GIVEN.

3. SETTLE ISSUES FOR TRIAL

When are issues said to be settled and when are issues said to be joined?

Issues are said to be settled when parties have the issues between them clearly defined by the court in line with the points of dispute between the parties. On the other hand, parties join issues when there is a positive averment and a positive contradiction to the averment, that is, when there are contrary views or dispute as to facts.

In all proceedings, issues of facts in dispute shall be defined by each party and filed within 7 days after close of pleadings. If the parties differ on the issues, the CMC judge may settle the issues. On conclusion of pleadings, the parties **shall within 7 days 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 2018**

Comment [C103]: **Advantages**
- It narrows down the disputes in issue.
- For speedy determination of cases.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. In L & A interrogatories shall be as in forms___respectively.

A. 16/17

B. 17/18

C. 19/21

D. 19/20

2. Interrogatories shall be delivered within___days after close of pleadings and the interrogatories shall be by affidavit within___days

A. 5/7

B. 14/7

C. 7/7

D. 14/14

3. ___copies of the affidavit in answer shall be delivered to the registrar.

A. 2

B. 5

C. 6

D. 8

4. An affidavit in answer to interrogatories shall be as in Forms___in L & A respectively.

A. 19/20

B. 20/20

C. 20/22

D. 21/22

5. Answer to a request for discovery of documents shall be as in Forms___for L & A respectively.

A. 21/23

B. 20/22

C. 19/20

D. 20/21

6. Notice to admit facts/documents may be filed not later than___days before the first CMC/PTC and admission/non-admission of such is to be served not later than___days after service.

A. 7/4

B. 4/7

C. 14/7

D. 7/14

7. NO QUESTION

8. Where an application is made by either party to the registrar to set down the case for trial, the registrar shall cause___to be issued to all the parties in the suit.

A. Hearing notices

B. Trial motions

C. Proceedings notices

D. All of the above.

ANSWERS

1. C
2. C
3. A
4. C
5. A
6. A
7. BONUS
8. A

Comment [C104]: THERE IS NO MCQ ON CMC/PTC HERE BECAUSE IT HAD BEEN TREATED IN THE EARLIER PART OF THIS NOTE. MAKE REFERENCE TO IT.

10. TRIAL PREPARATION AND EVIDENCE

1. PREPARE A CASE THEORY, A TRIAL PLAN AND IDENTIFY RELEVANT EVIDENCE IN A CASE

(a) Case analysis

After an interview with a client, counsel analyses the facts and law relating to his case, for evaluation of the strength and drawbacks of his client's case. He identifies the evidence to prove the ingredients/elements of the cause of action.

(b) Case theory

It refers to the party's version or line of argument of the case which if accepted by the court, will lead to judgment being given in your favour. You don't have to repeat the whole story again; it is just your story. It is the thread that runs through the case, **which offers explanation of or accounts for the facts and circumstances of the case.** It is pivotal to the successful laying out of the case canvassed by a party to litigation. It is at this stage, you consider the arguments of the other party and also you sketch out the address that you will give at the end of the case.

Sample theory in the car accident case

"….that the defendant was in a hurry to attend an urgent meeting scheduled for 1pm on the 12th day of March 2019. At the time material to this action, he was about, some fourteen kilometers away from the venue of the meeting"

Essence of case theory: in case the initial lawyer handling the case withdraws, the subsequent lawyer can familiarize himself with the facts.

(c) Trial plan

It is the process of actualizing the theory of the case. This is the graphic representation of how the theory of the case would be achieved. It would involve putting into consideration what the other side would say and how to argue against the other side. It also involves stages - the theory is broken into component parts. The success of a case is not based on how much you prepare for your case but on how much you have prepared for the case of the other side. Look for the law in your favour and the law against you. It is pertinent to know that a good trial plan is amended as the case goes on. A good lawyer starts to write his written address at the trial plan stage.

Essence of trial plan

- It gives the lawyer a clear view of the strength and weaknesses of the client's case
- It serves as a reminder of outstanding issues such as summoning witnesses.
- It aids adequate preparation for the case.

Comment [C105]:
It involves a lot of issues and those issues usually arise before commencing action after client interview has taken place and the client decides to institute an action. This is because of the mandatory front loading of documents (for claimant/institution of action. The issues are:
- Identification of the issues
- Formulation of a case theory
- Drawing of trial plan
- Identifying the burden of proof and standard of proof
- Identifying and collating the relevant evidence
- Deciding how the evidence is to be brought to court.

Comment [C106]:
In every case, there is usually two sides presenting their different theories of the case as viewed from their individual perspective and at the end, the court accepts one of the theories. The acceptance of the theory of the case is determined by evidence in support of the theory. From commencement of the action to when judgment is given, every step taken is for the purpose of the theory of the case. Thus everything to be done is limited to the line of argument. Most time, the theory of the case is not written down but it is advisable to write the theory of the case down. This is because there are instances where another lawyer may take over the case and his own theory of the case might not be the same with the initial one.

When you come across any evidence that will not help your case, disclose it to the court and distinguish it from your own case (if it is a case, show how the case is not relevant to the other party's case) - **RULE 31(2) RPC.**

Aside from ethical issues involved, it is also a strategic issue. If for instance, the case law is from the opposite counsel to be used by the other counsel, the effect will not be as heavy as when it is coming from the counsel himself. Thus, it neutralizes the argument from the other side. In relating the trial plan with the theory of the case, **the theory of the case is like a destination and the trial plan is how to get to the destination** – the steps to actualizing the theory of the case.

Example of trial plan

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

BETWEEN

ABC.....CLAIMANT

AND

XYZ.....DEFENDANT

CAUSE OF ACTION	ELEMENTS OF CAUSE OF ACTION	WITNESSES FOR	LIKELY WITNESSES AGAINST	DOCUMENTARY EVIDENCE	LIKELY LEGAL DEFENCES	LAW IN FAVOUR AND AGAINST	COMMENTS AND NOTES			
1. Breach of contract	1. Offer 2. Acceptance 3. Consideration 4. Intention to create legal relation 5. Breach	1. ABC 2. XYZ	1. 2.		Unfitness for purpose	1. Sale of goods Law of Lagos State 2.Common Law of contract	1. There is no implied term as to fitness for purpose 2..... 3.....			
2.Negligence	1. Duty of care 2. Breach of duty of care 3. Consequential Damage	1. EFG 2. IJK	1. 2.	1. Photographs taken 2. Video 3. Medical report and medical bills						

2. EXPLAIN AND DISCUSS THE RULES OF EVIDENCE AS TO THE BURDEN AND STANDARD OF PROOF AND ADMISSIBILITY OF DIFFERENT TYPES AND FORMS OF EVIDENCE

(a) Burden of proof

General/legal burden of proof –**Ss. 132 & 133 EA 2011.** The general burden of proof is determined by the state of pleadings and the applicable presumptions. It rests on the party that substantially asserts the affirmative in the case. The claimant has the responsibility of proving the entire case.

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person----**S. 131(2) EA 2011**

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side---**S. 132 EA 2011**; **ESEGINE V ONOBRUCHERE** (note whenever there is confession and avoidance in the statement of defence, the general burden of proof shifts to the defendant)

Evidential burden – this is the duty of proving particular facts as in **S. 136 EA 2011.** The pleadings should be looked at in determining evidential burden. There are certain elements/circumstances that shift the burden of proof from one party to the other.

Generally, presumption in itself shifts the burden of proof. Presumptions are divided into three:

- Presumption of facts – rebuttable
- Irrebuttable presumption of law; and
- Rebuttable presumption of law

Presumption of facts

The major feature of presumption of facts is that they are nothing but logical inferences. The court is not under the obligation to draw the inferences. Even when the court draws the inferences, the other party is at liberty to rebut it--**S. 145(1) EA 2011.** However, for fact as conclusive proof of another, the court shall, on proof of the one fact regard the other as proved and shall not allow evidence to be given for the purpose of disproving it – **S. 145(3) EA 2011.**

S. 167(a)-(e) EA 2011 provides for the classic cases of presumption of facts. They are not exhaustive but instances. Presumption of facts if inferred by the court is not conclusive unless there is no contrary evidence. Some are:

- The court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.
- The court may presume that a thing or state of things which has been shown to be in existence within a period shorter than that which such things or state of things usually cease to exist, is still in existence.
- The court may presume that the common course of business has been followed in particular cases.

Comment [C107]: Under burden of proof, the following questions arise
- What are the matters of fact/which issues need proving and whose duty is it to prove?
- How do we determination of the number of witnesses and documents to tender?

The burden of proof is the responsibility imposed upon a party to prove or disprove the existence of particular facts,

Generally, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See **ONOBRUCHERE & ANOR V. ESEGINE & ORS; S.133(1) EA**

In the arena of proof in a civil case, the onus of proof does not remain static but shifts from side to side. See **NIGERIAN MARITIME SERVICES LTD v ALHAJI BELLO AFOLABI.**

There are certain elements/circumstances that shift the burden of proof from one party to the other:
- Where there are admitted facts, the burden of proof shift.
- Where there is presumption in favour of one of the party.

- The court may presume that evidence which could be and is not produce would, if produced, be unfavourable to the person who withholds it; and
- When a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

Rebuttable presumption of law

In presumption of law generally, the court is under the obligation to draw the inferences until the contrary is proved – **S. 145(2) EA 2011**

- Official transactions – **S. 168(1) EA 2011** provides that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with and section 168(2) Evidence Act, provides that when it is shown that a person acted in a public capacity it is presumed that he has been duly appointed and was entitled so to act.
- Presumption of marriage – **S. 166 EA 2011**
- Presumption of death – **S. 164(1) EA 2011**. When a person has not been seen or heard of for 7 years. However, no presumption as at the age he died. On the other hand, if two persons died and it is not certain as at the time or date of death of both of them, the older one would be presumed to have died first, this is for purpose of determining title to property – **S. 164(2) EA 2011.**
- Presumption of legitimacy – **S. 165 EA 2011**
- Presumption of negligence – res ipsa loquitur

(b) Standard of proof

The degree of proof of fact required in specific cases. In civil cases, the standard proof is discharged on the balance of probabilities **or preponderance of evidence---S. 134 EA 2011.** This means that he has to persuade the court that his version of the facts is more probable than that of his opponent--**MILLER V. MINISTER OF PENSIONS**

His case must be such that, the court, after weighing the evidence of both parties, must find a preponderance of evidence in his favour. It must outweigh the evidence of the opponent. In **MOGAJI V. ODOFIN**, the Supreme Court laid the procedure for reaching a decision on where the balance lies. Thus:

- The judge should first put the totality of the testimony by both parties on an imaginary scale. The evidence of the plaintiff on one side of the scale and the evidence of the defendant on the other side.
- The Judge is to weigh them together.
- The Judge will then see which is heavier. (This is not determined by the number of witness called by each party, but the quality of the probative value of the testimony of those witnesses.)

Exceptions

There may be circumstances where a higher proof would be required in civil cases.

- Where there is an **allegation of crime in a civil action**, such crime must be proved beyond reasonable **doubt S. 135 EA 2011.** E.g. within an election petition matter, an allegation of fraud is made, this fraud must be proved beyond reasonable doubt-- **AJASHIN V OMOBORIOWO; NWOBODO V. ONOH.** In the latter case on election petition, the Supreme Court stated that burden of proof of specific allegations of crime in the petition appears to be clear in that the commission of forgery, altering and dereliction of official duty can properly be said to be the basis or foundation of the petition. Since the respondents denied the allegations, the commission of crimes by the parties to the petition was directly in issue and consequently it needs to be proved by the complainant beyond reasonable doubt, but the standard of proof on the Defendant is still discharged on the balance of probabilities.
- Where there is a claim for **special damages** or special interest, **such damage or interest must be strictly proved e.g. tendering the receipt of payment for medical treatment due to negligence of the defendant**
- In respect of **matrimonial causes**, matters are to be established to **the satisfaction of the court----S. 82 MATRIMONIAL CAUSES ACT**

(c) Admissibility of different types and forms of evidence

Types of evidence

- Oral
- Real
- Documentary, including Computer generated evidence

Where the facts had not been admitted, not been judicially noticed and has not been presumed, there is then need to prove it. The following are the means of proof of facts:

1. Oral evidence: all facts except the contents of documents may be proved by oral evidence – **S. 125 EA 2011** and subject to the exceptions provided in the Act, oral evidence shall in all cases **be direct – S. 126 EA 2011.**

- If it is a fact which could be seen, it must be the evidence of a witness who says he saw that fact – **S. 126(1)(a) EA 2011.**
- If it is a fact which could be heard, it must be the evidence of a witness who says he heard that fact – **S. 126(1)(b) EA 2011.**
- If it is a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in that manner – **S. 126(1)(c) EA 2011**.

Comment [C108]: **CIRCUMSTANTIAL EVIDENCE**: circumstances surrounding the event. Evidence not of the fact in issue but from other facts which you can infer the fact in issue. These are facts that point to the fact in issue. **S. 9 EA 2011:** Facts not otherwise relevant are relevant if- —
(a) they are inconsistent with any fact in issue or relevant fact; and
(b) by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact probable or improbable.
Note that generally, circumstantial evidence is in criminal litigation.

Comment [C109]: **DIRECT EVIDENCE**: **S. 126 EA 2011**: Testimony of a fact actually perceived by a witness with any of his sensory organs. This evidence is made out by the person standing as a witness testifying to the fact in issue. If it is the opinion of someone, it should be given by the person who it is his/her opinion. This is exclusion of hearsay evidence.

- If refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those ground. Exception--- opinion of experts expresses in any treatise commonly offered for sale, if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable– **S. 126(1)(d) EA 2011**

Hearsay Evidence should be avoided---Ss. 37 & 38 EA 2011; SHIVERO V. STATE, SUBRAMANIAM V. PUBLIC PROSECUTOR. Where a witness gives hearsay evidence, the opposing party should object timeously as to the admissibility of the evidence.

The demerits of hearsay

- It defies the rule that oral evidence must be direct.
- It is an altered evidence.
- It is unreliable as additional facts may be made.
- There is depreciation in transmission of the fact, it allows for fraud or mistake, it is not on oath, it does not accord the court to watch the demeanor of the witness especially in **cross examination**

NOTABLES

The general rule is that statements (oral or written) made by a person who is not called as a witness in a case OR where a document is tendered in evidence, statements in such a document for the purpose of proving the truth of the matters stated in such a document, are regarded as HEARSAY and hearsay evidence is generally NOT ADMISSIBLE IN EVIDENCE IN PROOF OF FACTS IN ISSUE OR RELEVANT FACTS.---**Ss. 37 & 38 EA 2011**

However, as an exception, where such statements are made in relation to facts in issue or relevant facts under circumstances stipulated in the EA 2011, such statements shall be admissible in evidence.---**S. 39 EA 2011**

Comment [C110]: LOOK THEM UP FROM THE EA 2011

The same general rule applies to documentary evidence. Thus, documentary hearsay is not allowed **as the maker of any statement in a document (which is sought to be used as evidence to prove a fact in issue) must be one that:**

- has produced the original of that document;
- has personal knowledge of the matters in that document OR if there is no personal knowledge of such matters, he is one that got to record the matters in the document (pursuant to information gotten from someone who has personal knowledge of such matters in that document that forms part of a continuous record) in the performance of his duty to record information supplied to him;
- has been called as a witness in the proceedings

However, as an exception, documentary hearsay is allowed in matters mentioned in S. 39 EA 2011. Also, the court may permit the CTC of such document to tendered in place of the original document.-----**S. 83(1)(2) EA 2011**

Furthermore, the general rule is that statements in a document made by **a person interested** at a time when proceedings were pending or anticipated, SHALL NOT BE ADMISSIBLE FOR THE PROOF OF ANY FACT IN SUCH PENDING OR ANTICIPATED PROCEEDINGS, provided that the "PERSON INTERESTED" is taken to mean a person likely to be personally affected by the outcome of the proceedings.---**Ss. 83(3) & 258 EA 2011**

Thus, as an exception, where such a statement in a document is made by a person who is not likely to be affected by the outcome of the proceedings, such a person is not "A PERSON INTERSTED" and as such, the statement of such a person in a document, though made when proceedings were pending or anticipated, shall be admissible in proof of any fact in such pending or anticipated proceedings.---**RT BRISCOE v. ANYAEBOSI**

2. Real evidence: it could be movable or immovable. Movable evidence is tendered in court through a witness and marked as exhibits. Movable – **S. 127(1)(a)(b) EA 2011**, the court may require the production of such material thing for its inspection.

Visit to the locus in quo

Comment [C111]: BAR II EAM

Immovable – the court adjourned to the place – visit to the locus in quo. The matter deliberated in such place is part of court's proceeding and the judge must be there personally to conduct the proceedings. Parties must also always be there because of fair hearing. **S. 127(2)(a)-(b) EA 2011** provides the court with **two options:**

- Adjourn to the place where the subject matter of the said inspection may be **and the proceeding shall continue at that place** until the court further adjourns back to its original place of sitting or some other place of sitting. NB: Proceedings at the locus in quo forms part of the proceedings----**CHUKWUOGOR V OBIORA.**
- Attend and make an inspection of the subject matter only and the evidence of what transpired there to be given in court afterwards. NB: The judge cannot delegate his duties to go to the locus for inspection---**EVOYOMA V DAREGBA**

NB: The judge should not substitute the evidence with his own account. He cannot substitute the ear with the eyes. In both, outside the court (sitting outside) or inspecting, the parties shall be present.

3. EXPLAIN DIFFERENT KINDS OF DOCUMENTS, ADMISSIBILITY OF DOCUMENTARY EVIDENCE, THE USE OF PRIMARY AND SECONDARY EVIDENCE AND THE NECESSARY FOUNDATION TO BE LAID FOR THAT PURPOSE

(a) Different kinds of documents

S. 258(a) EA 2011 defines documents to include books, maps, plans, graphs, drawings, photographs and also includes any matter expressed or described upon any substance by means of letter, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter. From specific items mentioned, it includes anything used to record information of which will qualify as document. Thus, a building can be documentary evidence if information is inscribed on it. Bill boards on the road will qualify as documentary evidence. It therefore means that the same object can qualify as a real and

documentary evidence. When using object, as an object, it is real evidence but it if is used as a means of recording, it will qualify as documentary evidence (no matter how big the object is)

(b) Admissibility of documentary evidence, the use of primary and secondary evidence and necessary foundation to be laid for that purpose

Comment [C112]:
NB: Any documents not agreed upon in CMC in Lagos must be proved in court.

- The primary rule is that the document should speak for itself.
- A proof of a document should be by the production of the document or the secondary evidence, and no oral evidence of a document is allowed as a general rule---**S. 128 EA 2011, OZIGI V. UBN LTD**

There are exceptions to the general rule:

- Fraud, intimidation and illegality
- Want of execution: the fact that it is wrongly dated, existence or want or failure of consideration, mistake in fact or law;
- Want of capacity in any contracting party or the capacity in which a contracting party acted when it is not inconsistent with the terms of the contract:
- Or any other matter which, if proved would produce any effect upon the validity of any document or of any part of it, or which would entitle any person to any judgment, decree or order relating to it – section 128(1)(a).
- The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, if from the circumstances of the case, the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them – paragraph (b).
- The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property – paragraph (c)
- The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property; and – paragraph (d)
- Any usage or custom by which incidents not expressly mentioned in any contract are annexed to contracts of that description unless such would be repugnant or inconsistent with the express terms of the contract – paragraph (e)
- Where documentary memorandum was not intended to have legal effect as a contract, grant or disposition of property (thus oral evidence is allowed) – subsection (2)
- Where there is need to prove the existence of a legal relationship itself which has been reduced to document and not the terms on which it is established or to be carried on.

Documents are basically divided into:

- Private documents; and
- Public documents.

Public documents – **S. 102 EA 2011**. The following documents are public documents;

1. Documents forming the official acts or records of the official acts of the sovereign authority – **S. 102(a)(i) EA 2011**. when the documents is an official act or record of the official acts of the President of Nigeria, that is a public document. For instance, a letter written by President

Goodluck Jonathan congratulating the Super Eagles on their victory in the African Nations Cup is a public document.

2. Documents forming the official acts or records of the official acts of official bodies and tribunals are public documents – **S. 102(a)(ii) EA 2011**. For instance, the letter of admission given by the Council of Legal Education is a public document because it forms part of the acts of Council of Legal Education being official bodies.

3. Documents forming the official acts or records of the official acts of public officers, legislature, judicial and executive whether of Nigeria or elsewhere are public documents – **S. 102(a)(iii) EA 2011**. Examples include:

- Marriage certificate issued by the Registrar of Marriage being a public officer is a public document.
- Certificate of incorporation issued by the Corporate Affairs Commission
- Records of legislative proceeding
- Statutes
- Judgment of the English court and courts of other countries.
- Land certificate – certificate of titles issued by Registrar of Land Registry.
- Certificate of occupancy issued by Governor.

4. Public records kept in Nigeria of private documents – **S. 102(b) EA 2011**.

- Memorandum and Articles of Association of a company upon incorporation, particulars of director, annual returns e.t.c
- Deed of assignment, Deed of lease, Deed of Mortgage when registered under the Land Instrument Registration Law.
- Newspaper – there are two laws on it. The Newspaper Act and National Library Act. Three copies one is to be kept at the library at University of Ibadan, another at National Library.

If the laws are complied, both those kept at the designated places and those on the streets are public documents**.** In practice the certified copies are always obtained at the National Library. The list of public documents is not exhaustive but once a document emanate from a public officer just know that it is a public document (in his official capacity)

How is a public document proved?

Comment [C113]: BAR II EXAM

It is by tendering the Certified True Copy of the Document through anyone in court. The registrar or public officer that issued it **need not be brought to court**. Even the counsel can tender such Certified True Copy----**OGBUANYINYA V OBI-OKUDOR**

Requirement for a valid proof of public document---S. 104 EA 2011, ARAKA V EGBUE

Comment [C114]: Section 105 EA provides that documents certified in accordance with section 104 may be produced in proof of the contents of a public document or part of the public document of which they purport to be copies.

REASONS FOR CTC
- Original pertains to many persons
- Possibility of loss
- Deprivation of others from use if original is produced

- Evidence of payment of the requisite legal fees.
- There should be a written certificate at the foot of the Certified True Copy, "CERTIFIED" by the same public officer stating that it is a true copy of such original document in reference.

- The certificate must be dated
- The certificate must be subscribed to by the issuing public officer and the officer must state his name and official title and if he is entitled to use a seal, then he must seal same

Private documents: All documents other than public documents are private document---**S. 103 EA 2011**. All preliminary agreement between members or investors is private document as they are excluded from documents to be incorporated.

Primary evidence means either of the following:

- Where the document itself is produced for the inspection of the court – **S. 86(1) EA 2011**
- Where a document has been executed in several parts, each part shall be primary evidence of the document – **S. 86(2) EA 2011, OMABOLOWO V AJASIN**
- Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart shall be primary evidence as against the parties executing it. To person signing it, it is a primary evidence but against the other person who did not sign it, it is secondary – **S. 86(3) EA 2011**
- Where a number of documents have all been made by one uniform process, as in the case of printing, lithography, photography, computer or other electronic or mechanical process, each shall be primary evidence of the contents of the rest but where they are all copies of a common original, they shall not be primary evidence of the contents of the original.

Secondary evidence - section 87

It includes (meaning not exhaustive) the following

- Certified copies given under the provisions contained in the EA.
- Copies made from the original by mechanical or electronic processes which in themselves ensure the accuracy of the copy and copies compared with such copies.
- Copies made from or compared with the original.
- Counterparts of documents as against the parties who did not execute them; and
- Oral accounts of the contents of a document given by some person who has himself seen it.

Proof of documents

Generally documents shall be proved by primary evidence except as provided in the EA - section 88. Before tendering secondary evidence, **foundation must be laid**. **Proper foundation is the reason to be given for not producing the primary evidence.**

- **Proof of contents**
- **Proof of execution (showing the document to witness to confirm that it is his signature that is on the document)**

The content of documents may be proved either by **primary or by secondary evidence.** The general rule is that documents are to be proved by primary evidence (the original document)

Comment [C115]: PRIMARY EVIDENCE which is the original copy or the executed counter-parts of the original. **S. 86 of the Evidence Act. Note THE BEST EVIDENCE RULE** - The best evidence rule is to tender the original document by its maker which must speak for itself as oral evidence to prove the content of a document is excluded. Primary evidence includes:
a.Original copy of the document produced for inspection of the court.
b.Each part of a document executed in several parts (e.g. lease document of lessor and lessee). See **OMOBORIOWO v AJASIN**
c.A document executed in counterpart (copy executed by the party against whom it is sought to be tendered). For instance, 2 copies of the same documents but Mr A signs document 1 and Mr B signs document 2.
d.Copy of a document made by uniform process (like lithography, printing)
e.Copies made by carbon paper-**JACOB V. AG AKWA IBOM**

Comment [C116]: SECONDARY EVIDENCE: S.87 of the Evidence Act: *Secondary evidence includes—*
a)certified copies given under the provisions hereafter contained in this Act;
b)copies made from the original by mechanical or electronic processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
c)copies made from or compared with the original;
d)counterparts of documents as against the parties who did not execute them; and
e)oral accounts of the contents of a document given by some person who has himself seen it.

except as provided under the Act-**S. 88 EA 2011**

Exceptions to the rule that documents are to be proved by primary evidence/Cases in which secondary evidence are used in proving documents.

Secondary evidence may be given of the existence, condition or contents of a document when

1. The original is shown or appears to be in the possession of the person against whom the document is sought to be proved - section 89(a)(i); or

2. The original is shown or appears to be in the possession or power of any person legally bound to produce it.

However with regard to the above situations, notice is required to be given to such person under section 91 EA requiring him to produce. Section 91 EA provides for situation where notice will be dispensed with.

a. When the document to be proved is itself a notice (Generally, where a document is within the custody of the defendant, a notice to produce will be served on the party to produce such document. However, pursuant to section 91(a) of the EA no notice need to be issued as the document to be proved is itself a notice. Thus, secondary evidence can be given without a notice to produce). Example: Tenant Notice to quit.
b. When from the nature of the case, the adverse party must know that he will be required to produce it.
c. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force
d. When the adverse party or his agent has the original in court or
e. When the adverse party or his agent has admitted the loss of the document.

By virtue of section 90(1)(a), any secondary evidence of the contents of the document is admissible upon fulfilling the necessary

3. The existence, condition or content of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest – section 89(5). By virtue of section 90(1)(b)., the written admission is admissible.

4. The original has been destroyed or lost and in the latter case all possible search has been made for it – section 89(c). By virtue section 90(1)(a), any secondary evidence of the contents of the documents is admissible.

5. The original is of such a nature as not to be easily movable – section 89(d). By virtue of section 90(1)(a), any secondary evidence of the contents of the documents is admissible.

6. The original is a public document within the meaning of section 102, section 89(e). By virtue of section 90(1)(c), a certified copy of the documents **but no other secondary evidence is admissible**. A photocopy of certified public document should be re-certified – **OGBORU V. UDUAGHAN**. **What happens where the original of the public document is lost or**

destroyed? NOTE THAT public documents can be proved only by its ORIGINAL DOCUMENT or by its CERTIFIED TRUE COPY. Where such is not followed, then the evidence is inadmissible---**DR. NNAMDI AZIKIWE v MINISTER OF WESTERN NIGERIA.** In the case of **UDO v STATE,** the court held that only the original of a Public document or its CTC is admissible. Therefore, the proof of contents of a public document is generally by tendering primary evidence which is the original document. **However, where the original is not available then the CTC and no other secondary evidence is admissible.**

Conditions for a Certified True Copy to be admissible as CTC---S. 104 EA 2011

- There must be payment of legal fee prescribed in that respect;
- There must be certificate written at the foot of such copy that it is a true copy;
- The certificate must be dated;
- It must be subscribed by such officer with his name and his official title; and It must be sealed in a case where such officer is authorised by law to make use of seal.

7. The original is a document of which a certified copy is permitted by this Act or by any other law in force in Nigeria to be given in evidence – section 89(f). By virtue of section 90(1)(c), a certified copy of the document, but no other secondary evidence is admissible.

8. The originals consist of numerical accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection – section 89(g), section 90(1)(d).

9. The document is an entry in the banker's book – section 89(h). By virtue of section 90(1)(e), the copies cannot be received as evidence unless it is first proved that

. The book in which the entries copied were made was at the time of making one of the ordinary books of the bank.
i. The entry was made in the usual and ordinary course of business.
ii. The book is in the control and custody of the bank which proof may be given orally or by affidavit by an officer of the bank; and
iii. The copy has been examined with the original entry and is correct which proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit.

For section 89(9), 90(1)(d) provides that evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

Custody of documents

When a document is coming from where it should be coming from, it is used to be a proper copy and in proper custody. This relates only to authenticity and not relevancy as a document that is

not genuine can be admissible. Genuineness only goes to weight to be attached to it. Thus, admissibility before authenticity---**TORTI V. UKPABI**

General and specific conditions for admitting documents produced by computer

General conditions

- It must be pleaded
- It must be relevant
- It must be in admissible form

SEE ACB LTD V GWAGWADA; KUBOR V DICKSON

Specific conditions

Four conditions must be satisfied. It must be proved that:

a. the statement sought to be tendered was produced by the computer during a period when it was in regular use, to store or process information for the purpose of any activity regularly carried on over that period;
b. during that period of regular use, information of the kind contained in the document or statement was supplied to the computer;
c. the computer was operating properly during that period of regular use or if not, the improper working of the computer at any time did not affect the production of the document or the accuracy of its contents; and
d. the information contained in the statement was supplied to the computer in the ordinary course of its normal use. See **S. 84 (2) EA 2011**

Furthermore, where such a statement is sought to be tendered in evidence, **a certificate**

a. identifying the document containing the statement and describing the manner in which it was produced; **or**
b. giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; **or**
c. dealing with any of the matters to which the conditions mentioned above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, **shall be evidence of the matter stated in the certificate, and it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it**---**S. 84 (4) EA 2011**

The mandatory conditions stipulated in S. 84 (2) and (4) EA simply seek to ensure that what is presented before the court is prima facie reliable and worthy to be accepted as evidence. In other words, that the statement claimed to have been produced from the computer reflects 'completely and totally', what was fed into and contained in the computer. It is to safeguard the source and authenticity of the electronically generated evidence sought to be used in evidence---**KUBOR V. DICKSON**; **AKEREDOLU & ANOR V. MIMIKO & ORS**

Comment [C117]:
In defining documents – section 258 provides that it includes any device by means of which information is recorded, stored, or retrievable including computer output. Computer in this like will include desktop, laptop, ipad, GSM phones e.t.c. thus section 84(1) provides that statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it which direct oral evidence would be admissible provided the conditions stated are satisfied.

Admissibility of computer generated evidence
In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that certain conditions are satisfied in relation to the statement and computer in question---**S. 84(1) EA 2011**

Comment [C118]:
Subsection 3 further explains that the computer referred to in the subsection need not be a single computer, it can be:
- Combination of computer operating over the period
- Different computer operating in succession over that period.
- Different combination of computers operating in succession over that period.

NB: Oral evidence in lieu of certificate may also be used to prove the conditions above (examine a witness to establish the existing of the conditions. The certificate should replicate the conditions above.

NB: Documents generated at internet is not a public document

Comment [C119]: Subsection 5 provides for supplying of information to the computer whether directly or with or without human intervention by means of any appropriate equipment – paragraph (a). Also, document can be produced directly or with or without human intervention by means of any application equipment – paragraph (c). The computer in the real sense of it is the evidence to be admitted, but section 84 provides for admissibility of copies generated from the computer. The adverse party can show that what is produced in court is not what is produced by the computer.

Laying foundation and objection to evidence

All evidence requires certain conditions before it can be admissible. At what stage can an adverse party raise objection? In Lagos, it is at the case management stage and in other jurisdiction, at the stage of the evidence being sought to be tendered.

The original copy of official gazette and certified true copy of public document is admissible **from the law.** Thus, although documents are ordinarily tendered through witness, for the above; counsel can tender it without calling witness.

When a document is disputed at the stage of tendering, counsel seeking to object should object and state the grounds of objection.

Comment [C120]: The following could be grounds of objection to documents with regard to its admissibility

- The document or facts relating to the document is not pleaded.
- No foundation is laid when tendering secondary evidence
- Public document sought to be tendered is not certified in accordance with section 104 (not in its prescribed form).
- Document is not relevant to the case.
- Document is on fact that is privileged (in any other way statutorily excluded)

If the grounds are proper in the eyes of the counsel seeking it to be tendered, such document should be withdrawn (apply to withdraw) and then remove the imperfection and re-tender the document. Thus, do not join issues with adverse party. If counsel joins issues on tendering of a document, the court is bound to deliver a ruling and if the ruling is not in favour of the party (counsel tendering it), it will be marked REJECTED and such document cannot be re-tendered again---**ALADE V. OLUKADE**.

Wrongful admission of evidence

There are pieces of evidence that are inadmissible and there are evidence that are admissible upon satisfaction of certain conditions. Where evidence is inadmissible and the other side did not raise objection, the evidence will become valid evidence as he will be deemed to have waived his right. **S. 251 EA 2011** is to the effect that the impact of evidence wrongfully admitted or excluded will depend on the role such evidence played or will play in the final decision. Both wrongfully admitted and excluded evidence will not be a ground for reversal of any decision unless the decision of the court will change –material. The court on appeal will order the case to be heard de novo. Where such will not affect the decision of the court then there will be no need – not material.

Comment [C121]: Note the following:

- Always identify what each witness would do and the document to be tendered through especially if he is the maker.
- As a maker of law, corroboration is not needed except when the law state so. In civil suit, it is in an action for damages for breach of agreement to marry.
- Anybody can be compelled to testify if competent except those expressly excluded. However, always bear in mind hostile witness.
- Every counsel should avoid the temptation of manufacturing facts and evidence.
- Evidence tendered from the bar is from the lawyer to the judge and it is an exception to the rule that evidence is to be tendered from witness box to Bench. Exception:

.Original copy of official gazette,
i.Undisputed documents
ii.CTL of public documents (original)

Proof of facts

- By virtue of **S. 121(a) EA 2011** facts are said to be proved when after considering the matters before it, the court either believes it to exist or considers its existence probable that a prudent man ought reasonably to act in the supposition that it exists.
- **S. 121(b) EA 2011** facts are said to be disproved when after considering the matters before it, the court either believes it does not exist or considers its non-existence probable that a prudent man ought reasonably not to act on it.
- Fact is not proved when it is neither proved nor disproved.

Facts that may be proved: admissibility of facts

Facts that are admissible that may be proved are:

- Facts in issue. Main facts in issue + Collateral Facts in Issue=Facts in issue---**S. 258 EA 2011, THOMAS V OLUFOSOYE**
- Facts relevant to the facts in issue
- Any fact declared to be relevant in the ct by necessary implication
    a. Facts relevant on grounds of credibility. Section 223 EA
    b. Facts relevant under special circumstances. E.g 35 && 36 EA
    c. Facts generally relevant. Ss 1-19. See s. 4, 7,8, 9

Facts which are not to be proved are

- Too remote to be material (an objection can be raised that evidence is too remote and will be prejudicial to the case)
- Evidence of a fact which is disentitled to prove by a person by the provision of any law in force. E.g Hearsay evidence, opinion evidence, similar fact evidence, character evidence.

Facts not admissible

1. Character evidence – section 78 and 79. Section 78 is to the effect that character of a person to a civil proceeding is inadmissible. This is the general rule that admits of exception. Where the character of such person is a fact in issue, for instance in defamation suit, where the defendant pleads the defence of justification, the character of the claimant becomes a fact in issue. Except in so far as such character appears from facts otherwise relevant. Where character will affect the amount of damages. Section 79 provides that notwithstanding section 78 in civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive may be given in evidence.

2. Similar facts – generally, similar facts are not admissible. However, in land matters such facts are admissible. For instance, A has plots of land, B & C which are adjoining. If there is dispute as to the ownership of one of them, the fact that it is adjoining to the other can be admissible to prior ownership by A to it pursuant to section 35 EA. Also, negligence relating to procedure and subject matter that share common rule.

3. Opinion evidence – it is not admissible as a general rule except as otherwise provided by Evidence Act – section 67. The exceptions are contained in section 68, 69, 70, 71, 72, 73, 74 and 75.

4. Hearsay evidence – (already discussed)

Factors that determine admissibility in civil cases---ACB LTD V GWAGWADA,

- Is the fact pleaded?
- Is it relevant?
- Is it in the admissible form?

Comment [v122]: Question asked by my judge: under what circumstances will a counsel object when a document is sought to be tendered in evidence? BAR PART 11

Estoppel

The estoppel relevant in this instance is estoppels by record. This is that arising from the record of the court. There are two types of estoppels by record:

- Issue estoppels – on a particular issue
- Cause of action estoppels – the entire case.

There are four conditions to be fulfilled before estoppels by record can avail a party

- Parties or their privies are the same in the present suit and previous suit. Parties can be by blood – children; or by law – agent; or privies in title/estate – subsequent purchaser
- Subject matter and issues are the same. Note that action for trespass and ownership to land are not the same. Also estoppels on part of land does not relate to the other.
- The previous action was determined by a court of competent jurisdiction
- The previous decision was a final decision of that court. Even when a matter is on appeal, it is still a final decision as long as it is not interlocutory.

Competence and Compellability

Competence: A competent witness will be able to give admissible evidence. Admissibility is the qualification of a piece of evidence when a judge has adjudged it to be part of evidence he would consider to form his judgment.

Competence of a child

For the evidence of a person of tender age, section 209(1) EA provides that if a child has not attained the age of 14 years and is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation if in the opinion of the court if he is possessed of sufficient intelligence to justify the reception if his evidence; and understands the duty of speaking the truth. However, a child of 14 years and above can give sworn evidence in all cases – section 209(2) EA

Therefore, in examination-in-chief of the child, **the counsel** may also **apply for leave of Court**

If he satisfies the condition above and he has attained 14 years of age, he gives sworn evidence.

Examination in chief involves asking questions of the witness to show his age, his intelligence and duty of speaking the truth.

Competence of spouse

In all civil proceeding, the parties to the suit and the husband or wife of any party to the suit shall be competent witness ----**S. 178 EA 2011, ELIAS v DISU.** The **only exception** is that husband or wife is not competent to give evidence that will bastardize a child born within a valid marriage or within 280 days of dissolution of such marriage---**S. 165 EA 2011; S. 84 Matrimonial Causes Act**

Comment [C123]:
It refers to the ability of a witness to give evidence
- The general rule pursuant to section 175(1) EA is that everyone is a competent witness except the court considers that they are prevented from understanding puts to him or from giving rational answers by reason of:
  - ✓Tender age
  - ✓Extreme old age
  - ✓Disease whether of body or mind
  - ✓Or any other cause of the same kind
- Section 175(2) EA, provides that a person of unsound mind is competent to testify unless he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them.
- A dumb person is competent to testify either in writing or by signs but such writing must be written and the signs made in open court – section 176(1). Importantly, the evidence so given shall be deemed to be oral evidence – section 176(2).

In all civil proceeding, the parties to the suit and the husband or wife of any party to the suit shall be competent witness – **S. 178 EA, ELIAS V DISU.** The only exception is that husband or wife is not competent to give evidence that will bastardize a child born within a valid marriage or within 280 days of dissolution of such marriage – section 165; section 84 Matrimonial Causes Act. As a general rule, corroboration is not needed in civil cases except in an action for breach of promise to marry.

Comment [C124]: A child is a person who is **above the age of seven years** but **has not attained the age of fourteen (that is children of 8-13 years).** For a child to be competent to give evidence, he must show:
a. That he understands the questions put to him and that he can give rational answers.
b. That he understands the duty of speaking the truth.

Comment [C125]: It is instructive to note the change in the definition section of the Evidence Act. Under Section 2(1) of the Old Evidence Act, wife and husband only referred to wives and husbands of statutory marriage but under **Section 258 of the Evidence Act 2011,** the definition of wives and husbands now encapsulates that of Customary and Islamic Law in addition to those contracted under the Act.

As a general rule, corroboration is not needed in civil cases except in an action for breach of promise to marry.

By **Section 178 of the Evidence Act 2011**, the party to a civil action or the husband or wife of any party to the suit is a competent witness not just for themselves but also for the opposing party except as provided in **section 165.**

By **Section 186** in any proceeding instituted in consequence of adultery, the husbands and wives of the parties shall be competent to give evidence in the proceedings, but no witness in any such proceedings whether a party thereto or not shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceeding in disprove of the alleged adultery.

Compellability: The general rule is that every competent witness is a compellable witness except where there are laws excluding certain competent persons from being compelled. The procedure to compel the attendance of a competent witness is to apply to the court by way of FORM OF PRAECIPE, FORM 26 as provided for in ORDER 32 R 20 LAGOS 2012 praying the court to issue a subpoena ad testificadum OR ducestecum to testify in court or produce a document.

It is pertinent to note that **personal service** is the means to subpoena a person to court unless substituted service is ordered.

Is a Defendant a Competent and Compellable Witness for the claimant and Vice Versa?

The **Supreme Court** held that a defendant is both competent and compellable to testify on behalf of a claimant especially if the defendant has been **subpoenaed**- **OBOLO v REV. ALUKO.** Conversely, a claimant is a competent and compellable witness at the instance of a defendant.

Modes of compelling attendance of a witness

This can be by the use of subpoena or witness summons.

Subpoena: A leading case on subpoena in Nigeria is **BUHARI v OBASANJO.** The Supreme Court described subpoena as a process to compel a person to attend court and give testimony or tender documents. However, subpoena may require the witness to do both (appear and give testimony and to tender documents). It is a special writ to compel the attendance of a witness to give evidence. For a good description of the term subpoena---**FAMAKINWA v UNIVERSITY OF IBADAN**

Forms

For subpoena are as in the **praecipe** attached to the rules of court. The praecipe should be

Comment [C126]: S
What this appears to mean is that even though you are sure there was no sexual connection between you and the mother of the child resulting in the birth of the child, you are not competent to say so.

Comment [C127]:

FORM 27 : SUBPOENA AD TESTIFICANDUM
FORM 28: HABEAS CORPUS AD TESTIFICANDUM
FORM 29: SUBPOENA DUCES TECUM(judge signs the subpoena and seals it).

SECTION 218 EA 2011
It is pertinent to note that pursuant to SECTION 218 EAa person whether a party or not in a cause may be summoned to produce a document, without being summoned to give evidence and if he causes such document to be produced in court the court may dispense with his PERSONAL ATTENDANCE. Implicit in this, is that the person who was issued with a subpoena duces tecum need not produce the document personally. It is sufficient if he produces it through someone.
SECTION 219 EA 2011
A person served with subpoena duces tecum does not ipso facto become a witness. Thus, he cannot be cross examined unless and until he is called as a witness.

Comment [C128]: Section 218 EA 2011: A person, whether a party or not in a cause, may be summoned to produce a document without being summoned to give evidence, and if he causes such document to be produced in court the court may dispense with his personal attendance.

Section 219 EA 2011: A person summoned to produce a document **does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.**

carefully adapted to suit the purpose of the party. If the praecipe is not properly adapted, a witness whom the party subpoenaed to tender documents may end up in the witness box and after tendering the documents, he will be cross examined by the opposite party. Note that this is a dangerous situation since you've not prepared a witness statement or prepared the witness.

Two types of subpoena

- **Subpoena ad testificandum**- It compels a witness to appear before the court and give evidence orally. He will be cross examined.
- **Subpoena duces tecum**- Compels a witness to produce a document in his custody relevant to the trial. He does not become a witness strictu sensu and cannot be cross examined—**S. 219 EA 2011, HESKY v MAGAJI; AKOMO v NIG. ARMY**

Comment [C129]: **S. 243 EVIDENCE ACT 2011:** The **Minister or Governor** may object to the production of document or request the exclusion of oral evidence where in his opinion it is against public interest. The court has the discretion to uphold objection or not.

Difference between subpoena and witness summons

- A subpoena can only be issued by superior courts.
- A witness summons can be issued by inferior courts as well as superior courts.

Procedure

- In Abuja, fill prescribed form in the appendix containing the name or firm and the place of business or residence of the legal practitioner intending to issue out the subpoena
- Pay the necessary court fees (including fee for service)
- Service of the subpoena on the person
- Where the witness refuses to comply with the summons, such refusal is to be noted down.

Comment [C130]: **IN LAGOS**
1. Fill **FORM 27 or FORM 29** containing name or firm and place of business or residence of Legal Practitioner intending to issue out the subpoena.
2. Deliver and file the Form at the Registry
3. Pay all court **fees**

NOTE-Subpoena for attendance of a witness for proceedings in Judge's chambers, that subpoena shall be issued from the Registry upon a note from the Judge.

Service of subpoena

Mode of service is primarily by **PERSONAL SERVICE UNLESS SUBSTITUTED SERVICE** has been ordered by the court or a judge in chambers in cases where a person evades service.

Lifespan of subpoena

A subpoena shall remain in force from the **date of issue until the conclusion of the trial** of the matter in which it is issued**.** However, in practice, once the witness obeys and appears in court and gives testimony, usually the court will tell him that he is discharged and he need not come again.

Correction of errors in subpoena

In the interval between the issuing out and service of a subpoena, the party issuing out a subpoena may correct any error in the names of parties or witnesses and may have the writ re-sealed upon leaving a corrected praecipe of the subpoena marked with the words "altered and re-sealed", and signed with the name and address of the legal practitioner issuing out the same:

NB: In Lagos:

- The Court may mandate the appearance of any person for the purpose of producing any writing or document**, without using the word subpoena.**
- **Disobedience to attend for examination or production** of any document shall be in **contempt of court and may be dealt with accordingly.**

How to lay foundation to tender a document from witness on subpoena

- Can you please tell this Honourable Court, your name, address and what you do for a living?
- Why are you before this Honourable Court today?
- Did you have the copy of this subpoena served on you?
- Did you have the documents you are referred to produce before this Honourable Court?
- My Lord, we apply to have these documents tendered in Evidence

There are two conditions for issuance of subpoena

- Payment of the requisite court fees including the fee for service
- Deposit of sufficient **CONDUCT MONEY** on the prescribed scale for at least the first day of attendance.

Comment [C131]: The money to be paid by the person **applying for the subpoena in addition to the fee paid for issuing the subpoena**

Persons that cannot be compelled

- **The President, Vice- president, Governor of a state and Deputy-Governor of that state**. Section 308 CFRN 1999 provides for this immunity. The immunity protects them in their personal capacity and not in their official capacity. Thus the office of the President and Governor can be sued. The immunity avails them for the period they occupy the office. For the commencement of action, time will not run until the person leaves office.
  However, in GLOBAL EXCELLENCE COMM LTD V DUKE, the court held that the executives can sue or maintain personal actions.
- **Legislative immunity:** only the premises of the legislature and not the persons are protected. The subpoena cannot be served on a senator in the legislative house.
- **Diplomats:** diplomats and ambassadors have diplomatic immunity under the **Diplomatic Immunity and Privileges Act 1962, section 1.** It is pertinent to note that the immunities can be waived. **Note that their domestic staff members who are Nigerians do not**

Comment [C132]: **Note however that they can be sued in their official capacity for civil matters or when they are nominal parties (s308 (2) CFRN).**
A person who wants to compel them has to wait till they leave office- **TINUBU v IMB; ROTIMI v MACGREGOR.** Note however that they can be subpoenaed for election petitions. See **AD v FAYOSE; BUHARI v OBASANJO; Note also that they can sue and maintain action- GLOBAL EXCELLENCE COMM. LTD v DUKE.**

enjoy the immunity. Thus, such diplomats enjoy immunity from: Suit and legal processes including processes to compel attendance in court as a witness—**Ss. 1 and 10 DIPA.** Inviolability of their residence

- **Bankers:** S. 177 EA 2011. A banker or an officer of a bank or other financial institution shall not, in any legal proceeding to which the bank is not a party, be compelled to produce any banker's book or financial book, the contents of which can be proved in the manner provided in sections 89 and 90 of the Act, or to appear as a witness to prove the matters and accounts in such book, UNLESS BY ORDER OF THE COURT MADE FOR SPECIAL CAUSE.
- No **Justice, Judge, Grand Kadi or President of a Customary Court of Appeal** shall be compelled to answer any questions in a trial over which he presides or as to anything which comes to his knowledge by acting in that capacity. Also**, no Magistrate or District Judge (North)** shall**, EXCEPT UPON THE SPECIAL ORDER OF THE HIGH COURT of the State** be compelled to answer similar questions –**S. 188 EA 2011. Therefore, there is exception where magistrate can be compelled. EXCEPTION to the above-**any of the above mentioned justices may however give evidence **in any other trial** and be examined as to matters, which occurred in his **presence while he was presiding over the case.**
- **Legal Practitioners:** Where the evidence of such counsel is necessary on the merits of the case, he should decline to appear as counsel. **Rule 20 Rules of Professional Conduct 2007.** He can give testimony if the testimony to be given is uncontested, matters of formality or matters given about nature of legal services given to the particular client or where if he doesn't testify it would work hardship on the client**---ELABANJO V. TIJANI, HORN v. RICHARD; ADARA v IBADAN WEST DISTRICT CUSTOMARY CT OF APPEAL.**
- **Public Officers:** No Public Officer shall be compelled to disclose communications trade to him in official confidence, when he considered that the public interests would suffer by the disclosure. He shall however, on the order of the court disclosure the communication to the **JUDGE ALONE IN CHAMBERS**, and if the judge is satisfied that the communication should be received in evidence this shall be done in private in accordance with section 36 (4) of the Constitution – **S. 191 EA 2011**
- **Spouses: Section 182(3) EA 2011**: Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose any communication made to her by her husband during

Comment [C133]: EXCEPTIONS-
•It does not cover their Nigerian Staff
•It does not cover their commercial activities or professional activities **ZABUSKY v ISRAELI AIRCRAFT INDUSTRIES**

Comment [C134]: S. 192(1) EA 2011: No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure-
(a) any such communication made in furtherance of any illegal purpose; or
(b) any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

the marriage. **Section 187 EA 2011:** No husband or wife shall be compelled to disclose any communication made to him or her during marriage by any person to whom he or she is or has been married nor shall he or she be permitted to disclose any such communication, unless the person who made it or that person's representative in interest, consents, except in suits between married persons, or proceeding in which one married person is prosecuted for an offence specified in section 182 (1) of this Act.

- **Without prejudice: S. 196 of the Evidence Act 2011**: A statement in any document marked "without prejudice" made in the course of Statements in negotiation for a settlement of a dispute out of court, shall not be given in evidence in any proceeding

Comment [C135]: So for example, when one spouse is charged with the offence of defilement of a child (s.217 C.C.) and such like offences mentioned in section 182(1) E.A. 2011, or charged with inflicting violence on his/her spouse, then the wife/husband shall be a competent and compellable witness (for the purposes of appearing before the court and disclosing communications between them and the other spouse) for the prosecution or defence, without the consent of the person charged having to be obtained.

Corroboration

Corroboration means confirmation of a piece of evidence by another piece of evidence.

The general rule is that a single witness is enough to prove a case**. S. 200 of the Evidence Act 2011.** The **exceptions** where more than a witness or evidence will be required to proof a case in civil trials are as follows:

1. Breach of promise to marry needs an independent evidence to corroborate the plaintiff's action. A claimant in an action for breach of promise to marry cannot succeed unless other material evidence is used to corroborate the evidence--**S. 197 EA 2011, WILCOX v JEFFREY**- constant reference to the plaintiff as his fiancée was enough corroboration. Another English case where failure on the part of the defendant to deny the statement made to him by the plaintiff saying that you always promised to marry him but you don't keep your word: CT said this was enough corroboration.
2. To prove a custom, the Court requires corroboration.

4. IDENTIFY AND DISCUSS THE ETHICAL ISSUES ARISING FROM THE LESSON, FOR EXAMPLE, USING FORGED OR PRIVILEGED DOCUMENTS (Brainstorm)

5. PREPARE WITNESS STATEMENT ON OATH

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO…….……..

BETWEEN

KAYUBA ADA……CLAIMANT

AND

AGRICULTURAL BANK PLC……DEFENDANT

WITNESS STATEMENT ON OATH OF MRS KAYUBA ADA—CLAIMANT WITNESS

I, KAYUBA ADA, Nigerian, Adult, Female, of No. 45, Games Village, Lagos do hereby make oath and state as follows:

1. …..
2. …..

This statement is made in good faith, believing same to be true and is made in accordance with Oaths Law of Lagos State

_____

DEPONENT

Sworn to at the High Court, Lagos

this 5th day of March, 2019

BEFORE ME

_____

COMMISSIONER FOR OATHS

6. EXPLAIN AND DEMONSTRATE THE PROCEDURE AND FOUNDATION FOR ADOPTING WITNESS STATEMENT ON OATH AND TENDRING DOCUMENTS AND OTHER EXHIBITS DURING EXAMINATION OF WITNESSES

(a) Step by step procedure for adoption of witness statement on oath

- Identification of the witness by asking him to state his name, residence and occupation--i.e general introduction. **"CAN YOU PLEASE TELL THIS HONOURABLE COURT YOUR NAME, ADDRESS AND OCCUPATION?"**
- Questioning the witness on whether he made any written statement before the court. **"MR. ABC, DID YOU MAKE ANY STATEMENT IN WRITING BEFORE THIS HONOURABLE COURT?"**

Comment [C136]: POINTS TO NOTE IN PREPARATION OF WITNESS STATEMENTS ON OATH
1.You must be conversant with your pleadings, trial plan and all facts narrated by the witness
2.Allow witness to go through the witness statement on oath if literate to your satisfaction. If he is illiterate, use an interpreter.
3.An illiterate jurat is needed for an illiterate witness
4.Do not send fictitious persons to go and sign as witnesses

Comment [C137]: •Note that if a witness is subpoenaed or summoned, the witness should be cautioned (s206). **Section 206 EA** states any witness summoned to give oral evidence, shall be cautioned by the CT or Registrar before giving evidence:
"You (Full *name)* are hereby cautioned that if you tell a lie in your testimony in this proceeding or wilfully mislead this court you are liable to be prosecuted and if found guilty you will be seriously dealt with accordingly to law."

- If he answered in the affirmative, ask him whether he would identify such statement on oath when he sees it and how would he recognize it. **"IF YOU SEE THAT STATEMENT, CAN YOU RECOGNIZE IT?"**
- If yes, **"HOW?"** (my signature is on the statement)
- **"WHERE IS THE STATEMENT?"** (it is with you)
- **"MY LORD, WE SEEK THE LEAVE OF THIS COURT TO SHOW THE STATEMENT TO THE WITNESS"** (you may do so)
- **"TAKE A LOOK AT THIS DOCUMENT, IS THAT THE STATEMENT YOU WERE REFFERING TO?"** (yes)
- **"WHAT DO YOU WANT TO DO WITH THIS STATEMENT?"** (I want to adopt it as my evidence/testimony/evidence-in-chief before this court)
- **"MY LORD, THE WITNESS HAS ADOPTED HIS WRITTEN STATEMENT ON OATH"**
- The court will then rule on the adoption of such witness statement on oath.

(b) Step by step procedure for tendering documents/exhibits

Procedure for tendering document from the bar

1. Counsel brings to the notice of the court the documents he intends to tender (documents already admitted to at the CMC/PTC)
2. Counsel tenders the document (no objection is expected as the documents had been admitted at the CMC/PTC)
3. Document is shown to the other party for identification and appraisals
4. The court will then admit it in evidence and mark it as an "EXHIBIT"

Procedure for tendering document through a witness

1. **"AT PARAGRAGH 30 OF YOUR STATEMENT, YOU MADE A REFERENCE TO A WRITTEN CONTRACT BETWEEN YOU AND THE DEFENDANT. IF YOU SEE THAT WRITTEN CONTRACT, WOULD YOU BE ABLE TO RECOGNIZE IT?"** (yes)
2. **"HOW WOULD YOU RECOGNIZE IT?"** (my signature…)
3. **"WHERE IS THIS WRITTEN CONTRACT?"** (it is with you)
4. **"MY LORD, WE SEEK THE LEAVE OF THIS COURT TO SHOW THE DOCUMENT TO THE WITNESS"** (you may do so)
5. **"PLEASE TAKE A LOOK AT THIS DOCUMENT, IS IT THE CONTRACT YOU WERE REFERRING TO?"** (yes)

Comment [C138]: Note the following:
- Always identify what each witness would do and the document to be tendered through such witness especially if he is the maker.
- As a maker of law, corroboration is not needed except when the law state so. In civil suit, it is in an action for damages for breach of agreement to marry.
- Anybody can be compelled to testify if competent except those expressly excluded. However, always bear in mind hostile witness.
- Every counsel should avoid the temptation of manufacturing facts and evidence.
- Evidence tendered from the bar is from the lawyer to the judge and it is an exception to the rule that evidence is to be tendered from witness box to Bench.

The Exceptions are:
- Original copy of official gazette,
- Undisputed documents
- CTC of public documents (original)

The following could be grounds of objection to documents with regard to its admissibility
1. The document or facts relating to the document is not pleaded.
2. No foundation is laid when tendering secondary evidence.
3. Public document sought to be tendered is not certified in accordance with section 104 (not in its prescribed form).
4. Document is not relevant to the case.
5. Document is on fact that is privileged in any other way statutorily excluded.

Comment [C139]: Modes of tendering evidence during trial- Tendering of documents in examination of witnesses can be done through any of the following ways:
- Undisputed documents can be tendered from the Bar after an agreement by the Counsel in the matter.
- Disputed documents are to be tendered through the witnesses in evidence-in chief for the party calling him or in cross-examination by the adverse party---**OGBUNYINYA v. OKUDO**

6. **"MY LORD, WE HUMBLY APPLY TO TENDER THIS DOCUMENT IN EVIDENCE"** (show the document to the defence counsel…any objection?...yes my lord, we oppose to the admissibility of this document for the following reasons---must be on points of law)

Note that the court may reject it and mark it "TENDERED AND REJECTED." Once the document is rejected, it cannot be tendered again---**BABATOLA v. ALADEJANA.**

Note further that once tendered it cannot be withdrawn for correction of the defect and it should not be re-tendered. It is retained in the court, until an appeal or the period for appeal expires but if before tendering it, it is withdrawn by the party tendering it, then it will be allowed to be retained by that counsel. **NB:** The written statement on oath of the witness through which you want to tender a document should refer to that document. If not, the witness will be a stranger to the document---**UNION BANK PLC v ISHOLA; HARUNA v MODIBBO**

EXAMINATION OF WITNESSES, HOSTILE WITNESS, CHILDREN, EXPERTS, REFRESHING OF MEMORY ETC see your criminal litigation note—trial.

NOTABLES

Appearance of parties at trial

The parties to a case are to be present on the day of trial. However, if they are absent and represented by legal practitioners, it is deemed that they are represented as the services of the Lawyers has been engaged.

The effect of non-appearance of parties at trial

- Where **both parties** are absent, the Court may strike out the matter or adjourn the matter if it sees good reason to do so.
- If it is the **claimant** that is **absen**t and the defendant is in Court**,** the defendant may apply that the case be dismissed or strike out the action. If the defendant then has a counter claim, he may be allowed to lead evidence and proof his counter claim
- If the **defendant is absent** and the claimant is in Court, the claimant may apply that default judgment be entered for him or set down the case for hearing where he needs to prove his claim in order to be given judgment.

Comment [C140]: NB=> **A witness must not be the maker of a document before it can be tendered through him e.g. Section 53 Evidence Act:** Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves admissible.

Comment [C141]: NB=> **Certified True Copy (CTC) of a public document** can be tendered from the bar and it would be admissible in evidence. **Implication of tendering from the bar-**there will be no need to call witnesses for this.

11. CLOSING/FINAL ADDRESS AND JUDGMENT

1. EXPLAIN AND DISCUSS THE ROLE AND FUNCTIONS OF CLOSING OR FINAL ADDRESS IN A TRIAL

1. The essence is to reduce congestion, which oral arguments perpetuate in courts.
2. It presents an opportunity to the parties to logically present their arguments.
3. To urge the court to decide in favour of party addressing the court
4. It provides an opportunity for parties to present their case theory by blending it with the evidence given at trial.
5. It might assist parties to sway the mind of the court.
6. Assists the court in the just and proper determination of the case---**OBODO V OLOMU**
7. Persuades the court as to the theory of their case.
8. It is a stage where the parties try to marry the facts or issues raised to the law.
9. It provides an opportunity to resolve all questions hanging during cross-examination and stress them.
10. To assist the court in arriving at a just decision based on the evidence led and the law.

2. PRESENT A FINAL/CLOSING ADDRESS

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

SUIT NO: ……..

BETWEEN

ROYAL ESTATES LIMITED ---------- CLAIMANT

AND

CHIEF JOSEPH LAMBE ---------- DEFENDANT

DEFENDANT'S FINAL WRITTEN ADDRESS

1.0 **INTRODUCTION**

1.1 By a Writ of Summons dated 27/01/2015, the claimant commenced this action against the defendant claiming the following reliefs as contained on the Claimant's Statement of Claim dated and filed on the same day.

2.0 **BRIEF STATEMENT OF FACTS**

Comment [C142]: TWO MAJOR TYPES OF ADDRESS
1. OPENNIG ADDRESS
- Not usually used in civil litigation in Nigeria
- When used, its purpose is to assist the jury understand evidence that would be adduced at the trial.
- It is an overview of the varying evidence that would be presented.
- Useful to ventilate the theory of the case.

2. CLOSING ADDRESS
Closing address or final address is the marriage of the facts and law in order to convince the court to grant or refuse to grant certain prayers. Closing address is immediately after trial, while closing statement is before judgment. The closing address is also known as written address and closing address is also referred to as Final Address
A denial of the right of address to a party where the right exists is an infringement on the constitutional rights of the parties. Failure to hear a party vitiates the trial---S. **36(1) CFRN; NIGER CONSTRUCTION LTD V OKUGBENI.**
However, an address cannot take the place of credible evidence in a trial. Thus, in **BELOXXI & CO LTD V SOUTHTRUST BANK,** the court stated that even where the trial court **FAILS TO TAKE INTO ACCOUNT THE FINAL ADDRESS,** it does not void the decision taken in the case. No matter how brilliant a counsel's address is, it cannot take the place of legal evidence and a judgment cannot be voided on the basis of non-mention or non-consideration of counsel's address.

2.1 The agreed facts are that:

3.0 **ISSUES FOR DETERMINATION**
3.1 **Issue One**
Whether the duty of care of owed to the claimant has been breached.

4.0 **LEGAL ARGUMENTS**
4.1 My Lord, on issue one, the law is settled that as a general rule...
4.2 We therefore answer issue one in the affirmative and humbly urge this Honourable Court to so hold by resolving this issue in favour of the defendant..

5.0 **RELIEFS SOUGHT**

6.0 **CONCLUSION**
6.1 On the whole, in IBAMA v. SHELL PETROLEUM DEVELOPMENT COMPANY LTD (2005) 17 NWLR (pt. 954) 364 at 389, Oguntade JSC stated that sympathy is not always the forerunner for justice. In as much as we must sympathize with the claimants on account of their developments on the land, that sympathy cannot translate itself into law...Therefore, we urge this Honorable Court to resolve all the issues raised and argued in this case in favour of the defendant, dismiss the case of the claimant and grant the reliefs counter claimed by the defendant vide the statement of defence and counter claim to wit...

DATED THIS 22ND DAY OF MARCH, 2019

K. C. Aneke Esq.,
Defendant's Counsel,
Star Chambers,
No 5 Law School Drive,
Victoria Island Lagos.
kundycmith@gmail.com
07053531239

FOR SERVICE ON:
The Claimant,
C/o his Counsel,
Anita Lardner (Miss),
Anita & Co,
No 12 Law School Drive,
Victoria Island,
Lagos.

LIST OF AUTHORITIES
Statutes:
Cases:

NOTABLES

- Each party shall file 2 copies of his written address in court and serve copies on all parties in the action.
- Where the party beginning concludes his evidence and the other party calls evidence, that other party shall, within 21 days, file his final written address and where the other party does not call evidence, the party beginning shall within 21 days file a final written address. Whoever receives service of a final written address from the party who called evidence last, shall file his own final written address within 21 days after such service on

Comment [C143]:
A defendant will be held to have adduced evidence even though he calls no witness as long as he tenders documents in cross-examination or puts in document by consent--**AUTOMATIC TELEPHONE AND ELECTRIC CO LTD. v FMG OF NIGERIA**
Options open to a defendant in a civil trial after claimant has closed his case
1.He may decide to rely on the claimant's evidence;
2.He may make a no case submission
No Case Submission in Civil Trial
When the party beginning has concluded his case, the other shall be at liberty to state his case and to call evidence, forum up and comment thereon.
But instead of calling evidence at this stage, the other party beginning his case may indicate to the court that he does not intend to call evidence.
He may make a submission that the **claimant or the party beginning has failed to make a case for him to answer.** That other party will be entitled to address the court in reply.
Condition for a No Case Submission in Civil Proceedings
A no case submission in civil proceedings may be made;
a. . If no case has been established in law.
b. . If the evidence led by the claimant is so unsatisfactory or unreliable that the court should hold that the burden on the claimant has not been discharged.
c. . The party intending to make the no case submission **MUST ELECT** whether he will call evidence or not should the ruling on the no case submission be against him. If elects NOT TO CALL EVIDENCE he will be bound by the outcome of the ruling.
Distinction between Civil and Criminal No Case Submissions
a.In **criminal proceedings**, the court is under a duty to decide whether a case has been made out or not at the close of prosecution's case. **In civil proceedings,** the court is under no such duty.
b.If a no case submission is wrongly overruled in criminal proceedings any subsequent participation of the accused in the trial is a nullity and any fact elicited from the accused cannot be used against him. In civil proceedings, the subsequent participation of the other party will not be vitiated and any admission on his part can be used against him.
c.In criminal trials, the accused can never or should never put his election to call or not to call evidence nor can be forced to rest his case on the case of the prosecution. Even where he elects not to call evidence or elects to rest his case on the prosecution's case and his no case submission is rightly overruled; it is still his fundamental right to defend himself by calling all relevant evidence at his disposal.

him. The party who first files his final written address shall have a right of reply **on points of law** only, the reply to be filed within 7 days after service of the other party's address---**ORDER 33 RULES 13-16 LAGOS 2019; ORDER 32 RULES 14-17 ABUJA 2018**

- Parties are allowed time to adopt their written address and adumbrate on salient point. On the day set for the final address...adopt in the following words: *"My Lord, before this Honourable Court is the claimant's final address dated_____ day of_____2019 and filed on the same date. We humbly seek the leave of the court to adopt same as our final written address"*

  After leave has been granted

  "We adopt the written address dated_____ day of_____2019 and filed on the same date as the claimant's final written address"
- The parties after adoption will be allowed to canvass oral argument, and where a party is absent, he shall be deemed to have adopted it (20mins for both L and A)—**ORDER 35 RULE 5 LAGOS 2019; ORDER 33 RULE 4 ABUJA 2018**

3. EXPLAIN AND DISCUSS THE MEANING OF, CHARACTERISTICS OF GOOD JUDGMENT, TYPES OF JUDGMENT, REQUIREMENTS AND PROCEDURE FOR DELIVERY OF JUDGMENT

(a) Meaning of judgment

A judgment is defined as a reasoned decision and which is delivered to the suit. It is a binding decision which is to the rights of the parties---**OBI V. OBI.** The constitution of Nigeria did not define judgment but defined decision of the court as follows: any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation---**S. 318 CFRN**

(b) Characteristics of a Valid Judgment

- Must be in writing
- It must be written by the judge himself
- Judge is not allowed to deliver judgment and write it later.
- It is to be delivered in an open Court
- It is to be delivered within a reasonable time i.e. **within 90 days after the Final addresses---S. 294(1) CFRN**

Comment [C144]: Objections should not be raised during oral adoption.

Comment [C145]: STYLE OF WRITING A local court is at liberty to employ his own style in writing his judgment. However, whichever style the judge adopts, the judgment must reflect the fact that his views are true reflections of the evaluation of evidence adduced before him by both parties--- **ADEPETU V. STATE**

Comment [C146]: Every court established under this Constitution shall deliver its decision in writing not later than **90 days** after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within **7 days** of the delivery thereof.

- A judgment must contain a dispassionate consideration/evaluation of the issues properly raised and heard---**OJOGBUE V NNUBIA**
- Reasons must be given for the judgment. There is NO right vested in **the High Court** to give a decision and reserve the giving of reasons for its decision later---**SOL FORNAL LTD V. ELEMENE; NITT ZARIA V. DANGE.** Final courts in election matters (Court of Appeal) however can adjourn by reserving the reasons---**S. 285(8) CFRN**. Also, the Supreme Court has the power to reserve reasons for its judgment.
- A judgment must contain the name and signature of the judge, the date and seal of the court.
- It grants the claims of the parties and **not more** than was requested by the parties--**EKPENYONG V. NYONG.**
- It contains a summary of all the facts and evidence adduced by the parties
- A judgment must show a clear resolution of all the issues that arise for decision in the case
- It contains a finding of facts based on credible witnesses and their probative values
- The judgment should show clearly that the court considered the evidence at the trial.

Proper Approach to writing a Good Judgment

This was laid down in **ADEYEYE V. AJIBOYE & ORS** as follows:

1. First set out the claim or claims
2. Then the pleadings
3. The issues arising from the pleadings
4. The evaluation of evidence in proof of each issue
5. Decide on which side to believe on the preponderance of credibility of evidence.
6. Record his logical and consequential finding of fact
7. Discuss the applicable law against the background of his finding of fact.

(c) Types of judgments

1. Interlocutory Judgment: This is the judgment given during the pendency of the suit, which does not finally determine the rights of the parties, such as an order of consolidation, order of retrial, order striking out with leave to reli**st, order of non-suit**, order of interim or

Comment [C147]: The court is however; allowed to grant **Ancillary/Consequential Orders not expressly asked for but are necessary for just determination of a case**. An ancillary or consequential order or relief is one which, though not claimed, is incidental and necessary to give effect to the judgment of the court. See OBAYAGBONA v. OBAZEE (1972) 5 SC 247; NNEJI v. CHUKWU (1988) 3 NWLR 184 ---**AMAECHI V. INEC,** where the claim was whether the appellant was the lawful PDP candidate for the elections, the Supreme Court made a consequential order declaring Amaechi as the Governor of Rivers State. CT held it would be futile to declare Amaechi as the candidate of PDP without stating that since PDP won the elections, Amaechi was the Governor of Rivers State.

Comment [C148]: Witnesses must be expressly or impliedly believed, or disbelieved---**MOGAJI V ODOFIN; ADEYEYE V AJIBOYE**

Comment [C149]: **FORMAT**
a)Issues;
b)Facts and Evidence;
c)Resolution of Issues of Facts or Law or Both;
d)Conclusion

interlocutory injunction, etc. In **OMONUWA v. OSHODIN** (locus classicus), it was held that an order or decision of a court is interlocutory if:

- It does not deal with the final rights of the parties
- If it merely directs how the parties are to proceed in order to obtain the final decision
- If it does not decide the final rights of the parties.
  From the above, if the order or judgment is one which finally disposes of the rights of the parties, then it is final and not interlocutory. **However, a decision in an interlocutory application, in which the court declines jurisdiction to hear the substantive suit and consequently strikes out the matter, it will be deemed to be a final decision for the purposes of appeal as the ruling decides the final rights to sue in the case---WESTERN STEEL WORKS LTD v. IRON & STEEL WORKERS UNION**. That is, where there is an interlocutory application challenging jurisdiction, if the judgment given thereon maintains that the court lacks jurisdiction, then such a judgment is a FINAL JUDGMENT. But, if the judgment holds that the court has jurisdiction, then it is an INTERLOCUTORY JUDGMENT. **Note also that an order striking out a case with leave to relist is an interlocutory judgment, while an order striking out without leave to relist is a final judgment.**
  Where a judgment is interlocutory, leave of court must be sought before appeal can be made against it on grounds other than grounds of law. That is, an appeal against an interlocutory decision can only be with leave of the High Court or the Court of Appeal if it is not on grounds of law---**S. 242(1) CFRN**.
  The time within which to appeal against an interlocutory judgment is **within 14days of the delivery of the judgment**---**S. 25(2)(a) COURT OF APPEAL ACT**

2. Final Judgment: A final judgment is one that disposes of the rights and liabilities of the parties finally in a suit. It generally refers to a judgment whereby the court decides on the final rights of the parties, leaving nothing pending for decision. It comes at the end of the matter. At the end of the trial, the judge may either give judgment for the claimant or dismiss his case thereby giving judgment for the defendant. A final judgment has the following effect:

- After the judgment the court becomes functus officio and the judgment is binding on all the parties and the court---**GOMWALK v. OKOSA**
- It determines the number of days within which an appeal will be made.
- It is forms the basis of estoppel per rem judicatam **S. 169 EA 2011,** and also creates the irrebuttable presumption of law called estoppel by record under **S. 173 EA 2011**

We have two test determining whether or not it is final judgement:

a. The nature of the order test or the test in **BOZON V ALTRINCHAM UDC**

b. The Nature of the application test---**GILBERT V ENDEAN**- It determines whether a judgment or order is final by the nature or purpose of it

Comment [C150]:
The Distinction between Final Judgment and Interlocutory Judgment
- For final judgment, a party has to appeal against the decision **WITHIN** 3 **MONTHS** of its delivery; S. 24 Court of Appeal Act while for interlocutory judgment; a party has **14 days** to appeal against it.
- Where a court takes a decision that it does not have jurisdiction it becomes a final decision, whereas where the court finds that it has jurisdiction, it is an interlocutory decision.

Note that rulings are decisions of court made during the pendency of the suit.

3. **Consent Judgment:** A consent judgment is judgment entered pursuant to an agreement between the parties---**DANA IMPEX v. AWUKAM**. The agreement may either be made out of court; then brought for court to pronounce it as judgment; or may be entered in the **face of court** pursuant to parties' agreement adopting the terms of agreement---**WOLUCHEM V WOKOMA.**

It is binding on the parties and enforceable just like any court judgment, but a third party can apply to set it aside for **FRAUD; MUTUAL MISTAKE. For a consent judgment to be validly entered the parties must agree as to the exact t**erms of the judgment **and their consent to it must be freely and voluntarily given. It must be a result of free volition. Once the element of compulsion comes in, the element of volition goes; and the subsequent judgment can never be a consent judgment---UBN PLC v. EDAMKUE; AFOLABI v ADEKUNLE**

Where a consent judgment is to be set aside by the same court that delivered it on grounds of mistake, fraud, misrepresentation or on any other ground for which the agreement on which it was made may be set aside, the procedure for setting it aside is NOT by motion on notice**. It is by a SUBSTANTIVE ACTION commenced by Writ of summons in the same court that delivered the consent judgment----BABAJIDE v. AISA**

A consent judgment is a final judgment and appeal is not of right. It requires **leave of** Court against it either from the High Court or Court of Appeal---**S. 241(2)(c) CFRN; AFEGBAI V AG EDO STATE**.

Comment [C151]:
- The TERMS OF THE SETTLEMENT must be filed in court as adopted by the parties.
- The consent of the **DEFENDANT** is to be given by his **legal Practitioner** or agent before any consent judgment may be entered.
- Where not represented by counsel, the defendant must appear in court and give his consent in open court.

Comment [C152]: Where the parties are in court and then they agree on certain issues and the agreement is filed in court. The court then adopts and delivers it as judgment.

The other is where parties are outside the court and they agree on certain terms and conditions which is reduced into writing as Terms of Settlement and submitted to court.

The terms are adopted by the parties in the open court where it is made the judgment of court.

Comment [C153]: A non-party to the proceedings cannot be bound by the consent judgment. Non-party does not include privy and agent.

Comment [C154]: A consent judgment cannot be set aside by the court that delivered unless on grounds of mistake, fraud, misrepresentation or on any other ground for which the agreement on which it was made may be set aside.

SAMPLE OF TERMS OF SETTLEMENT

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICAL DIVISION

HOLDEN AT LAGOS

SUIT NO: _____

BETWEEN

OLABISI MUSHARAF.....CLAIMANT

AND

KAZEEM EMEKA.....DEFENDANT

TERMS OF SETTLEMENT

The parties to this suit have resolved and agreed that this case be settled in the terms set out below:

a) That the Claimant has stated his claims and the Defendant has admitted the same as set out by the Claimant.
b) That the Defendant offered to pay the sum of #500,000.00 (Five Hundred Thousand Naira) in lieu of the #1,000,000.00 (One Million Naira) claimed by the Claimant and the Claimant accepted the said payment.
c) The Defendant agreed to pay the said sum installmentally at every 3 months until the debt is paid off and the Claimant accepted the same.
d) That the Claimant agreed to forego the other claims before this honourable court provided the Defendant keeps to the terms of the agreement.

The parties have agreed that the terms be made to be the consent judgment in this case.

DATED THIS 22ND DAY OF MARCH 2019

.....	.....
OLABISI MUSHARAF	**KAZEEM EMEKA**
(CLAIMANT)	**(DEFENDANT)**
…….....…	**.....**
ARIYIBI AHMOD ESQ.	**RAJI MUBARAK ESQ.**
(CLAIMANT'S COUNSEL)	**(DEFENDANT'S COUNSEL)**

4. **Declaratory Judgment:** This is the judgment that declares the rights of parties without ordering anything to be done or awarding of damages. A declaratory judgment is not given on admission of facts or in default of appearance. **Where a party seeks a declaratory judgment, he must prove by evidence that he is entitled to the declaration and in such cases, he must succeed on the strengths of his case and not on the weakness of the defence---BELLO v. EWEKA; KANO v. MAIKAJI; EZEOKONKWO v. OKEKE**

   A declaratory judgment cannot be stayed, enforced or executed because it only declares the rights of the party seeking it. The only application against declaratory judgment is **injunction pending appeal.**

5. **Executory Judgment:** This declares the rights and duties of the parties to an action and also includes a binding order on the defendant. This judgment is the opposite of declaratory judgment in that it imposes certain orders and obligations on the party against whom it is given, and such party must comply with the order. Example is payment of damages and vacation of premises against a tenant. See **OKOYA v. SANTILLI**. Such judgment is liable to be executed by any of the known means of execution of judgment. It is executory because it can be executed or stayed. If a party did not comply with the judgment, there are certain mechanisms which the court can use to compel compliance.
6. **Default Judgment:** (already discussed as a separate topic)
7. **Summary Judgment:** (already discussed as a separate topic)
8. **Non-Suit:** Where this order is made, it means that the claimant's claim is neither allowed nor dismissed as circumstances of the case are such that the court does not think it should enter judgment against the claimant or for the defendant (the claimant can still bring an action, on same facts, against the defendant)**---ORDER 38 LAGOS 2019; YUSUFU V BARCLAYS BANK LTD**

   Note that the power of a court to enter a non-suit is not inherent in the court rather must be **expressly conferred by statute and before the court grant such non-suit---OMOREGBE v. LAWANI; IBIYEMI v. FBN PLC; KHALIL v. ODUMADE**

   Before entering an order of non-suit, the court is to call on both parties to address it on the propriety or otherwise of the non-suit---CRAIG V CRAIG

   Three factors to consider

   - The claimant has failed to prove anything
   - The defendant is not entitled to judgment

Comment [C155]: Note that in a judgment of the court, there could be declaratory judgment combined with other judgments such as damages and injunction. Note that a declaratory judgment cannot be entered in default of appearance or pleading. A party seeking the declaration still needs to prove it.

Comment [C156]:
Effect of Entering an Order of Non Suit
- It allows the claimant the opportunity to bring the same action against the defendant without the defendant being able to plead res judicata.
- It is of the same effect as an order striking out a case
- The order of non-suit is not a final decision and can be appealed against.

Comment [C157]:
When should Non Suit Be Entered?
Non-suit is appropriate where there is no satisfactory evidence enabling the court to give judgment to either of the parties. It should only be made where dismissal of the case will work hardship on the claimant and the non-suit will not result to injustice on the defendant.

- No wrong or injustice will be made against the defendant

This order of non-suit is **NOT PROVIDED IN THE ABUJA RULES**. Thus, the High Courts in Abuja cannot make an order of non-suit---**FALEYE v OTAPO; NWAKASI v. NWACHUKWU**

9. **Order of dismissal:** This is available against the claimant who has failed to prove his case by evidence. It means that the action has been heard on its merits. It also makes the court to become functus officio. An order of dismissal renders the decision appealable and order striking out is granted where the action or application has not been heard on merit. The action or application can be relisted again.
10. **Consequential Order:** it is made consequent to a substantive order; it is made to give effect to a substantive order---**AMAECHI V INEC**
11. **Judgment in rem and judgment in personam:** A judgment in rem is made to bind the whole world, and not only the parties to an action. It deals with the status of the parties. Examples are matrimonial causes and bankruptcy. In personam on the other hand is binding effect not just on the parties but also includes their privies, agents, representative, servants and other persons connected with them.

(d) Requirements and procedure for delivery of judgment

- Court must be properly constituted when reading the judgment e.g. High Court is properly constituted by one judge and it should be this judge to read the judgment.
- Judgment generally is to be delivered in open court. The proceedings of a court shall be held in public---**S. 36(3) CFRN.** However, there are exceptions:
    a. Where hearing was conducted in chambers that judgment may be delivered in chambers---**NAB LTD V BARI. ENGINEERING NIG. LTD.**
    b. Public safety
    c. Public order
    d. Public morality; and
    e. In case of minor. SEE **S. 36(4) CFRN**

    In this like, the hearing and delivery of judgment cannot be in the chambers of the judge---**NIGERIA ARAB BANK LTD V. BARRIENGNIG LTD**

- Judgment must **be delivered** in writing within a reasonable time (**NOT LATER THAN 90 DAYS)** after conclusion of evidence and final addresses.

Comment [C158]:
JUDGEMENT IN REM.
✓A judgement that is made to bind the whole world, and not only the parties to the action.
✓It deals with the status of the parties.
✓Examples are judgement on matrimonial causes, bankruptcy.
JUDGEMENT IN PERSONAM
✓A judgement that has binding effect on the parties that are before the court.
✓A person that is not made a party to such action is generally not bound by the judgement obtained there at
✓Party includes privies, representatives, agents, legal successors of the parties.

Comment [C159]:
Some Terms Commonly used in Reference to Judgments
•**LEAD JUDGMENT**: This is the judgment of the court as determined **S. 294(3) CFRN.**
•**DISSENTING JUDGMENT**: This is the judgment of a justice whose opinion differs from the majority of the justices and whose judgment is at variance with the lead judgment.
•**ALTERNATIVE JUDGMENT**: This is a judgment, which might be satisfied by doing either of several acts at the election of the party against whom the judgment is rendered.
•**PERVERSE JUDGMENT**: This is a judgment, which ignores the facts or evidence and amounts to a miscarriage of justice.
•**PER INCURIAM JUDGMENT**: This is a judgment given in ignorance or forgetfulness of some statutory provision or some authorities. Where decision of a Higher Court is given per incuriam, a lower court will still be bound to follow it---**OSSOM V. OSSOM.**

Comment [C160]:
All parties must be furnished with duly authenticated copies within seven (7) days of the delivery---**S. 294(1) CFRN.**

- The court may however reopen a case for further argument after it had reserved judgment provided it acts WITHIN THE 90 DAYS LIMIT---**IFEZUE V MBADUGHA**. Time will then begin to run from the end of the further address to the court.
- A judgment must be signed by the judge that wrote it. Failure to sign a judgment renders it void---**TSALIBAWA v. HABIBA** and once a judge has left that court, he cannot deliver a judgment in that court--**OGBU ANYINYA v. OBI OKUDO.**
- All the justices who heard an appeal must not all be present at the time of delivery of the judgment. Where one justice is absent, his opinion can be read by another justice of the court, whether or not he was present during hearing---**S. 294(2) & (4) CFRN**.
- However, non-compliance with all the above and the other requirements of section 294(1) CFRN will not render the decision a nullity as long as there is no miscarriage of justice – section 294(5) CRFN. But the judge may be reported to chairman of NJC. See section 294(6) CFRN.
- Once a judgment is delivered, it takes immediate effect unless the court order otherwise.

Amendment/correction of judgment

Once a court delivers its judgment, it becomes functus officio and it cannot alter, amend or vary the judgment. However, a judge may, at any time, correct clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission UPON APPLICATION, **without an appeal being filed.** In Lagos, the application is by motion on notice, supported by affidavit and written address. Thus, there is no need for an appeal to correct typographical errors. There is also no need for appeal to set aside a void or null judgment---**VULCAN GASES v. GFIG**

Also, the record of the court showing the place where error occurred is to be attached---**OGUNSOLA v. NICON.** Such clerical or typographical errors are corrected under the SLIP RULE.

Instances where a court can re-open its judgment to amend or vary it include:

- To correct clerical or typographical errors/mistake---**INTRA MOTORS NIG PLC v. AKINLOYE**
- To set aside a default judgment obtained in default of appearance or pleadings.
- To set aside a judgment obtained by fraud perpetrated by one of the parties--**ALAKA V. ADEKUNLE.**
- Where the judgment was entered on the mistaken belief that the parties consented to it when in fact they did not---**AGOBADE V OKONUGA**
- Where the judgment is a nullity owing to want of jurisdiction---**SKEN-CONSULT NIG LTD v. UKEY.**

Comment [C161]: The court held that a court had no jurisdiction to recall parties to further address it AFTER the 90 days limit and judgments given outside the 90 days **were void.** A retrial can be ordered on appeal---**ODI V. OSAFILE.**

Comment [C162]: A judgment may be written by one judge and delivered by another provided that the person who wrote the judgment is the person who heard the case---**AG FEDERATION v ANPP**

Comment [C163]: In OKINO v. OBANEBIRA, the Supreme Court held that under section 11 of the Court of Appeal Act, it shall not be necessary for all the justices who heard an appeal to be present together in court on the day appointed for the delivery of the judgment. It is lawful if another justice of that court reads the written opinion of any one of them who is unavailable.

Where a justice writes his judgment but dies, retires, is elevated or is howsoever not a member of that court again, his judgment can only be pronounced and not read---**AG IMO V A.G RIVERS STATE** . Therefore, in any circumstance, where a judge who didn't sit on the case delivers the judgment, it is pronouncing the judgment. Thus, if a judge states that he reads the judgment of his learned friend, Justice X, the decision is invalid. If a person is no longer a member of a court, he can no longer read a judgment in that court.

Comment [C164]: **Note that** where a judgment is challenged on grounds of fraud, the proper procedure is not to file an appeal, but to file a fresh action in which the issue of fraud is the only issue---**A.I.B V PACKOPLAST**.

Comment [C165]: Any judge can set a judgment that is a nullity aside. See SKEN-CONSULT NIG LTD v. UKEY

Days for delivery of judgment and its effect

- A judgment of a court delivered on Christmas day is not a nullity
- A judge has jurisdiction to sit on Saturday and even Sunday since they are not days designated as public holidays provided he does not compel litigants or the counsel to attend.

When can a judgment of the court be delivered?

A judgment of the court may be delivered:

- Immediately at the hearing
- It may be reserved
- The court may state the date on which judgment will be delivered

4. IDENTIFY ETHICAL ISSUES ARISING FROM CLOSING ADDRESS BY COUNSEL (Brainstorm)

- Rule 30 RPC: A lawyer is an officer of the court and accordingly, he shall not do any act or conduct himself in any matter that may obstruct, delay or adversely affect the administration of justice

Comment [C166]:
ARREST OF JUDGMENT:
The practice of arresting judgment is usually a delay tactic used by counsel when they discover that they have a bad case. At common law, this procedure was available in both civil and criminal cases and was used to stay the delivery of judgment due to some patent error or defect appearing on the face of the record which could render such judgment erroneous or a nullity if delivered.
The practice of arresting judgment is alien to the Rules of court in Nigeria as there is no provision for it and it is therefore not applicable in civil proceedings. See NEWSWATCH COMMUNICATIONS LTD v.ATTA (2006) 12 NWLR (Pt. 993) 144; SHETTIMA v. GONI (2011) 18 NWLR (Pt. 1279) 413. However, in SHETTIMA v. GONI (supra), it was held that although there is no provision for arrest of judgment in our Rules, there is an exception under which the judgment of a court may be arrested in order to prevent an abuse of court process, since every court has a duty to prevent the abuse of its process. See also DINGYADI v. INEC (No 1) (2010) 18 NWLR (Pt. 1224) 1.
Although counsel may not tag his application as one for arresting a judgment, since such procedure is alien to the Rule of Court, a proper application before the court objecting to procedure or to a defect In procedure, albeit brought at the point of delivering judgment, must be considered by the court as the court has a duty to consider all motions filed before its judgment is delivered, in order to do real justice in the case. If such a motion is considered, it would have the same effect of arresting the judgment of the court by staying the delivery of the judgment until the determination of the motion.
Although a judge has a duty to consider every application properly filed before it, no matter how worthless; where the application is a cynical attempt to taunt the court or to hamstring the court in the face of losing a bad case, it will be rejected by the courts.

12. ENFORCEMENT OF JUDGMENT AND APPLICATIONS PENDING APPEAL

1. EXPLAIN AND 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.

(a) Best methods for the enforcement and execution of judgments

A. Money judgment

There are various modes of enforcing this kind of judgment namely:

- Writ of Fieri Facias (Fi. Fa.)
- Garnishee proceedings
- Judgment debtor summons
- Writ of sequestration
- Instalmental Payment

1. Writ of Fieri Facias: The writ is **issued by the registrar** upon the application of the judgment creditor. It is also called the **writ of attachment and sale.**

Procedure---EFIMI

- **Expiration period:** 3 days from the day of judgment must expire before the judgment creditor can apply for writ of execution
- **Filling of form:** Judgment creditor shall fill the form with the Registrar for a writ of execution in **Form 3 of 1st Schedule to SCPA (**praecipe Form) or make a written application stating suit no, parties, date of judgment, nature of the process and amount of judgment.
- **Issuance of writ:** The Registrar then issues the writ of fifa **directing the sheriff or deputy sheriff to attach, seize and sell the property and goods of the judgment debtor within the division or district of the court** to satisfy the judgment debt. **The sale is usually by public auction**
- **Movable properties to be first attached:** The Sheriff is to FIRST levy execution (ATTACH AND SEIZE AT THIS POINT) on the MOVABLE PROPERTIES (goods and chattels) of the judgment debtor found within jurisdiction. The movable properties SHALL NOT BE SOLD UNTIL AFTER THE EXPIRATION OF **AT LEAST FIVE (5) DAYS FROM THE SEIZURE except** where the goods are perishable; **OR** where the judgment debtor requests so in writing.
- **Immovable properties to be attached:** If after levying execution against the moveable properties of the judgment debtor, the judgment debt is still outstanding and no other moveable properties of the judgment debtor can be found, **a writ of execution can be issued against the immovable property of the judgment debtor---**S. 44 SCPA. Leave

Comment [C167]: The method/mode of enforcing a judgment will depend on whether the judgment is a
1. Money judgment – liquidated money
2. Non-money judgment (land judgment)
3. Other judgments

Note that in any of these judgments, the trial court or the appellate court may order a stay of execution in which case, the enforcement of the judgment is stayed pending a further direction from the court.

OTHER METHODS OF ENFORCING JUDGMENTS

Where movable or immovable properties of the judgment debtor cannot be found or are insufficient to satisfy the judgment debt, the judgment creditor may commence an action against the judgment debtor under bankruptcy proceedings in the case of an individual or winding up proceedings in the case of a company.

Comment [C168]: A money judgment is one which awards a sum of money either as damages, debt, liquidated sum or even costs to the successful party called the judgment creditor. It may be enforced in any of the methods above.

The parties in favour of whom the court was given is the judgment creditor, while the adverse party is the judgment debtor. Where a judgment debtor fails to comply with the order of the court, some coercive methods must be employed to ensure due compliance with judgment.

Comment [C169]: BAR PART II APPLICATION OF PROCEEDS UPON SALE---ORDER 7 R 5 JER

- Deduct the expenditure incurred in respect of the sale
- Offset the judgment sum due to the judgment creditor.
- Any outstanding balance is given to the judgment debtor.

Comment [C170]: Any money, bank notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person can be attached. Thus, shares in a company or corporation to which the judgment debtor is entitled can be attached---S. 25(b) SCPA

However, his wearing apparel, beddings owned by him or his family, the tools and implements of trade (equipment used to work), to the tune of N10 cannot be attached---S. 25(a) SCPA

Comment [C171]: Provided that where the judgment has been obtained in a magistrate court execution **SHALL NOT ISSUE OUT OF THE MAGISTRATE'S COURT** against the immovable property but **SHALL BE ISSUED OUT OF THE HIGH COURT** upon an application that the High Court may grant leave to attach immovable property.

Thus, a magistrate court cannot grant leave to levy execution against the immoveable property of the judgment debtor.

of the High Court is however required to issue a writ of Fi Fa against immoveable property---**ORDER 4 R 16 JER**. The application for leave to issue a writ of Fi Fa against immoveable property shall be by MON+A+WA. If leave is granted by the High Court, the registrar issues the writ as in **FORM 38 in the 1st schedule to the JER**. After issuance, the IMMOVEABLE property will be attached and the writ is executed by:

a. Delivery of Notice of attachment as in **Form 41** to the judgment debtor; OR
b. Pasting **FORM 40** on the land prohibiting people, from buying such land which is intended to be attached and sold, except the court otherwise orders; OR
c. The sheriff retaining actual possession by putting some fit and proper person approved by him in the possession of the land.

The immovable property SHALL NOT BE SOLD UNTIL AFTER THE EXPIRATION OF AT **LEAST FIFTEEN (15) DAYS FROM THE DAY IT WAS SO ATTACHED,** except the judgment debtor requests otherwise in writing. Sale of the immovable property. Sale of an attached property is always by public auction and not by private contract unless the court otherwise directs. The time for the sale shall be between **7am and 8pm.**

2. Garnishee proceedings: If a judgment debtor fails to pay a judgment debt to the judgment creditor, and it is discovered that the judgment debtor has money standing to his credit in his account at a bank (a third party), the law views the money in the account as a debt owing to him from the bank and the debt can be attached by way of garnishee proceedings of the court judgment against him----**S. 83 SCPA; FILONE V OLADIPO**

In this procedure of enforcing money judgment, three parties are involved; the judgment creditor, the judgment debtor and a third party called the garnishee. The third party is a debtor of the judgment debtor and the judgment creditor then puts himself in the position of the judgment debtor to collect the debt due to the judgment debtor.

This applies to money held by banks, co-operative societies or friends. The third party is known as the garnishee, while the judgment creditor is known as the garnishor. Essentially, the arrangement is between the garnishee and the judgment creditor/garnishor. The judgment creditor must establish that:

- The garnishee is indebted to the judgment debtor in the state in which the proceedings are brought.
- The debt is due or accruing to the judgment debtor.
- It is for sums certain. Examples include:
  a. A due salary for a particular month
  b. Rent that is due; and
  c. Present debt and not a future debt.

NB: Cannot attach insurance policies, judgment pending.

Limitations of garnishee proceedings

- Applicable only if the Garnishee is indebted to the judgment debtor within jurisdiction of court where judgment was given----**S. 83 SCPA; RICHARDSON V. RICHARDSON**

Comment [C172]: Any execution against an immovable property without an order of the court renders both the attachment and subsequent sale null and void---**SALEH v. MONGUNO**

Comment [C173]: **VERY IMPORTANT FOR BAR PART II**
WHAT THE AFFIDAVIT MUST STATE
1. The steps that has already been taken to enforce the judgment against the moveable properties, and the effect.
2. The sum recovered and the sum that remains due under the judgment.
3. There are no moveable properties of the judgment debtor that can be attached, or that no sufficient one can reasonably be found to satisfy the judgment debt.
4. Evidence of proof of ownership of the property sought to be executed. The description of the property must be clearly stated. Example, the Four-storey building situate at No 1 Law School Drive, Victoria Island Lagos. **This could be ascertained by questions asked and searches at the land registry.**

Comment [C174]: **By section 16(a) SCPA, where goods and other movable properties attached under a writ of Fi.Fa are sold, the purchaser shall acquire a good title to the goods.** In the case of immovable property, by section 47 SCPA, **THE PURCHASER'S TITLE IS VOIDABLE FOR A PERIOD OF TWENTY-ONE (21) DAYS FROM THE SALE AND CAN ONLY BECOME ABSOLUTE AFTER THE EXPIRATION OF 21DAYS FROM THE DAY OF THE SALE.**
By section 50 SCPA, if within the 21days, no one applies to set aside the sale, then the sale becomes absolute and the court shall prepare and issue, to the purchaser, **a Certificate of Title signed by the Judge to the effect that the purchaser has purchased the right, title and interest of the judgment debtor in the property sold.**

- Where the garnishee is a public officer, consent of the A.G is required for garnishee proceedings against money in possession of a public officer---**S. 84(1) SCPA; ONJENWU V K.S.M.C.I.** However, money belonging to a public corporation in a commercial bank can be garnisheed without the leave of the AG.

Procedure---AHSODE

- **Application:** by MEP+A+WA praying for a GARNISHEE ORDER NISI
- **Hearing date and order nisi:** If the court is satisfied, a hearing date is fixed and it makes a garnishee order nisi as in **Form 26** requiring the garnishee to come to court to show cause why the Order nisi should not be made absolute and also notifying the garnishee that if he pays the money to the Registrar of the court within 8 days of service of the form, he shall incur no further cost.
- **Service:** The form shall be personally served on the garnishee, **at least 14 days before the hearing date**. The JD is also served (JD is entitled to appear in court on the hearing date but he cannot be heard)---**S. 83(2) SCPA**
- **Options open to the garnishee:** The garnishee should file an affidavit accepting or disputing the debt. If he accepts and pays the money into court, the proceedings terminate, but if he disputes the debt, he should file a counter-affidavit and appear before the court on the hearing date.
- **Decision of the court:** On the date fixed for hearing, if the court is convinced that garnishee is owing the judgment debtor it will make an order absolute. However, where the court is convinced that the garnishee does not owe, the application may be struck out.
- **Execution**: will be carried out against the garnishee if he fails to pay. A writ of Fi.Fa can be executed against him as if he is a normal party pursuant to section 86 SCPA.

Note

- Payment made by Garnishee is a total discharge of the debts owed to the Judgment Debtor in relation to that judgment.
- An Application for garnishee proceedings can be made even if there is a stay of execution of judgment---**PURIFICATION TECHNIQUE V A.G LAGOS STATE ; NITEL V ICC**
- Garnishee proceedings is sui generis (of its own kind) and ought to be differentiated from other modes of enforcement of judgment.

3. Judgment debtor summons: This is a procedure that is available for enforcing money judgment against a judgment debtor who has the money to pay for the judgment debt but intentionally and/or negligently refuses to pay. The judgment debtor is thus **brought to court to be examined on oath as to his means**, if found to have means and refusing to pay the debt he shall be committed to prison or liable in any other order the court might make until he pays the debt.

Comment [C175]: An affidavit as in **FORM 25** deposed to by the applicant or his legal practitioner – Order 8 r 3(1) Judgment Enforcement Rules (JER).
The affidavit is to have the following particulars:
•Name, addresses, occupation of parties
•The date the judgment was entered. ATTACH A CTC OF THE JUDGEMENT OF THE COURT
•That the judgment is still wholly unsatisfied
•That the garnishee is indebted to the judgment debtor and the amount of indebtedness.
•Garnishee is within the jurisdiction

Comment [C176]: EFFECT:
Once order nisi has been served on the bank, it cannot, without leave of the court, pay any money out of that account to a third party. **SKYE BANK PLC VCOLOMBORA.**

If the garnishee does anything with the debt contrary to the order nisi, he will be liable for contempt of court. **S. 85 SCPA, UBA LTD V EKANEM.**

THERE CAN BE NO RIGHT OF APPEAL AGAINST A GARNISHEE ORDER NISI MADE ex parte. SECTION 14 COURT OF APPEAL ACT.

Comment [C177]: to show cause to contest that he does not have any money, or money to that tune, or the money belongs to a third party who has a lien over it OR showing why a garnishee order absolute should not be made against him. **SECTION 87 SCPA**
The garnishee may apply for such third party to be made a party to the proceedings and such person is expected to come and establish the claim.

Comment [C178]: The ORDER ABSOLUTE IS A FINAL ORDER OF THE COURT **PURSUANT TO SECTION 91 SCPA** AND can only be set aside on appeal: RE: DIAMOND BANK LTD.

Procedure---AIDS EO

- **Application:** The judgment creditor shall apply to court by filing the praecipe in **Form 13 in** the 1st Schedule of SCPA for the issuance of a judgment summons---**S. 55 SCPA**
- **Issuance of summons:** The judgment summons shall be issued either in Form 14 or Form 15.
- **Date for hearing:** A date for hearing is fixed
- **Service:** The judgment debtor is **personally served---ORDER 9 RULE 5(1) JER** and between the date of service and the date fixed for hearing, **there must be not less than 5 clear days**, as the registrar may direct, having regard to the distance of the court and where the defendant resides---**ORDER 9 RULE 5(2) JER**
- **Examination:** On the date fixed for hearing, the judgment debtor will be examined on oath as to his means**.** If the judgment debtor refuses to attend court, or is about to abscond from the jurisdiction of the court in order to avoid being examined on oath, the court may issue a **warrant for his arrest and detention so that he may be brought to court---S. 58 SCPA**
- **Orders of court:** The following are the orders the court will make
  - **a.** An order committing the judgment debtor to prison for a term not exceeding 6 weeks until he pays if the court finds that he intentionally defaulted in paying--**S. 65 SCPA**
  - b. An order that the judgment debtor's property be attached and sold.
  - c. An order for payment of the money by installments.
  - **d.** An order discharging of the judgment debtor from prison—**S. 63 SCPA**

4. Writ of Sequestration: This is directed against movable and immovable properties of a judgment debtor. It may be issued

- When an order of warrant of arrest or committal to prison has been issued against a judgment debtor but he cannot be found
- Where he has been arrested and detained in custody for failing to obey the judgment of the court but despite this, he still persists in his disobedience of judgment. See **S. 82 SCPA**; **ORDER 11 R 9 JER**

The Application for Sequestration Order can only be made **TO THE HIGH COURT** in **FORM 69 JER--S. 82 SCPA**

Effect of Order of Sequestration

- The judgment debtor is deprived of the use and benefit of his properties.
- The Writ would direct two or more Commissioners (they are called Commissioner but are usually Sheriffs, Bailiffs, etc.) to seize the IMMOVEABLE property, collect rent and profits from it so that it can be used to offset the judgment debt OR to seize and detain the moveable properties of the JD until he purges himself of contempt or the court makes other contrary order.

Comment [C179]: Judgment summons should be filed in the judicial division in which the judgment debtor resides or carries on business

Comment [C180]: Note that the misconduct of the judgment debtor may also make him liable to be committed to prison. Thus, failure or refusal to honestly and sincerely disclose the matters examined on may amount to misconduct for which the judgment debtor may be committed to prison under section 66 SCPA. However, imprisonment of the judgment debtor does not extinguish his liability to pay the debt pursuant to SECTION 76 SCPA. Again, where the judgment debtor had the means to pay or comply but refused to pay or comply, he can be committed to prison for his disobedience under section 72 SCPA. **When the judgment debtor is committed to prison under a judgment summons, the judgment creditor is to pay for his sustenance to the tune of not more than 45kobo daily.** See section 78 SCPA. If he fails to pay, the judgment debtor shall be released.

Comment [C181]: Application is by MON+A+WA for the issue of the writ of sequestration in **Form 69.** See **O. 11 R 8 and 9 JER**

- It does not vest title on the Commissioners; they can only collect RENT/PROFITS to satisfy the said debt. Therefore, the order **does not entitle the Commissioners to sell.** The Commissioners are however allowed to deduct running expenses.

5. Instalmental payment: When a court makes a money judgment, it may make an order of instalmental payment The order for payment in instalments may be made suo moto by the court or upon application by the judgment debtor. In practice, once the judgment debtor files an application for instalmental payment, the Registrar suspends all execution procedures pending the determination of the application. The application is usually by Motion on Notice, supported by affidavit disclosing cogent reasons why the judgment debt should not be paid in en-bloc and a written Address. However, in **ACB v. EHIEMUA**, the SC warned that a court should not frustrate its own judgment by making an order of payment in instalments over a long period of time. See also **ACB v. ADC LTD**.

B. Non-money (land) judgment

1. Execution of judgment for Recovery of possession of land: It is usually enforced by writ of possession after 14 days of judgment. Judgments for recovery of land or delivery of possession other than an action between landlord and tenant is enforceable by **WRIT OF POSSESSION**---**ORDER 11 RULE 5 JER.** The application for writ of delivery or possession of land is made by filling and filing the appropriate form in the 1st schedule to SCPA. The writ of possession can only be issued after the expiration of 14 days from the day judgment was delivered, except otherwise ordered by the court---**ORDER 4 RULE 1(1) JER**

NB: It is possible to use writ of possession and writ of Fi Fa to levy execution. Thus, if judgment was obtained for recovery or possession of land as well as payment of money, the judgment may be enforced by a writ of possession and a writ of Fi Fa.

2. Judgment relating to delivery of goods: shall be enforced by a **WRIT OF DELIVERY** in **Form 67**. It is addressed to the sheriff requiring him to seize the goods wherever they may be found within the judicial division of the court and deliver same to the judgment creditor.

NB: If in addition to delivery of goods, the judgment is also for the payment of goods; FORM 68 that is writ of delivery with execution against immoveable property will be issued.

3. Judgment for the execution of deeds and other negotiable instruments: Applies where the court has given judgment in favour of the judgment creditor that a deed of Assignment must be executed in his favour or a negotiable instrument be endorsed in his favour and the judgment debtor defaults. A request is thereafter made to the judgment debtor to comply with the order of the court and he refuses to comply. The judgment creditor will prepare the deed or negotiable instrument for the registrar to stamp and sign and therefore it becomes valid and binding---**ORDER 11 RULE 11 JER**

Non- compliance with the orders of the court

- Where a party fails to comply with the order of the court OTHER THAN AN ORDER FOR PAYMENT OF MONEY, the court may order that he be committed to prison and detained in custody until he obeys the court order

Comment [C182]: **PAYMENT BY INSTALMENT**
- It is possible for judgment to be given and the judgment debtor is willing to pay but cannot pay the entire judgment sum as a whole.
- In such situation, he brings an application by motion on notice for the court to grant an order for him to pay instalmentally. Supported by an affidavit stating reasonable grounds for the court to grant instalmental payment.
- ORDER 35 RULE 4 LAGOS 2012; ORDER 39 RULE 4 LAGOS 2019; ORDER 39 RULE 4 ABUJA 2018. ACB ltd v DOMINICO BUILDERS CO.LTD.
- However, upon default of one instalmental payment, all the outstanding sum become payable and thus the judgment creditor can bring an application to levy execution.
- The judge however in granting the application, should not grant the instalmental payment over a long period of time so much that there is a clog in the claimant reaping the benefits of the judgment. ACB LTD V EHIEMUA.

Comment [C183]: **NOTE:** Where the judgment relates to an action between Landlord and tenant, it will be enforced by a WARRANT OF POSSESSION. It must be noted that the Writ of Possession and the Warrant of Possession are in like form.

- The judgment creditor brings an application by way of MON+A+WA asking that the judgment debtor be cited for contempt.
- The court upon grant of the order will issue Form 48 which is **notice of consequence of disobedience to order of court.**
- This notice will be served on the judgment debtor and **he has 2 days to comply with the order of the court**.
- Where he fails, the judgment creditor will apply to the registrar to issue Form 49 which is **notice to show cause why order of committal should not be made.** This is to be issued **within 2 days of issue of Form 48**.
- If he comes to court and established good reason, the court will discharge
- If he fails to appear, a warrant of arrest will be issued---**ONAGORUWA V ADE**

(b) Processes and limitations involved in the enforcement of interstate and foreign judgments

1. Inter-state: What law governs execution of judgment of superior courts outside the state where it was given? It is guaranteed by **S. 287(1)-(3) CFRN** that the decision of the Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, State High Court and other Courts established by the Constitution shall be enforceable in any part of the Federation by all authorities and persons and by all courts. The enforcement of judgment of superior courts outside the state where it was given therefore is a Federal matter and is guided by the **Sheriffs and Civil Process Act**. **Ss. 104-110 SCPA**

Procedure---AT EAR

- **APPLY FOR COJ:** Judgment Creditor applies to Registrar of the Court where the judgment was given for the issuance of a **Certificate of Judgment** containing the particulars set forth in the second schedule or as near as possible. The registrar will issue the Certificate of Judgment which he must sign and seal.
- **TAKE SAME TO THE OTHER JURISDICTION:** The Judgment creditor or his counsel takes the certificate of judgment to the Registrar of the Court of co-ordinate jurisdiction in the other State where it is to be executed**.**
- **ENTRY IN NROJ:** The Registrar of that Court will enter it in **the Nigerian Register of Judgment**.
- **AFFIDAVIT:** Judgment creditor will swear to an affidavit in support of the registered certificate of judgment before he can execute the judgment stating:
    - **a.** That the amount for which process is proposed to be issued is actually due and unpaid; or

Comment [C184]: All superior courts of Record in Nigeria have a uniform procedure for enforcing their judgments. It is governed by the Sheriff and Civil Process Act (SCPA) applicable in the whole of Nigeria and JUDGMENT ENFORCEMENT RULES. ***This is because the enforcement of judgments, the service and execution of court processes is under item 57 of the exclusive legislative list.*** Thus in all states in Nigeria, there is a uniform enforcement law which is the Sheriff and Civil Processes Act.
For the inferior courts, the states have adopted the SCPA as state laws which now apply to inferior courts. The Judgement Enforcement Rules also apply.
Applicable laws in enforcement of judgment include:
- the Sheriff and Civil Process Act
- Judgment (Enforcement) Rules, made pursuant to section 94 of SCPA.
- Rules of Court

b. That an act ordered to be done remains undone; or

c. That the person ordered to forebear from doing an act has disobeyed the order.

The judgment when **registered** is treated as the judgment of the Court of the other State. The Court will levy execution first by writ of fi fa (against the movable property) then by writ of execution

- **REPORT:** After execution, the registrar of the enforcing court **shall file a report under seal of the court** on **the outcome of the execution** notifying the registrar of the court where the judgment was given, that the judgment has been satisfied either wholly or in part. See **ELECTRICAL MECHANICAL CONSTRUCTION LTD V TOTAL NIG. & ANOR**

Comment [C185]: EFFECT OF REGISTRATION
Upon registration, that judgment acquires the status of judgment of that court; all modes of execution can be used in that court of execution.
Scope- This is applicable to both High Court and Magistrates Courts. **Note however that** one can register a judgment above the monetary jurisdiction of a Magistrate court in that Magistrate Court.

2. Intra-state judgment: This involves the execution of a judgment of a court in another judicial division or district within the same state. The court that gave the judgment is called the "Home Court" for this purpose, while the court that is to enforce the judgment is called the "Foreign Court".

Procedure

- The registrar of the home court issues the writ of execution and sends it to the registrar of the foreign court.
- A warrant in Form 11 in the 1st schedule to SCPA accompanies the process (writ of execution), requesting and authorizing execution in the foreign court.
- The registrar of the foreign court receives the process and acts on it as if it were issued in his court.
- After execution, the registrar of the foreign court pays over all monies (if any) received from the execution and reports back to the registrar of the home court on what has been taken on the process.
- The report should be as in Form 12.

See **S. 37 & 39 SCPA; ORDER 2 RULES 26(2) & 28 JER.**

3. Foreign judgments: Foreign judgments can be enforced in Nigeria through any of the following two ways:

- By an action at common law
- By reciprocity or reciprocal enforcement

(a) Common Law

Under this method of enforcing foreign judgments, the element of reciprocity is not required. Thus, such a foreign judgment may be enforced in Nigeria irrespective of whether or not the foreign court would reciprocally enforce the judgments of Nigerian Courts. This distinguishes it from the other method of enforcing foreign judgments in Nigeria

The foreign judgment creditor will commence an action in a HC in Nigeria, using the reliefs given in his foreign judgment as the cause of action. No need for lengthy trial as the foreign judgment creditor can institute an action under the summary judgment procedure i.e. OR 11 Lag, undefended list in Abuja.

Which judgments are enforceable? In **PEENOK LTD v. HOTEL PRESIDENTIAL LTD,** it was held that for the enforcement of a foreign judgment through an action at common law to be successful, the foreign judgment must satisfy the following requirements:

- The judgment must be final and conclusive
- The judgment must have been delivered by a superior court of competent jurisdiction
- The judgment must be for a definite sum of money, provided that it is not money recoverable as tax, penalty or fine; and
- 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.

Not all judgments are enforceable by this method. Any foreign judgment to which Part I of the Foreign Judgment (Reciprocal Enforcement) Act applies cannot be enforced in Nigeria through an action at common law, but can only be so enforced through registration under the Act. (Reciprocity). That is, any judgment to which reciprocal enforcement applies cannot be enforced by action at common law. See **S. 8 Foreign Judgment (Reciprocal Enforcement) Act.**

(b) Reciprocal Enforcement

This is based on the enforcement of judgments given by foreign courts in Nigeria which accord reciprocal treatment to judgments given in Nigeria. Such countries that are engaged in reciprocal enforcement with Nigeria are those to be listed in an order made by the Minister of Justice under Part I of the Foreign Judgment (Reciprocal Enforcement) Act 1961. For Nigeria, this is applicable to commonwealth countries and nations under the trusteeship of the League of Nations as accepted by the President---**S. 9 FJ(RE) ACT.** NOT ALL JUDGEMENTS ARE ENFORCED BY RECIPROCITY.

Procedure

- The foreign judgment creditor will apply (MON+A+WA) to a High Court in Nigeria **within 6 years after the judgment was given OR if there is an appeal within 6 years of the appeal, to have the judgment enforced** Section 4(1) FJ(RE) Act.
- If the High Court is satisfied by the affidavit evidence that the foreign country is one that has a reciprocal arrangement with Nigeria, or the affidavit discloses that the foreign country is one listed under Section 9 of the Act, the court may order that the foreign judgment be registered
- Upon registration, the HC will have power to deal with the judgment as if it were its own judgment, BUT CANNOT ORDER INSTALMENTAL PAYMENT---**S. 4(2) FJ (RE)ACT, GOODCHILD V ONWUKA**
- If the judgment is in foreign currency, it is registered in Nigerian currency at the prevailing exchange rate at the time the judgment was given in the foreign country.

Setting aside the registration of a foreign judgment

Comment [C186]:
Conditions to register the foreign judgment--- RES FC
- **Reciprocity:** The Minister of Justice may advise against the registration if it is satisfied that the foreign country will not reciprocate.
- **Enforceability:** A foreign judgment shall not be registered, if at the time of application it is not capable of being enforced in the country of origin.
- **Superior court:** the foreign judgment must be of a superior court in that country, that is High Court status or above. See section 3(1) Foreign Judgment (Reciprocal Enforcement) Act.
- **Final and conclusive:** The judgment must be final and conclusive, though there may be a pending appeal in the country of origin.
- **Certain sum:** The judgment sum must be fixed and certain and not taxes, fines, penalties or any other charges---**S. 3(2) FJ (RE) ACT.**

Where a judgment creditor applies that the judgment be registered in the HC, a judgment debtor can apply by way of PETITION to have the registration set aside if he can establish any of the facts grounds. If application to set aside is refused, the judgment creditor may proceed to levy execution using any of the methods for enforcement. If granted, the registration will be set aside---**S. 6 FJ (RE) ACT; IFC v. DSNL OFFSHORE LTD**

Comment [C187]: ❖NO RECIPROCITY
❖LACK OF REASONABLE NOTICE
❖NO JURISDICTION OF FOREIGN COURT
❖PUBLIC POLICY
❖FRAUD
❖APPLICANTS HAS NO RIGHT TO JUDGMENT
❖RES JUDICATA

4. Enforcement of Nigerian judgment abroad: Only the judgment of the HC and other superior courts of record in Nigeria can be enforced in foreign country. There must be reciprocal arrangement on enforcement between the foreign country and Nigeria. Judgment must be for payment of a fixed sum of money and not levies, fines, taxes or penalties. Apply by MON+A+WA to the HC for CTC of the Nigerian Judgment and Certificate of Judgment. Look for a foreign lawyer to enforce the judgment in compliance with the procedure in the foreign country.

NOTABLES

Once a judgment is delivered, it takes immediate effect. It becomes operative and it remains in force and valid in so far as it has not been appealed against or set aside.

What time should the judgment creditor apply to court to enforce a judgment?

- After expiration of the specified period of time given by court.
- If judgment is given in respect of recovery of debt, what time will judgment be executed? This depends, as the court can give a time within which the judgment should be complied with. Thus, the judgment creditor cannot bring an application to levy execution of the judgment before the expiration of the time stated. CONSEQUENCE: The implication is that the enforcement is null and void. Secondly, the judgment debtor can sue the judgment creditor for damages.
- However, where the judgment is to be executed by writ of possession of land, where the judge does not stipulate a date, the judgment debtor is given **14 DAYS from the date of judgment to comply before execution---ORDER 4 RULE 1(1) JER.**
- For other processes of execution it will be 3 DAYS after judgment was given. OR 4 R 1(2) JER
- In accordance with **ORDER 4 R 8(1) JER**, a process for execution of a judgment **against the person of the judgment debtor must be executed within two (2) years from the day judgment is delivered, whereas a process for execution of a judgment which is not against the person of the judgment debtor must be executed within six (6) years from the day judgment is delivered. After the specified** periods of two and six years respectively, no process shall be issued without leave of court pursuant to **ORDER 4 R 8(2)JER**
- **The life of a writ of execution is one (1) year---ORDER 4 RULE 10 JER**. However, the time for the execution of the writ can be extended by an application by way of MON+A+WA
- Execution shall be between **6am and 6pm from Monday to Saturday.** No execution shall take place on Sunday or public holiday, unless the judge directs otherwise by order endorsed on the process to be executed.

2. DRAFT NECESSARY PROCESSES FOR ENFORCEMENT OF JUDGMENT, INCLUDING GARNISHEE PROCEEDINGS

BETWEEN

XYZ…….JUDGEMENT CREDITOR/GARNISHOR/APPLICANT

AND

BOLANLE DABIRI…….JUDGEMENT DEBTOR/RESPONDENT

AND

GUARANTEE TRUST BANK PLC……GARNISHEE/RESPONDENT

PRAYER

"A GARNISHEE ORDER NISI of this Honourable Court attaching the sum of N20,000,000 (Twenty Million Naira) in the Judgment Debtor's current account No: 888555577774 with the garnishee, in satisfaction of the judgment given by Honouable Justice ABC in suit no: LS/333/2015 on the 30th day of March 2019"

3. EXPLAIN AND DISCUSS VARIOUS FORMS, PURPOSE, PRINCIPLES, SCOPE AND PROCEDURE OF APPLICATIONS PENDING APPEAL

Applications pending appeal are applications made when judgment is given to prevent the judgment creditor from levying execution because an appeal simpliciter does not operate as an automatic stay of execution or proceeding---**S. 17 OF COURT OF APPEAL ACT; EMIR OF KANO V. AGUNDI.**

Where an interlocutory judgment or ruling or a final judgment is delivered, the person against whom such judgment is made may need to appeal against the judgment or ruling. Since an appeal does not operate as an automatic stay, he may need to apply for further action to be stayed pending the determination of the appeal.

In which court can applications pending appeals be made?

- The trial court in the first instance
- If refused the application will be made to the court of appeal. SEE **OJOSIPE V. IKALABA**

Where the application is refused at the trial court, an application should be brought **within 15 days of refusal of the application at the trial court at the COURT OF APPEAL**. The application to the court of appeal must be accompanied by

- CTC of the notice of appeal against the ruling or judgment,
- CTC of the judgment or the ruling against which the appeal is lodged and
- the ruling of the High Court refusing the application

Comment [C188]: DRAFT A MEP
a)a garnishee order is an order in personam and not an order in rem. It binds the debt in the hands of the garnishee
b)by section 83 SCPA, the garnishee must be within the State. That is, it must be within the jurisdiction of the court. A court can only make a garnishee order if the garnishee is within jurisdiction. Thus, to commence garnishee proceedings, you must go to a court where the garnishee can be a defendant. THUS, IT NEED NOT BE THE COURT THAT GAVE JUDGEMENT, THAT A GARNISHEE PROCEEDINGS CAN BE INSTITUTED.

Comment [C189]:
Generally, application pending appeal is made for any of the following reasons:
- The preservation of the res (subject matter) pending the determination of appeal.
- Not to irreversibly alter or change the character of the subject matter before appeal is determined.
- The successful party at the end of the case will not have an empty judgment and the appeal is not rendered nugatory
- Status quo ante will be maintained pending determination of appeal.

NB: The application cannot be brought at first instance to the court of appeal unless there are special circumstances existing which make it impracticable to apply first to lower court---**BASHORUN V CHIEF OF ARMY STAFF**

NB: Before an application pending appeal can be brought in court, the condition precedent is that a valid appeal must be pending---**INTER CONTRACTORS V UAC**.

NB: The High Court's jurisdiction to entertain the applications pending appeal is limited to anytime after the notice of appeal is filed before it or leave to appeal has been granted. However, once an appeal has been entered at the Court of Appeal, the HC does not have jurisdiction anymore and thus the application pending appeal will be brought at the Court of Appeal. Thus, when the Court of Appeal has become seised of the matter, that is, when the appeal has been entered, the application can only be made to the Court of Appeal as the High Court becomes divested of the matter upon the entry of appeal---**OGUNREMI V DADA, COKER V ADEYEMO**

Comment [d190]: That is where the records of the trial court have been transferred to the Court of Appeal. Where the appeal court has given an appeal number.

Comment [d191]: Where the application is refused by the Court of Appeal, then the applicant can appeal against such refusal to the Supreme Court.

The three applications pending appeal which he can use to achieve this purpose are:

a. Stay of execution
b. Stay of proceeding
c. Injunction pending appeal

(a) Stay of execution: Once judgment of the court has been delivered, a successful party is entitled to the fruit and benefits of the judgment notwithstanding that an appeal has been lodged. However, the other party can apply for stay of execution of that judgment pending the determination of an appeal against the judgment. An order of stay of execution pending the determination of an appeal prevents the judgment creditor from enforcing or executing the judgment pending the determination of the appeal.

Comment [C192]: An appeal simpliciter does not operate as an automatic stay of execution or proceeding---**LIJADU V LIJADU.**

Generally, application for stay of execution is made for any of the following reasons:

- The preservation of the res (subject matter) pending the determination of appeal
- So that the character of subject matter is not changed or altered.
- To maintain the status quo pending the determination of the appeal
- So that the judgment on appeal may not be nugatory and so that a party who succeeds on appeal do not have an empty judgment.

NB: The application for stay of execution is only appropriate where there is an executory judgment. Thus, where the court merely declines jurisdiction in a matter or gives a purely declaratory judgment, application for stay of execution is inappropriate. Thus, it is not granted in respect of purely declaratory judgments or orders---**YARO v. AREWA CONSTRUCTIONS LTD; AKIBU v. ODUNTAN**. Where it is a purely declaratory order or judgment, the proper application should be an application for an order of injunction pending appeal.

Also, it is not granted in favour of a person adjudged or declared to be trespasser---**AJOMALE v. YADUAT** or a person who is in contempt of an order of court in respect of the proceedings.

Power of court to grant stay

- The courts have inherent and statutory power to grant stay of execution of its judgment--**KIGO (NG) LTD V HOLMAN BROS (NIG) LTD**
- Application for stay can be granted either conditionally or unconditionally--**VASWANI TRADING CO V SAVALAKH& CO**
- Power of the court to grant stay is discretionary---**OKAFOR V NNAIFE**. The discretion must be exercised judicially and judiciously considering the interests of the parties.

Procedure

MON+A+WA

Documents to accompany the affidavit

- CTC of the judgment or ruling appealed against
- CTC of the notice of valid appeal and grounds of appeal.
- Where the application has been refused by a lower court, a copy of the ruling refusing the application.

Application is first made to the High Court except special circumstance makes it impossible, or appeal as been entered at the court of appeal. If application is refused at lower court, another can be made to CA within 15 days after date of refusal---**OJOSIPE V IKALABA**

Conditions for grant

- There must be a valid appeal against the judgment sought to be stayed.
- Special, exceptional and substantial circumstances to warrant stay---**VASWANI TRADING CO V SAVALKH**
- Grounds of appeal must raise substantial issues of law or recondite point of law---**AKANWA V IKEDIFE**

Factors to be considered---PMB CAR

- **PAYMENT ABILITY:** If judgment is for money and costs, whether the judgment debtor/respondent can pay if appeal succeeds.
- **MEANS OF PROSECUTING APPEAL:** Poverty is not a ground for grant of stay except where the applicant will be deprived of means of prosecuting his appeal.
- **BALANCE OF CONVENIENCE:** Court will consider the balance of convenience and competing rights of the parties---**UNION BANK NIG. V ODUSOTE BOOKSTORE**
- **CHANCES OF APPLICANT SUCCEEDING ON APPEAL.** Where the appeal is frivolous, the stay will not be granted.
- **ALTERATION/DESTRUCTION POSSIBILITY:** Whether the subject matter of the proceedings will be destroyed or altered.
- **REAPING OF BENEFITS:** Whether the applicant will be able to reap the benefits of the judgment if appeal succeeds.

Comment [d193]: When being filed at the COURT OF APPEAL

Comment [C194]: Note that where an application for an order of stay of execution is made in the trial court and it was struck out, another order cannot be made again in the same court. Thus generally, only subsequent applications are made at the appellate court (Court of Appeal). Order 6 r 3 Court of Appeal Rules 2016 within 15 days of such refusal.

Comment [C195]: May be referred to as further conditions as stated in the Supreme Court case of MARTINS V NICANNAR FOODS CO LTD

Comment [C196]: If he will not be able to handle his appeal.

Terms upon which the application may be granted

- It may be granted unconditionally
- It make be granted on the condition that the judgment debtor furnishes a bank guarantee
- It may be granted on the condition that the judgment debtor deposits his title documents to any properties.

Options open to an unsuccessful applicant

- He may appeal against the order refusing the application.
- He may make same application he made at the trial court to the Court of Appeal
- Where the complaint is that the application granted is too onerous, the applicant may apply for variation of the terms of the grant made by the trial or lower court. This application is made to the **appellate** court other than the court that granted the stay of execution.

NB: APPLICATION FOR SOE SHALL BE REGARDED AS AN URGENT MATTER IN BOTH LAGOS AND ABUJA BUT SHALL BE HEARD WITHIN 28 DAYS FROM THE DATE OF FILING THE NOTICE OF APPEAL (IN ABUJA---NO TIME STIPULATED IN LAGOS)---ORDER 61 RULE 3(1) ABUJA 2018

(b) Stay of proceedings: An order of stay of proceeding is always interlocutory as it stays the substantive proceeding in the lower court pending the determination of an appeal against a ruling of the court. That is, an order of stay of proceedings is made to suspend further proceedings in the suit pending the determination of an interlocutory appeal against an interlocutory ruling---**ORDER 58 RULE 1 LAGOS 2019; ORDER 61 RULE 1 ABUJA 2018**

Comment [C197]: MUST EVERY INTERLOCUTORY DECISION BE APPEALED AGAISNT?
Where the interlocutory order will not finally dispose of the case or affect the entire proceedings, no need to appeal or apply for stay of proceedings---**NNPC V ODIDERE ENT. (NIG)LTD, AROJEYE V UBA.**

It presupposes that an interlocutory order/ruling is made during the pendency of the action. It is applied for to suspend further proceedings in the substantive suit pending the determination of appeal against an interlocutory order/ruling. It is needed to preserve the res in pending suit and not render the appeal nugatory. Any of the parties that is dissatisfied with the ruling of the court can apply for stay of proceedings.

The power of the court to grant stay is inherent and statutory. The power of the court to stay is discretionary and must be exercised judicially and judiciously.

NB: ANY OF THE PARTIES CAN APPLY

NB: APPLICATION FOR SOP SHALL BE REGARDED AS AN URGENT MATTER IN BOTH LAGOS AND ABUJA BUT SHALL BE HEARD WITHIN 28 DAYS FROM THE DATE OF FILING THE NOTICE OF APPEAL (IN ABUJA---NO TIME STIPULATED IN LAGOS)---ORDER 61 RULE 3(1) ABUJA 2018

Procedure

MON+A+WA

Comment [C198]:
- That the appeal will dispose of the proceedings
- That the res will not be preserved
- That greater hardship will be caused by a refusal
- That the judgment of the appellate court will be nugatory if stay is not granted.

Conditions

- There must be notice of appeal filed at the trial court but have the heading of the appellate court.
- The grounds of appeal must be arguable---**S.G.B NIG LTD V. I.F.I LTD**
- There must be a valid pending appeal which is likely to succeed---**OLAWUNMI V MOHAMMED, SGB NIG LTD V I.F.I. LTD,** made within 14 days of delivery of the ruling.
- A valid cause of action in exists in the substantive suit which is the subject matter of the motion for stay.
- There must be in existence special and exceptional circumstances. Example: challenge the jurisdiction of the court---**EZE V OKOLONJI**.
- Whether the continuation of the action will be oppressive or vexatious to the applicant or would constitute an abuse of court process.
- The conduct of the parties and circumstances surrounding the case---**AKILU V FAWEHINMI**

In making a first application to Court of Appeal under special circumstances or second application, the following is the procedural requirement:

- Motion on Notice
- Affidavit stating the grounds (no written address at the Court of Appeal)
- A certified true copy of the notice of appeal.
- A CTC of ruling appealed against
- A CTC of the ruling of the lower court on first application (if a second application). Copy of ruling refusing stay in court below
- CTC of Application and affidavit filed at lower court which was refused
- Other relevant documents like pleadings, record of proceedings, writ of summons, documents.

NB: A person who is not a party to a case cannot apply for a stay of proceedings---**LIYANGE V SANI.** Thus, where the court grants an interlocutory judgment, it is the party against whom the judgment was given that appeals on it.

NB: An order for stay of proceeding is during the pendency of the suit while an order for stay of execution is after the final judgment of the court. Where it is a final judgment, then an application for stay of execution or injunction pending appeal should be brought depending on the kind of judgment. An application or order of stay of proceedings is always interlocutory.

An order for stay of execution or proceedings is discretionary as a court may make or refuse the order. This discretion must be exercised judicially and judiciously. Further, a stay of execution or proceedings could be made conditional or unconditional.

Application for stay of execution or proceedings is regarded as an urgent matter.

(c) Injunction Pending Appeal: An application for an injunction pending appeal can arise in the following circumstances:

Comment [C199]: These principles guiding the grant or refusal of stay of proceedings were stated in **NNPC v. ODIDERE ENTERPRISES NIG LTD**

Comment [C200]: NOTE THAT IN LAGOS, RECORDS OF APPEAL SHALL BE COMPILED BY THE APPLICANT **WITHIN 90 DAYS FROM THE DATE OF FILING OF NOTICE OF APPEAL**---**ORDER 59 RULE 2 LAGOS 2019**

IN ABUJA, THE APPLICANT SHALL PAY FOR COMPILATION OF THE RECORDS OF APPEAL WITHIN **14 DAYS FROM THE DATE OF FILING NOTICE OF APPEAL**---**ORDER 61 RULE 2 ABUJA 2018**

Comment [C201]: Special circumstances can include a strike action in the lower court or a statement by the justice of the lower court stating that the Counsel should not bring any application for stay of proceeding.

Comment [C202]: Not all times, depending on if appeal had been filed at the trial court. it was in held in ANAH v. ANAH (2008) 9 NWLR (Pt. 1091) 75 that an applicant applying for stay of proceeding must, in addition to the other documents mentioned above, annex the application and supporting affidavit which he filed at the High Court and which was refused to enable the court of appeal to know the reasons and facts why the HIGH COURT rejected the application in the first instance.

- An order of stay of execution can only be made in respect of an executory judgment or ruling. Thus, where the judgment is purely declaratory and has no executory orders to be stayed, the unsuccessful party may apply for an order of injunction pending the determination of the appeal.
- Where a claimant's action was dismissed (that is, he lost at trial court), he cannot apply for stay of execution or stay of proceedings. He can only apply for an injunction pending appeal. Thus, where the claimant's case is dismissed and the defendant has being trying to take steps in relation to the subject matter which may render the judgment of an appeal nugatory, the claimant can apply for an order of injunction pending appeal to preserve the res and maintain the status quo since there is no executory order that can be stayed---**SHODEINDE v. REGISTERED TRUSTEES OF AHMADIYA MOVEMENT OF ISLAM; ODUTOLA &ANOR V FBN**
- Also where an application for interlocutory injunction was refused. An unsuccessful applicant can apply for injunction pending appeal on the interlocutory ruling to restrain the respondent from acting on the order of refusal pending the determination of an appeal against the ruling---**ODUTOLA v. FBN; OKOYA v. SANTILI.**
- **An interlocutory order declining jurisdiction is a final judgment.** Thus, in an appeal against such decision, the proper application pending appeal is application for injunction pending appeal.

Comment [v203]: Query.

NB: Unlike application for stay of execution and stay of proceedings, application for injunction can be made to the court of appeal directly even though such an application had not been first made to the trial court BUT MAKE IT AT THE TRIAL COURT AND IF REFUSED, BRING IT BEFORE THE COURT OF APPEAL WITHIN 15 DAYS OF REFUSAL---**MIL ADMIN DELTA STATE V OLU OF WARRI.**

Procedure

MON+A+WA. NB: The power to grant an injunction pending appeal is discretionary and such discretionary power must be exercised judicially and judiciously.

Compare and contrast stay of execution, stay of proceedings and injunction pending appeal

Similarities

- All processes are used to protect the res, maintain status quo and not render appeal nugatory
- Applications are by motion on notice, affidavit and written address.
- There must be a valid notice of appeal filed for all processes.
- Stay of Execution and injunction pending appeal are brought after judgment of the trial court.

Differences

- Both stay of execution and injunction pending appeal are post judgment whereas stay of proceedings is during trial before judgment.
- Injunction pending appeal is granted on declaratory orders, stay of execution is granted on executory judgment.

- Application for injunction pending appeal can be made in the first instance to the court of appeal whereas stay of execution and stay of proceedings must first be made to the lower court before the Court of Appeal.

4. DRAFT APPLICATIONS FOR STAY OF EXECUTION, STAY OF PROCEEDINGS AND INJUNCTIONS PENDING APPEAL

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

SUIT NO:

BETWEEN

ABC ----------CLAIMANT/JUDGMENT CREDITOR/RESPONDENT

AND

AKINOLA WAHAB----------DEFENDANT/JUDFMENT DEBTOR/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER RULE OF THE HIGH COURT OF LAGOS (CIVIL PROCEDURE) 2019 AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

"OR"

BROUGHT PURSUANT TO ORDER 6 RULE 4 OF THE COURT OF APPEAL RULES, 2016 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honorable Court shall be moved on the ….day of ….2019 in the hour of 9'o clock in the forenoon or so soon thereafter as counsel to the defendant/applicant shall be heard praying this Honourable court for the following order(s):

1) AN ORDER FOR STAY OF EXECUTION of the judgment of this Honourable Court in Suit no LD/0558/13 delivered by Honourable Justice XYZ on the _____ day of _____, 2015 pending the hearing and determination of the appeal of the Defendant/Applicant filed on the 10th day of March, 2019 at the Registry of this Honourable court, against it at the Court of Appeal, Lagos Division.
2) AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Dated this _____ day of _____, _____

_____
K. C Aneke, Esq
Defendant/applicant Counsel
K.C & Co Chambers
No 5 Law School Drive
Victoria Island
Lagos
Kundycmith@gmail.com
0705353129

ON NOTICE TO:
The Claimant/Respondent
C/o his Counsel
B. E. Ayogu, Esq
B.E. Ayogu & Co.
No 10 Law School Drive
Victoria Island
Lagos

Comment [C204]: *(NB: where it is made to court of appeal at first instance for special circumstances. But where it is made to the court of appeal after refusal by High Court, it is order 6 r 3 of CA Rules 2016)*

Comment [C205]: FOR SOP
AN ORDER FOR STAY OF PROCEEDINGS in Suit numbered LD/0558/13 pending before Honourable Justice XYZ of the High Court of Lagos pending the hearing and determination of the appeal numbered CA/0274/0558 already filed by defendant/applicant at the Court of Appeal, Lagos division.

Comment [C206]:
AN ORDER of this Honourable Court granting injunction restraining the respondent from acting on the judgment of the High Court of Lagos state delivered by Honorable Justice Ayo Suleiman on 12th September 2012, Lagos pending the hearing and determination of the appeal numbered CA/0274/0558 already filed by defendant/applicant at the Court of Appeal, Lagos division

(b) Injunction pending appeal before the High Court

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

SUIT NO:

BETWEEN

ABC ----------CLAIMANT/RESPONDENT

AND

AKINOLA WAHAB ----------DEFENDANT/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT ORDER__RULE__OF THE HIGH COURT OF LAGOS (CIVIL PROCEDURE) 2019 AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honorable Court shall be moved on the ….day of ….2019 in the hour of 9'o clock in the forenoon or so soon thereafter as counsel to the defendant/applicant shall be heard praying this Honourable court for the following order(s):

1) AN ORDER of this Honourable Court granting injunction restraining the defendant/respondent, his privies, assigns and agents from acting on the judgment of the High Court of Lagos state delivered by Honorable Justice Ayo Suleiman on 12th September 2019, Lagos pending the hearing and determination of the appeal numbered CA/0274/0558 already filed by defendant/applicant at the Court of Appeal, Lagos division
2) AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Dated this _____ day of _____,2019

_____
K. C Aneke, Esq
Defendant/applicant Counsel
K.C & Co Chambers
No 5 Law School Drive
Victoria Island
Lagos
Kundycmith@gmail.com
07053531239

ON NOTICE TO:
The Claimant/Respondent
C/o his Counsel
B. E. Ayogu, Esq
B.E. Ayogu & Co.
No 10 Law School Drive
Victoria Island
Lagos

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1.____number of days must expire from the day of judgment before the judgment creditor can apply for writ of execution.

A. 2

B. 3

C. 5

D. 7

2. Upon an application for a writ of execution, movable goods attached shall not be sold until after the expiration of at least____days from the date of seizure.

A. 2

B. 3

C. 5

D. 7

3. The following statements are true except____

A. A Magistrate court cannot grant a leave for execution to be levied against the immovable property of the judgment debtor

B. A High court can grant leave for execution to be levied against the immovable property of the judgment debtor

C. A Magistrate court can grant leave for execution to be levied against the immovable property of the judgment debtor

D. All of the above

4. Where an immovable property is attached pursuant to the leave of court, such shall not be sold until after the expiration of at least____days from the day it was so attached.

A. 3

B. 5

C. 15

D. 7

5. The time for the sale as in 4 above shall be between___

A. 5am-8pm

B. 8am-6pm

C. 6am-6pm

D. 7am-8pm

6. The sale as in 4 above shall not confer a valid title on the purchaser until after the expiration of____days from the day of the sale.

A. 7

B. 14

C. 21

D. 28

7. Application for the issuance of a writ of execution is as in Form___

A. 3

B. 4

C. 1

D. 2

8. After leave of the High court is granted for the attachment of the immovable property of the judgment debtor, the registrar issues Form___

A. 38

B. 39

C. 40

D. 41

9. Notice of attachment of the immovable property of a judgment debtor is as in Form___

A. 38

B. 39

C. 40

D. 41

10. The form used to prohibit persons from otherwise dealing with an attached immovable property of a judgment debtor is as in Form___

A. 38

B. 39

C. 40

D. 41

11. Where the garnishee is a public officer, the consent of the____is required.

A. Federal High Court

B. Attorney General

C. Governor

D. Permanent Secretary

12. A garnishee order nisi requires the garnishee to come to court to show cause why the order should not be made absolute, and also notifies the garnishee that if he pays the money to the registrar of the court within___days of service of the form, he shall incur no further cost.

A. 7

B. 8

C. 9

D. 10

13. The hearing date when fixed and an order nisi made, as in 12 above, same shall be personally served on the garnishee at least___days before the hearing date.

A. 7

B. 14

C. 21

D. 28

14. The following statements but one are true

A. An application for garnishee proceedings cannot be made where there is a stay of execution

B. An application for garnishee proceedings can be made where there is a stay of execution

C. Garnishee proceedings are sui generis and ought to be differentiated from other modes of enforcement of judgment

D. Payment made by garnishee is a total discharge of the debts owed to the judgment debtor in relation to that judgment.

15. The procedure for enforcing money judgment against a judgment debtor that has intentionally/negligently refused to pay and he is thus brought to court for examination on oath as to his means is___

A. Judgment debtor summons

B. Public issuance summons

C. Writ of sequestration

D. Writ of FiFa

16. Where the judgment debtor as in 15 above is personally served, between the date of service and the date fixed for hearing, there must be not less than___

A. 10 days

B. 5 clear days

C. 10 clear days

D. 5 days

17. An application for sequestration order can be made to only___

A. High court of the FCT

B. Federal High Court

C. State High Court

D. All of the above

18. A writ of sequestration is directed to persons known as___

A. Commissioners

B. Registrars

C. Sheriffs

D. Clerks

19. Sale of the judgment debtor property is achievable in all but one of the following methods of enforcing judgment.

A. Writ of FiFa

B. Writ of sequestration

C. All of the above

D. None of the above

20. Judgment for recovery of possession of land is usually enforced by___after__days of judgment.

A. Writ of possession/7

B. Warrant of possession/14

C. Writ of possession/14

D. Warrant of possession/7

21. Judgment for recovery of possession as it relates to action between landlord and tenant will be enforced by___

A. Writ of possession

B. Warrant of possession

C. Writ of FiFa

D. Writ of sequestration

22. All these but one are ways of executing money judgments.

A. Writ of FiFa

B. Writ of delivery

C. Writ of sequestration

D. Garnishee proceedings

23. For a foreign judgment to be enforced in Nigeria under the reciprocity procedure, the foreign judgment creditor will apply by way of MON+A+WA to a High court in Nigeria within__after the judgment was given/of the appeal.

A. 6 days

B. 6 weeks

C. 6 months

D. 6 years

24. All these but one are true about the procedure in 23 above

A. The High court in Nigeria can order instalmental payment

B. The foreign judgment must be registered in Nigeria

C. The foreign judgment must be for a certain sum

D. The foreign judgment must be by a superior court

25. Where a judgment creditor applies that judgment be registered in Nigeria, a judgment debtor can apply by way of___to have the registration set aside.

A. Originating summons

B. MON+A+WA

C. Petition

D. Originating motion

26. A process for execution of a judgment against the person of the judgment debtor must be executed within____from the day of delivery of judgment, whereas a process for execution of a judgment not against the person of the judgment debtor must be executed within___from the day of delivery of judgment.

A. 2 years/6 years

B. 6 days/2 days

C. 6 days/6 days

D. 2 years/2 years

27. The life span of a writ of execution is___

A. 1 year

B. 2 years

C. 12 months

D. 6 months

28. Execution of writ of execution shall be between___

A. 5am-8pm (Mon-Fri)

B. 6am-6pm (Mon-Sat)

C. 8am-6pm (Mon-Fri)

D. 6am-5pm (Mon-Sun)

29. Which of the following applications pending appeal can be made directly at first instance to the Court of Appeal?

A. Application for stay of execution

B. Application for stay of proceedings

C. Application for injunction pending appeal

D. All of the above

30. Application for stay of execution/proceedings shall be regarded as an urgent matter in L & A and shall in Abuja be heard within___days from the date of filing of the Notice of Appeal.

A. 14

B. 28

C. 90

D. 15

31. NO QUESTION

32. NO QUESTION

33. Where the judgment of the court is purely declaratory, the proper application pending appeal is___

A. Stay of execution

B. Stay of proceedings

C. Injunction pending appeal

D. All of the above

34. Where an application pending appeal is refused at the trial court, same application should be brought to the Court of Appeal within___ days of refusal if such application at the trial court.

A. 14

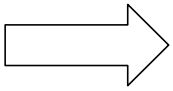
B. 15

C. 28

D. 30

ANSWERS

1. **B**
2. **C**
3. **C**
4. **C**
5. **D**
6. **C**
7. **A**
8. **A**
9. **D**
10. **C**
11. **B**
12. **B**
13. **B**
14. **A**
15. **A**
16. **B**
17. **D**
18. **A**
19. **B**
20. **C**
21. **B**
22. **B**
23. **D**
24. **A**
25. **C**
26. **A**
27. **A**
28. **B**
29. **C**
30. **B**
31. **BONUS**
32. **BONUS**
33. **C**
34. **B**



13. CIVIL APPEALS

1. EXPLAIN AND DISCUSS THE SCOPE OF RIGHT OF APPEAL AND PROCEDURE FOR APPEAL

(a) Scope of right of appeal

For a party to appeal against the decision of a Court he must have a right of appeal.

Who has a right of appeal?---S. 243(a) CFRN

- **Parties to an action in the lower court** (these are those whose names appear on the Court processes on a matter). Thus, either the claimant or defendant may exercise a right of appeal but the party appealing must have been aggrieved by the decision---**AWOJOB v. OGBEMUDIA**
- **Interested parties:** A person interested in the judgment can appeal with the leave of Court. Either he applies to the trial Court or the appellate Court. The Court must be satisfied that the interest is definite and pertains to them directly (not a general interest to the public: to prevent meddling interlopers). Thus, for an applicant to appeal as a person having an interest in a matter, he must show not only that he is a person interested but also that the order made prejudicially affects his interest---**OWENA BANK v. N.S.E**

NOTABLES

WHEN SEEKING THE LEAVE OF AN APPELLATE COURT, THE GENERAL RULE IS THAT YOU FILE THE APPLICATION AT THE COURT THAT GAVE THE DECISION **IF YOU ARE STILL WITHIN TIME** AND IF THE COURT GRANTS YOU LEAVE, THEN FILE A NOTICE OF APPEAL AT THE COURT THAT GAVE THE DECISION WHICH IS APPEALED AGAINST. THIS IS BECAUSE IT PREPARES THE RECORD OF PROCEEDINGS FOR APPEAL---**OBI V. INEC**

HOWEVER, WHERE THE COURT THAT GAVE THE DECISION REFUSES TO GRANT YOU LEAVE TO APPEAL, YOU THEN FILE A FRESH APPLICATION **(a similar application made to the Court of Appeal within fifteen (15) days of such refusal)** AT THE APPEALLATE COURT WITH THE FOLLOWING DOCUMENTS:

- **Notice of motion as in Form 5** (WHICH MUST SHOW ON THE FACE OF IT, GROUNDS FOR BRINGING THE APPLICATION)
- **Affidavit in support** (WHICH MUST SHOW GOOD AND SUBSTANTIAL REASONS for the leave to be granted)
- **CTC of judgment of the lower court**
- **CTC of the order or ruling refusing leave to appeal**.

Comment [C207]: Appeals involve proceeding from the judgment of a trial court to an appellate court or from one appellate court to another appellate court. Appeals are important because there is a realization that judges are human and they can be wrong. Thus, opportunity is given for another set of judges to assess the decision of a lower judge. Also, appeal helps curb the excessive power of the trial court.

Comment [C208]: Is it every judgment or order of court that can be appealed against? It is only the decision of a court that can be appealed against. Section 318 of the 1999 CFRN defines decision to mean, any decision of court. The whole decision or the part of the decision can be appealed against. This decision of the court will include an Order of the court.
What can be appealed against must be the ratio decidendi of the case.
An appeal is made against a decision and section 318 CFRN defines a decision as the determination of a court. See DEDUWA v. OKORODUDU. There are many things that are done in court that are not decisions and thus cannot be appealed against. They are:
1)Transfer by chief judges and administrative decision to assign cases: the decision of the chief judge to transfer a case is an administrative decision which is not subject to any appeal. DIKE v. ADUBA. Upon an application for transfer of a case from Magistrate to Higher Court, the Supreme Court said the function is administrative and the decision arrived at is not appealable to the Court of Appeal
2)Minority opinion of a court or a dissenting judgment: a minority opinion of a court or a dissenting judgment cannot be the basis of an appeal and are not appealable. See IGE v. OLUNLOYO.
3)Obiter dictum: this is a mere statement not based on any issue before the court. Thus an appeal cannot be made on it. ABACHA v. FAWEHINMI.

Comment [C209]: The application to the court that gave the decision is usually by way of MON+A+WA

Comment [C210]: except if there are special circumstances which make it impossible or impracticable to apply to the lower court. In such cases, the application may then be made first to the court of appeal.
Being out of time is one of such.

Comment [C211]: Where a person is seeking leave to appeal as an interested person and there is already a pending appeal, there will be no need to attach the judgment or order of the lower court sought to be appealed against. This is because it would already be in the court's file---**ADELEKE v OYO STATE HOUSE OF ASSEMBLY**

- **Proposed notice of appeal** (WHICH MUST SHOW PRIMA FACIE GOOD GROUNDS OF APPEAL)

ON THE OTHER HAND, **IF YOU ARE OUT OF TIME**, AN APPLICATION FOR EXTENSION OF TIME IS TO BE FILED. THE GENERAL RULE IS THAT NO LOWER COURT CAN EXTEND TIME FOR AN APPELLATE COURT AND AS SUCH APPLICATIONS FOR EXTENSION OF TIME ARE TO BE FILED AT THE APPELLATE COURT---**S. 25 CA ACT**

Comment [C212]: The application for enlargement of time is made directly to the Court of Appeal. This is because the High Court has no jurisdiction to grant an extension of time within which a person may appeal against its decision--- **OGUNREMI V DADA.** This rule also applies in the case of appeals to the Supreme Court. Thus, in **OWONIBOYS TECHNICAL SERVICES LTD v. JOHN HOLTS LTD,** it was held that the Court of Appeal has no jurisdiction to grant an extension of time within which a person may appeal or seek leave to appeal against its decision to the Supreme Court.

THE APPLICATION AT THE APPEALLATE COURT IS TO BE SUPPORTED WITH THE FOLLOWING DOCUMENTS:

- **Notice of motion as in Form 5** (WHICH MUST SHOW ON THE FACE OF IT, GROUNDS FOR BRINGING THE APPLICATION)
- **Affidavit in support** (WHICH MUST SHOW GOOD AND SUBSTANTIAL REASONS for the leave to be granted)
- **CTC of judgment of the lower court**
- **Proposed notice of appeal** (WHICH MUST SHOW PRIMA FACIE GOOD GROUNDS OF APPEAL)

IF THE LEAVE IS GRANTED, OBTAIN AN **"ENROLLED ORDER"** AND ATTACH IT TO THE NOTICE OF APPEAL AND FILE SAME AT THE REGISTRY OF THE COURT THAT GAVE THE DECISION

NOTABLES

THERE IS A BIG DIFFERENCE BETWEEN **"LEAVE TO APPEAL"** AND **"LEAVE FOR EXTENSION/ENLARGEMENT OF TIME WITHIN WHICH TO APPEAL"**. WHILE THE FORMER PRESUPPOSES THAT THE APPEAL IS NOT AS OF RIGHT AND THE APPELLANT SEEKS THE LEAVE/PERMISSION OF THE COURT TO APPEAL AGAINST THE DECISION; THE LATTER PRESUPPOSES THAT THE STATUTORY TIME LIMIT WITHIN WHICH TO APPEAL HAS ELAPSED, AND THE APPELLANT PRAYS THE COURT TO EXTEND THE TIME FOR HIM TO APPEAL AGAINST THE DECISION.

IT IS POSSIBLE FOR THE BOTH OF THEM TO COINCIDE SUCH THAT THE APPEAL IS NOT AS OF RIGHT BUT BY LEAVE OF COURT AND THE TIME WITHIN WHICH TO FILE THE APPEAL OR SEEK LEAVE TO APPEAL HAS EXPIRED. IN SUCH CIRCUMSTANCES THE APPLICATION MUST BE ONE SEEKING AN **EXTENSION/ENLARGEMENT OF TIME WITHIN WHICH TO SEEK LEAVE TO APPEAL.** THEN YOUR MOTION MUST CONTAIN THE TRINITY PRAYERS.

THE ORDER OF THE TRINITY PRAYERS IS:

Comment [C213]: These prayers are mandatory and failure to include the three of them or any of them is fatal to the application as it would be refused/ struck out. See **BOLEX v. INCAR; EMMANUEL KADIRI YUSUF v. NATIONAL TEACHER'S INSTITUTE; CCB NIG LTD v. EMEKA OGWURU**

1. AN ORDER OF EXTENSION OF TIME WITHIN WHICH TO SEEK LEAVE TO APPEAL
2. AN ORDER GRANTING LEAVE TO APPEAL
3. AN ORDER OF EXTENSION OF TIME WITHIN WHICH TO FILE A NOTICE OF APPEAL AGAINST THE RULING IN SUIT NO: DELIVERED ON THE 10TH DAY OF DECEMBER 2016 BY HONOURABLE JUSTICE

OWENS BRIGGS. SEE **OWENA BANK NIG LTD v. NIGERIAN STOCK EXCHANGE**

The documents required to apply for the trinity prayers are:

a. Notice of motion for extension of time (same as a MON)
b. Affidavit in support
c. CTC of judgment of the lower court
d. **Proposed** notice of appeal.

NOTABLES

IT MUST BE NOTED THAT LEAVE TO APPEAL AS A PERSON HAVING AN INTEREST IN A MATTER IS DISTINCT AND DIFFERENT FROM THE RIGHT TO APPEAL. IT IS SETTLED THAT THE RIGHT TO APPEAL MAY EITHER BE AS OF RIGHT OR BY LEAVE TO APPEAL. **THE LEAVE TO APPEAL AS AN INTERESTED PERSON IS MERELY TO ENABLE THE APPLICANT EXERCISE THE RIGHT OF APPEAL WHICH MAY BE AS OF RIGHT OR WITH LEAVE. THUS, WITH RESPECT TO A MATTER THAT REQUIRES LEAVE OF COURT, HE NEEDS TWO SEPARATE PRAYERS, ONE FOR LEAVE TO APPEAL AS AN INTERESTED PARTY AND THE OTHER, APPEAL WITH THE LEAVE OF THE COURT.**

HOWEVER, WHERE YOU ARE OUT OF TIME, THEN YOUR MOTION MUST CONTAIN THE TRINITY PRAYERS. THUS, **IT WILL HAVE FOUR PRAYERS**. ALL THESE CAN BE SOUGHT IN THE SAME APPLICATION. THE ORDER OF THE TRINITY PRAYERS IS:

1. AN ORDER OF EXTENSION OF TIME WITHIN WHICH TO SEEK LEAVE TO APPEAL
2. AN ORDER GRANTING LEAVE TO APPEAL AS AN INTERESTED PARTY
3. AN ORDER GRANTING LEAVE TO APPEAL
4. AN ORDER OF EXTENSION OF TIME WITHIN WHICH TO FILE A NOTICE OF APPEAL AGAINST THE RULING IN SUIT NO: DELIVERED ON THE 10TH DAY OF DECEMBER 2016 BY HONOURABLE JUSTICE OWENS BRIGGS.

FLOWING FROM THE ABOVE, IF YOU ARE NOT OUT OF TIME, YOUR MOTION PAPER WILL HAVE TWO PRAYERS: LEAVE TO APPEAL AS AN INTERESTED PERSON AND LEAVE TO APPEAL.

NOTABLES

The factors which the court of Appeal may consider in granting or refusing an application for enlargement/extension of time include:

- Whether the failure to file the appeal within time was caused by negligence or inadvertence of counsel or the delay is attributable to the court below. Where this is the case, leave will readily be granted---**BOWAJE v. ADEDIWURA**

Comment [C214]: The court has the right to grant both prayers or refuse both or grant one and refuse the other---**FAWEHINMI V. UBA.** Failure to obtain leave before appealing as a non-party having an interest in the matter renders the appeal incompetent---**AG FEDERATION v. ANPP**

Comment [C215]: TAKE NOTICE THAT THE SECOND PRAYER "AN ORDER GRANTING LEAVE TO APPEAL" (FROM THE 2 PRAYERS IDENTFIED EARLIER ON) IS ALREADY PART OF THE TRINITY PRAYER. HENCE, GO WITH THE TRINITY PRAYER + THE PRAYER FOR LEAVE TO APPEAL AS AN INTERESTED PARTY= 4 PRAYERS.

- The length of time that has elapsed between the time when the application ought to have been made and when it was actually made. Thus, if there is unreasonable delay in filing, the court will refuse to grant the enlargement of time. However, where there is no unreasonable delay in filing, the court may be willing to grant the extension of time---**OJORA v. BAKARE**
- In **NNPC v ODIDERE ENTERPRISES NIG LTD,** it was held that where the proposed grounds of appeal complain of lack of jurisdiction, then the applicant has satisfied a special or exceptional circumstance to warrant the necessity of inquiring into the reasons for the delay in bringing the appeal because jurisdiction is always a good and substantial reason why an appeal should be heard.

Does a Party have an inherent right of appeal?

The right to appeal against a decision is constitutional and statutory. There **is no inherent or general right of appeal---ADIGUN V. AG OYO STATE**

What are the instances when there will be no right of appeal?

- Unconditional leave to defend an action---**NATIONAL BANK V WEIDE & CO**
- Decree absolute in the absence of appeal against decree nisi (this is because status has changed, once a decree nisi become absolute the marriage has become dissolved)---**NABHAN V NABHAN**

Right of appeal is divided into two categories; namely:

- Appeal as of right
- Appeal with the leave of court (that is, permission or consent of either the lower or appellate court)

1. Appeal as of right: The following are the instances of appeal as of right which does not require the leave of court in the case of a party in the proceedings.

- **Final decisions** in any civil proceedings before the Federal High Court, High Court (state or FCT), and National Industrial Court **sitting at first instance---S. 241(1)(a) CFRN**. The decision must be final and the court must have sat as a court of first instance in the case.
- **Questions of law:** Where the ground of appeal involves questions of law alone arising from any civil proceeding. Section 241(1)(b). Here, there is no requirement of final decision or sitting at first instance. What is important is the ground of appeal which must be question of law alone. This may be a final or interlocutory decision. It does not matter whether the decision was final or not---**ATTAMAH v. ANGLICAN BISHOP OF THE NIGER**. **NOTE that where the ground of appeal is on facts alone or on grounds of mixed law and fact, the appeal would be by leave of court---HARRIMAN v. HARRIMAN; AKEREDOLU v. AKINREMI.**
- **Interpretation of the CFRN:** Decisions in any civil proceeding on the interpretation or application of the CFRN.

Comment [C216]: The applicable laws are:
- The CFRN
- The Court of Appeal Act
- The Court of Appeal Rules

Comment [C217]: Knowing the instances of appeal as of right is important because the processes to file depend on whether the appeal is as of right or with the leave of the court.

The appeal however must be brought within the time stipulated for filing appeals. Note: for the purpose of MCQ, **TIME TO FILE APPEAL IN CRIMINAL PROCEEDINGS IS NINETY (90) DAYS; WHILE IN CIVIL PROCEEDINGS, IT IS THREE (3) MONTHS.**

NOTE that the Difference between final and interlocutory is important in two respects namely:
- Time limit for appealing (3 months for final and 14 days for interlocutory)
- Right of appeal; whether appeal is as of right or with leave of court

Comment [C218]: If final, immaterial whether facts, or mixed facts and law as long as it is a court of first instance. HOWEVER, grounds of appeal as of facts or mixed facts becomes important in the case of an interlocutory injunctions not touching on 241(1)(C-D)

Comment [C219]: •The guide to identifying whether a ground of appeal is a ground of law alone was stated by the SC in **ASHDC v. EMEKUE** as follows:
a. The ground is as to whether a contract exists or has lapsed; OR
b. The ground does not question the evaluation of evidence by the lower court but only the inference to be drawn from established facts based on admissible evidence. That is, where the ground of appeal is on evaluation of evidence, it is a ground of fact; but where it relates to inference drawn from the facts, it is a ground of law. OR
c. The ground is complaining that there has been a misconception of the law in its application to the established facts; OR
d. The ground is complaining that the court below reached its decision where there is no evidence before it upon which the court below could base its decisions.
e. The ground is on admissibility of evidence. This is because the admissibility of evidence is determined by the EA
A ground of appeal will be said to be a ground of law alone where it relates solely to any of the above. NB: (b) & (c) are the best...
Note that where the appeal is against a matter which is at the discretion of the lower court, then, it is a ground of fact or at best mixed law and fact; not law, such as stay of proceedings etc---COMEX v. NAB

- **Chapter IV CFRN:** Decisions in any civil proceeding as to whether any provisions of Chapter IV CFRN has been, is being or is likely to be contravened in relation to any person.
- Decisions of the FHC or HC where:
    a. Where the liberty of a person or the custody of an infant is concerned.
    b. Where an injunction or the appointment of a receiver is granted or refused.
    c. Decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies.
    d. In the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability
    e. In such other cases as may be prescribed by a law in Nigeria.

NOTABLES

- By **S. 244(1) CFRN,** an appeal shall lie as of right to CA from decisions of Sharia Court of Appeal relating to questions of Islamic Personal Law
- By **S. 245(1) CFRN,** an appeal shall lie as of right to CA from decisions of Customary Court of Appeal relating to any question of customary law
- By **S. 246(1) CFRN**, an appeal shall lie as of right to CA from:
    a. Decisions of Code of Conduct Tribunal
    b. Decisions of National and State Houses of Assembly Election Tribunals on any question whether any person has been validly elected as a member of National Assembly or State House of Assembly.
    c. Decisions of Governorship Election Tribunals on any question whether any person has been validly elected into the office of a Governor or Deputy Governor.

2. Appeal with leave of court: The leave required here is the leave of either the trial court or the Court of Appeal.

When will appeal lie to the court of appeal with leave?

- Appeal by interested person
- Consent judgment
- Costs only
- Appeal on grounds of facts or mixed law or facts
- A double appeal. That is an appeal against a decision of HC or FHC, not sitting at first instance, but sitting on appeal from a decision of a lower court where the ground of appeal is not on law alone.

Effect of failure to obtain leave of court

Where leave of court to appeal is required and such is not obtained, such goes to the jurisdiction of the Court of Appeal. This is because appeal is statutory and not inherent. Thus, it will not be a question of irregularity which can be rectified---**ADIGUN V AG OYO STATE**

Leave to appeal

Where the appeal is by leave of court, the power of a judge to grant leave to appeal is discretionary. Thus, leave to appeal is not automatic---**OJORA v. ODUNSI**

The principles which a judge should follow in exercising his discretion to grant leave were stated in **ADAMOLEKUN v DIKE** as follows:

- Leave should be granted where the question is one of general principles decided for the first time; OR
- Where there is a real and substantial complaint which the trial judge though may not agree with, nevertheless considers arguable; that is, capable of being seriously canvassed and opposed on appeal
- The court should refuse leave where the complaint is obviously frivolous.

Time for filing appeal

By **S. 25 CA ACT,** an appeal or an application for leave to appeal against an interlocutory decision must be filed **within fourteen (14) days from the day the judgment was delivered.** In the case of a final judgment, the appeal or application for leave to appeal must be filed **within three (3) months from the day the judgment was delivered.**

Comment [C220]: Where the interlocutory decision on on questions of law and fact, an application for leave to appeal must first be filed before an application for extension of time is made.

The time limit to commence an appeal depends on the decision of the Court being appealed against as follows:

- Appeal against the final judgment of the Magistrate Court to the High Court---**within 30 days of the delivery of the judgment**
- Appeal against the final decision of the High Court to the Court of Appeal---**within 3 months of the delivery of the judgment**
- Appeal against the Court of Appeal decision to the Supreme Court---**within 30 days of the delivery of the judgment**
- For all interlocutory decisions in any Court to be appealed against---**within 14 days of the delivery of the ruling**

Records of appeal

The registrar has **60 days to compile and transmit the records of appeal**. If at the expiration of 60 days, he is not able to compile the record, the appellant should compile the record of appeal **within 30 days of failure.** Upon compilation, if the respondent is not satisfied with the records of appeal compiled, he will file additional records of appeal **within 15 days.** THIS TIME FOR COMPILING RECORDS OF APPEAL IS APPLICABLE TO FINAL AND INTERLOCUTORY APPEALS

Comment [C221]: 60-30-15.

Practice Direction 2013

This makes the time for compilation of appeals shorter than the normal time in the rules. This Practice direction is applicable to interlocutory appeals irrespective of the subject matter

- Paragraph 3(ii)(a)&(d)-priority in listing appeals and not more than 2 adjournments.

- Record of appeal to be compiled **not later than 7 days after filing Notice of Appeal,** paragraph 6(b). Record of Appeal to be compiled within 7 days
- Appellant---**7 days after failure by registrar**. Thus, Para 6(b)(h), where at the expiration of 7 days, the registrar has failed to transfer the record of appeal, it shall be mandatory on the appellant to compile same and transmit to the court.

(b) Procedure for appeal

- **File a Notice of Appeal:** If the appeal is as of right, the appeal is initiated by the appellant filing in the Registry of the High Court or any Court where the matter is appealed from, **a Notice of Appeal.** This Notice of Appeal is in **FORM 3** of the 1st schedule to the Court of Appeal Rules 2016. Where a **party is out of time**, he **will require leave to file his notice of appeal out of time** (only the Court of Appeal can extend time with respect of appeals from High Court)---**S. 4 (4) CA ACT**. The Court of Appeal shall extend time within which to appeal **upon being convinced that there are reasons to extend time** e.g. time lapse
- **File application Notice of Motion:** Any application to the court for leave to appeal shall be by **Notice of Motion (FORM 5) which shall be served on the party or parties affected.** Where the application is first made to the High Court and the High Court refuses leave, the appellant may apply to the Court of Appeal **within 15 DAYS** of such refusal. The application for leave to appeal from a decision of a lower Court shall contain copies of the following items, namely:
  - **a.** Notice of motion for leave to appeal (**Form** 5);
  - **b.** A certified true copy of the decision of the Court below sought to be appealed against;
  - **c.** A copy of the proposed grounds of appeal ; and
  - **d.** Where leave has been refused by the lower Court, a certified true copy of the order refusing leave.

2. EXPLAIN AND DISTINQUISH BETWEEN A RESPONDENT'S NOTICE AND A CROSS-APPEAL

1. Respondent's notice: A respondent who agrees with the decision of the trial court, which is in his favor and as such not dissatisfied and does not wish the appellate court to set aside the decision, but who rather wishes to urge the appellate court to affirm or vary the decision on other grounds other than those relied on by the trial judge in reaching the decision. To achieve this,

Comment [C222]: The procedure on appeal is provided for in ORDER 6 COURT OF APPEAL RULES 2016

Comment [C223]: For time within which to file the notice- **S24 (2) (a) Court of Appeal Act 2004**: For appeals against **final judgment, you have 3 months**. **For interlocutory judgments, you have 14 days**

Comment [C224]: If an appeal is to be with the leave of Court before an appeal is properly commenced, the application for leave is to be made within the time for the commencement of appeal, e.g. within 3 **months** for appeals against a decision of the High Court to be commenced at the Court of Appeal.

Comment [C225]: In **BRIGGS v. BOB-MANUEL,** it was held that the traditional role of a respondents notice is to seek to affirm the judgment appealed against on other grounds that may have been given in the judgment. That is, the judgment is correct, but there are other grounds which could either be in substitution for some of the reasons given for it or in addition to the grounds for the judgment. See also **LAGOS CITY COUNCIL v. AJAYI; WESTERN STEEL WORKER LTD v. IRON & STEEL WORKERS UNION OF NIGERIA** , where it was stated that a respondent's notice is only available to vary and retain the judgment and not it's reverse.

such a respondent is required to file a **RESPONDENT'S NOTICE in Preacipe Form 10 B**. The notice must specify the grounds for the contention and the precise form of variations which he proposes the court of appeal to make---**ORDER 9 RULES 1 & 2 COURT OF APPEAL RULES.** Where the respondent fails to file the respondent's notice, he will not be heard praying for a variation or affirmation of the decision on grounds other than those relied on by the trial court, except by leave of the court of appeal. **Before a Respondent's notice to vary can be filed, an appeal must have been filed and served by the unsuccessful party.** Once a respondent's notice of variation is given, the appellant cannot prevent the respondent from having the point raised by withdrawing his own appeal. Even if the appeal is withdrawn the point raised must be argued.

Any Respondent's notice given by a respondent must be served on the appellant and on all parties to the proceedings in the Court below who are directly affected by the contentions of the respondent and must be served:

a. In the case of an appeal against an interlocutory order, within **fifteen (15) days;** and

b. In any other case within **thirty (30) days,** after the service of the notice of appeal on the respondent. SEE **WILLIAMS V DAILY TIMES**

2. Cross-appeal: There cannot be a cross-appeal without the main appeal. It is usually filed by a respondent to an appeal. A respondent can cross-appeal if he is dissatisfied about a particular decision of the lower court. A cross appeal is against that decision and for it to be set aside.

Time to file a cross appeal will not start running until an appeal has been filed as there must be a substantive appeal. However, a cross appeal is independent of the appeal and as such an appeal may be dismissed and it will not affect the cross appeal---**ADEKEYE v. AKIN OLUGBADE; UTB NIG LTD v. AJAGBULE; ELIOCHIN V. MBADIWE**.

Circumstances where notice of appeal/cross appeal is necessary

A respondent may usually appeal/cross appeal under the following circumstances:

- There were several causes of action and he is dissatisfied in determination of some of them.
- There are several parties and he wishes to contest the decision in respect to some of these parties who have not appealed;

- He decides to appeal against a decision affecting only one or other of a number of consolidated quits.
- He desires to question the jurisdiction of the court below.

NOTE THAT

- The procedure for filing a cross appeal is the same as that of filing an appeal.
- It must comply with all the procedure for filing a Notice of Appeal- the cross-appellant may seek leave to appeal, bring an application for the extension of time within which to appeal etc.
- However in filing Briefs of Argument, the Appellant will file his while the **Respondent/Cross appellant** will file a single **Respondent's** Brief of Argument for the cross appeal and main appeal. The Appellant has two options after this, he can reply to the respondent's brief as to the main appeal and can file a cross respondent's brief as to the cross appeal.

3. DRAFT A NOTICE OF APPEAL, MOTION FOR LEAVE TO APPEAL OUT OF TIME AND BRIEFS OF ARGUMENT

(a) Notice of appeal

Comment [C226]: Mode of appeal
An appeal is lodged in the CA by means of a Notice of Appeal as in Civil Form 3. The Notice of Appeal, though headed in the name of the Court of Appeal, is FILED in the Registry of the HC or FHC or NIC that gave the decision appealed against
Where there is need for leave, an application for leave shall first be made to the HC or FHC unless there are special circumstances pursuant to OR 6 R 4 CAR 2016. The Notice of Appeal shall then be filed after the leave has been obtained.
Note that by Order 6 r 5 CA Rules, 2016, the filing of the Notice of Appeal must be within the time prescribed by section 25(2) of CA Act.

IN THE COURT OF APPEAL

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

APPEAL NO:

SUIT NO:

BETWEEN

CHIEF JOSEPH LAMBE----------APPELLANT

AND

ROYAL ESTATES LIMITED---------- RESPONDENT

NOTICE OF APPEAL

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

And the appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. DECISION APPEALED AGAINST: The whole judgment of the lower court.

3. GROUNDS OF APPEAL

4. RELIEFS SOUGHT

5.PERSONS DIRECTLY AFFECTED BY THIS APPEAL

1.Chief Joseph Lambe, Lambe close Ikoyi Lagos

2. Royal Estates Nigerian limited, 12 Ikoyi Drive, Ikoyi, Lagos Nigeria

Dated 14th Day of April, 2019

.....

K. C Aneke, Esq.

Counsel to the Appellant

K.C Aneke & Co

No 2 Law School Drive,

Victoria Island,

Lagos.

kundycmith@gmail.com

07053531239

ON NOTICE TO:

The Respondent

Royal Estate Limited

C/o Its Counsel

Cundy Smith, Esq

Cundy Smith LLP

Plot 6 Lewis Lanes,

Victoria Island,

Lagos.

NOTABLES

Grounds of appeal: A ground of an appeal is a complaint on an issue of fact or law or procedure which if upheld will lead to the appeal being allowed---**EGBE v. ADEFARASIN.**

A bare notice of appeal that does not contain any ground or grounds of appeal is valueless and incompetent and an abuse of court process---**AKEREDOLU v. AKINREMI; HALABY v. HALABY.**

A notice of appeal should set forth concisely and under distinct heads, the grounds of appeal which the appellant intends to rely on at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

No ground which is vague or in general terms or which disclose no reasonable ground of appeal shall be permitted except the omnibus ground that the judgment is against the weight of evidence; and every ground of appeal or any part thereof which is not permitted may be struck

out by the court either suo moto or on application by the Respondent. The ground of appeal must be valid and raise serious questions to be considered on appeal.

Where the grounds of appeal allege misdirection or error of law, the particulars and the nature of the misdirection or error shall be clearly stated. Therefore, the grounds of appeal are not considered alone, particulars must be supplied with it. While the grounds of appeal are the complaint, the particulars of reason are the reasons for the complaint. Each reason (particulars) are to be in paragraph(s). In **ORAKOSIN v. MENKITI,** the Supreme Court stated that in determining the nature of a ground of appeal, the ground and its particulars must be read together. For it is only by reading the ground as a whole that it can be determined what the appellant is complaining about in the judgment. The body of the grounds is not to be considered in isolation of its particulars.

All grounds of appeal, whether misdirection or error of law must be supported by the necessary particulars. Failure to include the particulars renders that ground worthless and incompetent---**OSAWARU v. EZEIRUKA; OKORIE v. UDOM**

The only ground of appeal that can survive without its particulars is the omnibus/general ground which is the decision of the trial court is against the weight of evidence as it is expressly excluded from this requirement---**ATUYEYE v ASHAMU; STEPHENS INDUSTRIES v. BCCI**

Misdirection or error of law: from the rules, an appeal could be founded on law, facts, or mixed law and facts. There are only three possible grounds of appeal namely:

- Misdirection: WHEN THE JUDGE MISCONCEIVES THE ISSUES, WHETHER OF FACTS OR LAW, OR SUMMARIZES THE EVIDENCE INADEQUATELY OR INCORRECTLY
- Error of law: THIS WILL ARISE ONLY AFTTER THE ISSUE HAS BEEN PROPERLY IDENTIFIED AND DECIDED BUT WRONG APPLICATION OF THE LAW.
- Omnibus/general ground that decision of lower court is against weight of evidence. In civil cases, it is simply drafted. **"THE JUDGMENT OF THE LOWER COURT IS AGAINST THE WEIGHT OF THE EVIDENCE."**

Comment [C227]: TAKE NOTE OF THE DIFFERENCE BETWEEN THIS AND THAT OF CRIMINAL LITIGATION

Note that a ground of appeal cannot be both an error of law and a misdirection at the same time---**NWADIKE v. IBEKWE.** If the judge makes a mistake with regards to the general burden of proof in a case, that will be an error of law. But if he failed to direct his mind to the question whether the burden on any party has been discharged, he misdirects himself in law---**OBEMBE v. EKELE**

Distinguishing between ground of law and facts

This is important in order to determine whether an appeal lies as of right or with the leave of court. A ground of law is any ground of appeal that complains about misunderstanding of law or misapplication of law to settle or admitted facts (applied law wrongly to facts). For instance, the law that a willing employer cannot be forced on an unwilling employer does not apply to

Comment [C228]: The following are grounds of law
- Determination of who has the burden of proof,
- Determination of whether a piece of evidence is admissible,
- Determination of jurisdiction of court, construction of documents or the constitution,
- STATING THE LAW ON A POINT WRONGLY---**OGBECHIE V ONOCHIE.**

employment with statutory flavor. Grounds of facts are where the court has to settle issues of facts or **evaluation of evidence.**

Mixed law and facts deal with the application of law to facts. Ground raises partly law and partly facts. These are instances of mixed facts and law. The exercise of discretion which is to be done judicially and judiciously is mixed law and facts---**METAL CONSTRUCTION LTD V MILGORE**

Relationship between issues for determination and grounds of appeal:

Issues for determination and grounds of appeal are not the same. The grounds of appeal must be traced to the decision of the lower court. They accentuate the defects in the judgment sought to be set aside; while the issues for determination are the questions of law arising from the complaints in the grounds of appeal, the resolution of which determines the appeal one way or the other. Only issues formulated within the parameters and context of the grounds of appeal can be properly regarded as valid issues for determination---**ONYIA v. ONYIA**

The issues must relate to or arise from the grounds of appeal filed. It must be noted that while one issue can cover several grounds of appeal; that is, while one issue can arise from and relate to more than one ground of appeal, the issues formulated should not be more than the grounds of appeal---**AP v. OWODUNMI.** To raise more issues than grounds of appeal amounts to proliferation of issues for determination. That is, if you have more than one issue from one ground of appeal, it amounts to proliferation of issues for determination---**IDRIS v. ARCHIBONG**

Do not formulate more than one issue from one ground of appeal. You can have one issue from several grounds; but each can only have a maximum of only one issue.

Any issue that does not arise from or relate to any ground of appeal goes to no issue. In the case of a respondent who has neither filed a cross appeal or a respondent's notice, any issues raised by him must be restricted to and arise from the grounds of appeal filed by the appellant or else they would be incompetent having not arisen from any ground of appeal---**IBATOR v BARAKURO**

Any ground of appeal from which no issue is raised or formulated and argued is deemed abandoned---**NEPA v. AROBIEKE; ARAKA v. EJEAGWU.**

(b) Motion for leave to appeal out of time

IN THE COURT OF APPEAL

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

APPEAL NO:

SUIT NO:

BETWEEN

CHIEF JOSEPH LAMBE----------APPELLANT

AND

ROYAL ESTATES LIMITED---------- RESPONDENT

NOTICE OF MOTION FOR EXTENSION OF TIME TO APPEAL
BROUGHT PURSUANT TO ORDER_RULE_OF THE COURT OF APPEAL RULES 2016 AND SECTION 25(4) OF THE COURT OF APPEAL ACT 2007 AND WITHIN THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE that this Honourable Court will be moved on the …….. day of……...2019 at the hour of 9 O'clock in the forenoon or so soon thereafter as Counsel for the Appellant will be heard praying this Honourable Court for:

1. **AN ORDER EXTENDING TIME** to appeal against the decision of the High Court of the FCT Abuja contained in the judgment of Hon. T. J. Stanley delivered on the 17th day of October 2018.
2. **AND FOR SUCH FURTHER OR OTHER ORDERS** as the Honourable Court may deem fit to make in the circumstances**.**

Dated this 4th day of April, 2019

K. C Aneke, Esq.
Counsel to the Appellant

K.C Aneke & Co

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Victoria Island,

Lagos.

kundycmith@gmail.com

07053531239

ON NOTICE TO:

The Respondent

Royal Estate Limited

C/o Its Counsel

Cundy Smith, Esq

Cundy Smith LLP

Plot 6 Lewis Lanes,

Victoria Island,

Lagos.

(c) Briefs of Argument

IN THE COURT OF APPEAL

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

APPEAL NO:

SUIT NO. HC/LA/2016

BETWEEN

CHIEF JOSEPH LAMBE----------APPELLANT

AND

ROYAL ESTATES LIMITED---------- RESPONDENT

APPELLANT'S BRIEF OF ARGUMENT

1.0 INTRODUCTION/PRELIMINARY STATEMENT
2.0 BRIEF FACTS
3.0 ISSUES FOR DETERMINATION
4.0 LEGAL ARGUMENTS
5.0 CONCLUSION

Dated this 4th day of April, 2019

K. C Aneke, Esq.
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Lagos.

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07053531239

FOR SERVICE ON:

The Respondent

Royal Estate Limited

C/o Its Counsel

Cundy Smith, Esq

Cundy Smith LLP

Plot 6 Lewis Lanes,

Victoria Island,

Lagos.

LIST OF AUTHORITIES:

Comment [C229]:
Time to file briefs
- Appellant brief **within 45 days**---**ORDER 19 RULE 2 CAR 2016.** It is now subject to **S. 8(3) CAFTPD** which **provides for 14 days**.
- Respondent brief **within 30 days---ORDER 19 RULE 4 (1) CAR 2016** but see **S. 8(5) CAFTPD** which **provides for 10 days**
- Reply brief is **within 14 days**---**ORDER 19 R 5(1) CAR 2016** but see **S. 8(7) CAFTPD** which **provide for 5 days.**

Effect of non compliance
Where appellant is in default, appeal is to be dismissed for want of diligent prosecution---**ORDER 19 RULE 10(1) CAR 2016; S. 8(4) CAFTPD; EVEMILI V STATE**
Where respondent is in default, the court will proceed to hear the appeal. He will not be allowed to make an oral argument. The court will proceed based on the brief of the appellant---**ORDER 19 R 10(1); S. 8(6) CAFTPD**
Failure to file reply brief, it will be deemed that the appellant has conceded to the new material facts raised by the respondent's brief---**ORDER 19 RULE 10(1) CAR 2016**

Comment [C230]: This is an appeal against the judgment of the High Court of Lagos State delivered on 17th October, 2018 by Hon. Justice T.J. Stanley. The Notice of Appeal was filed on the ..... The suit was commenced by writ of summons, and all other processes, in accordance with the rules of the trial Court, were frontloaded. Consequently, the writ of summons was filed along with the statement of claim, list of witnesses, witness deposition on oath, copies of the documents to be relied upon, and a Pre-trial protocol form 01
The Notice of Appeal was served on the Claimant/Respondent on the 12th day of March, 2019. In the Notice of Appeal, the Appellant raised four (4) grounds of Appeal.

4. DRAFT APPLICATIONS TO WITHDRAW A NOTICE OF APPEAL, PRELIMINARY OBJECTION AND APPLICATION TO CHALLENGE THE COMPETENCE OF AN APPEAL

(a) Application to withdraw a notice of appeal

IN THE COURT OF APPEAL

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

APPEAL NO:

SUIT NO. HC/LA/2016

BETWEEN

CHIEF JOSEPH LAMBE----------APPELLANT

AND

ROYAL ESTATES LIMITED---------- RESPONDENT

NOTICE OF WITHDRAWAL OF APPEAL

TAKE NOTICE that at the hearing of the above appeal the appellant intends to discontinue this appeal and may be heard praying this Honourable Court for an order withdrawing this appeal.

AND TAKE NOTICE that the grounds on which the appellant intends to rely are as follows:

1. The appeal is immature
2. The appeal needs to regularize its processes before the court and file within the statutory period with the appropriate order of court

Dated this 4th day of April, 2019

K. C Aneke, Esq.
Counsel to the Appellant
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Victoria Island,
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ON NOTICE TO:

The Respondent

Royal Estate Limited

C/o Its Counsel

Cundy Smith, Esq

Cundy Smith LLP

Plot 6 Lewis Lanes,

Victoria Island,

Lagos.

Comment [C231]:
WITHDRAWAL OF APPEAL
- Unilateral withdrawal
- Withdrawal by consent.

EFFECT OF WITHDRAWAL
An appellant may at any time before hearing serve on the parties to the appeal and the registrar a notice of withdrawal---**EDOZIEN v. EDOZIEN.**
If all the parties consent to the withdrawal, then the appeal shall be struck out. It must be noted that where the appeal is withdrawn, it is deemed to have been dismissed
If the parties do not consent, the appeal will remain on the list.

(b) Preliminary Objection

IN THE COURT OF APPEAL

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

APPEAL NO:

SUIT NO. HC/LA/2016

BETWEEN

CHIEF JOSEPH LAMBE----------APPELLANT

AND

ROYAL ESTATES LIMITED---------- RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

BROUGHT PURSUANT TO ORDER_ RULE_OF THE COURT OF APPEAL RULES 2016 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that the Respondent intends at the hearing of this appeal to raise a preliminary objection and praying the court for the following:

1. AN ORDER OF THIS COURT striking out the appeal for being incompetent.

Take further Notice that the grounds of the said objection are as follows:

1. That the defendant failed to file notice of appeal within the 3 months interval stipulated for filing, thus caught up by lapse of time

2. That the defendant did not obtain the leave of court to file notice of appeal out of time

3. That the Court of Appeal lacks the jurisdiction to entertain the defendant's appeal for lapse of time

Dated this 4th day of April, 2019

K. C Aneke, Esq.
Counsel to the Appellant
K.C Aneke & Co
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ON NOTICE TO:

The Respondent

Royal Estate Limited

C/o Its Counsel

Cundy Smith, Esq

Cundy Smith LLP

Plot 6 Lewis Lanes,

Victoria Island,

Lagos.

Comment [C232]:
NOTICE OF PRELIMINARY OBJECTION
This is filed by the **Respondent** in an appeal stating why the court should not entertain the appeal by setting out the grounds of Law against the hearing of the Appeal. He can do so by filing a Notice of preliminary objection
A respondent wishing to rely on a preliminary objection to the hearing of the appeal shall give the appellant **3 CLEAR DAYS NOTICE** before the hearing and also set out the ground of the objection and shall **file such notice together with 20 copies** with the registry **within 6 days**. The **FORM** used for this purpose is **FORM 11**
The Respondent can file the notice of preliminary objection against the hearing of the appeal, seeking an Order of the court to strike out the appeal for want of competence. Example: **AN ORDER OF THE COURT STRIKING OUT THE APPEAL FOR BEING INCOMPETENT.**

GROUNDS FOR THE APPLICATION
1.That the Grounds of Appeal in the Notice of Appeal is as of facts
2.That by virtue of section 241(1) (b) CFRN, leave of court ought to be sought and received before Notice of appeal shall be filed.
3.That such leave was not sought or received.
Note that the grounds of application for the preliminary objection must be based on Law only and the issues as of facts will be argued in the Respondent's brief.

5. IDENTIFY AND DISCUSS ETHICAL ISSUES INVOLVED IN APPEALS (Brainstorm)

Alternative Dispute Resolution in Court of Appeal – Mediation

Before the appeal is set for hearing, the court may in appropriate circumstances upon the request of any of the parties refer the appeal to the Court of Appeal Mediation Programme---CAMP. This is limited to an appeal of a purely civil matter and relates to

- Liquidated money demand
- Matrimonial causes
- Child custody; or
- Such other matter as may be mutually agreed by the parties – Order 16 r 1 CAR

The request for ADR is to be made in **Form 15** in the first schedule to CAR – Order 16 r 2 CAR. Once there is reference to CAMP, the appeal **is to be adjourned.** The parties can also resort to other ADR mechanism – Order 16 r 3(a) CAR. The parties are to take joint responsibility of all administrative expenses and can operate and give due regard to the CAMP at all times – Order 16 r 3(1)(b) CAR. Where the parties were able to settle, the agreement reached by the parties will be adopted by the Court of Appeal as the decision of the court. Where they were not able to settle, the appeal shall be set down for hearing – Order 16 r 4 CAR.

Departure from the rules

An appellant instead of waiting for 60 days within which the registrar is to compile record of appeal can apply for departure from the rules, so that he compile the record at a shorter period.

Amendment

The processes filed on appeal can be amended at any time before judgment.

Hearing of Appeal

Every appeal is heard by way of a re-hearing---**POWELL v. STREATHAM MILNE NURSING HOME.** A re-hearing is a reconsideration of the case on the printed evidence and not a re-trial.

In appeals, the appellate court will not interfere with findings of fact of the trial court except if it is so perverse and not supported by the evidence admitted and on the record---**OLORUNFEMI v. ASHO; ODIBA v MUEMUE**

If at the hearing, a party or his counsel does not appear to advance oral arguments, then the appeal will be deemed to have been duly argued on the briefs if the following conditions are satisfied:

- Briefs have been duly filed
- There is proof of service of hearing notices on the absent party
- There is no letter seeking adjournment---SEE **IRHABOR v. OGIAMEN**

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Where there is an appeal against the decision of a High Court sitting on appeal against the decision of a lower court, it is referred to as____

A. Appeal

B. Case stated

C. Double appeal

D. All of the above

2. Where the ground of an appeal is against a matter which is at the discretion of the lower court, the ground is that of__

A. Law

B. Fact

C. Mixed law and fact

D. B or C

3. An appeal/application for leave to appeal against an interlocutory decision of the High Court must be filed within___from the day of delivery of judgment and for a final judgment, it is____

A. 15 days/90 days

B. 14 days/3 months

C. 14 days/90 days

D. 30 days/3 months

4. Appeal against the final judgment of a Magistrate Court to a High Court is within___from the day of delivery of judgment.

A. 30 days

B. 90 days

C. 3 months

D. 14 days

5. Appeal against the final decision of a Court of Appeal to the Supreme Court is within__from the day of delivery of the judgment.

A. 30 days

B. 14 days

C. 90 days

D. 3 months

6. Under the 2013 Practice Direction, record of appeal is to be compiled by the registrar/appellant not later than___after filing notice of appeal/after failure of the registrar to do same.

A. 60/30 days

B. 7 days

C. 15 days

D. 3 days

7. A respondent who agrees with the decision of the lower court, with no intention of setting it aside, but wishes that the decision be varied or affirmed on other grounds other than the grounds relied on by the lower court, should file a___

A. Respondent's appeal

B. Cross-notice

C. Respondent's notice

D. Cross-appeal

8. The process identified in 7 above must be served on the appellant and all parties to the proceedings at the lower court in the case of an appeal against an

interlocutory order within___days after the service of the notice of appeal on the respondent, and in any other case within___days after the service of the notice of appeal on the respondent.

A. 30/15

B. 14/21

C. 15/30

D. 21/14

9. Where a respondent is dissatisfied with a particular decision of the lower court and an appeal is brought by the other party, and the respondent wishes to set aside the decision of the lower court, ___is required to be filed.

A. Respondent's appeal

B. Cross-notice

C. Cross-appeal

D. Respondent's notice

10. Where an appeal is withdrawn, it is deemed to have been___

A. Struck out

B. Dismissed

C. Non-suited

D. Put in abeyance

11. A respondent wishing to rely on a preliminary objection to the hearing of the appeal shall give the appellant___notice before the hearing and shall file such notice together with___copies at the registry within___days

A. 2 days/5/6

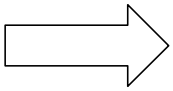
B. 3 clear days/20/6

C. 2 days/20/10

D. 10 clear days/5/2

ANSWERS

1. **C**
2. **D**
3. **B**
4. **A**
5. **A**
6. **B**
7. **C**
8. **C**
9. **C**
10. **B**
11. **B**



14. RECOVERY OF POSSESSION OF PREMISES

1. EXPLAIN AND DISCUSS THE GENERAL PRINCIPLES INCLUDING THE COURTS THAT EXERCISE JURISDICTION FOR THE RECOVERY OF POSSESSION OF PREMISES

(a) General principles

A. Applicable Laws

1. Abuja

- Recovery of Premises Act (CAP 544) LFN (ABUJA)1990
- District Courts (Increase in Jurisdiction of Judges) Order 2014.
- High Court of the Federal Capital Territory (Civil Procedure) Rules 2018

2. Lagos

- Recovery of Premises Law (Cap 118) Laws of Lagos, 1973
- Magistrate Courts Law (No 16) Lagos State 2009
- Lagos State Tenancy Law (No 14) 2011
- High Court of Lagos State (Civil Procedure) Rules 2019

  Not applicable in some areas, that is:

  a. Victoria Island
  b. Ikeja GRA,
  c. Ikoyi, and
  d. Apapa SEE **S. 1(3) TLL**

NB: The Governor may from time to time by Order published in the State Official Gazette exempt the application of TL to any other area or premises in Lagos State.

NB: With respect to the TL of Lagos, it must be noted that by section 1(2) TL, the TL shall not apply to:

- Residential premises owned or operated by an educational institution for its staff and students;
- Residential premises provided for emergency shelter;
- Residential premises:

Comment [C233]: What law will apply to exempted areas specified in Section 1(3) TLL? The law applicable is the **Recovery of Premises Law of Lagos State 1973**. Note that the Recovery of Premises Act, Abuja and Recovery of Premises Law, Lagos state are similar as it is copied Mutatis mutandis
PLEASE NOTE: **Rent Control and Recovery of Residential Premises Law, No 6 of Lagos State 1997 is no longer applicable**

a. In a care or hospice facility;
b. In a public or private hospital or a mental health facility: and
c. That is made available in the course of providing rehabilitative or therapeutic treatment.

NB: The object of the various laws is to regulate the relationship between Landlord and Tenant and to:

- Prevent arbitrary increase in rent
- Prevent unlawful ejection of tenants
- Prevent illegal holding over by tenants

B. Definition of terms

1. Landlord: This is the person entitled to title and ownership right on the property and the immediate reversion of the premises and this includes:

- The attorney, solicitor, agent or caretaker of the landlord
- Any person receiving rent or who has a right to receive rent.
- A former landlord where the context so requires.
- Any person to whom the title and ownership rights on property.
  SEE **S. 2 RECOVERY OF PREMISES ACT 1990, ABUJA; S. 47 TENANCY LAW OF LAGOS STATE; S. 2 RECOVERY OF PREMISES LAW, LAGOS STATE**

2. Tenant: Any person who holds, uses or occupies another person's property temporarily for a term certain or fixed duration by an agreement, whether on payment of rent or otherwise or by operation of law. **A tenant does not include any person occupying a premises under a bona fide claim to be the owner----S. 2 RPA ABUJA, 47 TLL.** Requirement to be a statutory tenant is "**Lawful Occupation**"- Once a person has been put in lawful occupation by the owner of the property, that person is a tenant statutorily. A tenant has been held in **OKEDARE V HANID** to include a sub tenant- (sub tenant to the landlord, tenant to the initial tenant). **A SUB-TENANT** is deemed for the purposes of the Law to be the tenant of the Landlord. It has been held by Supreme Court to include service tenants---**SULE V. NIG. COTTON BOARD, ODUYE V NIG. AIRWAYS, ELIOCHIN NIG. LTD V. MBADIWE.** THESE ARE BASED ON SERVICE OCCUPATION, UPON TERMINATION OF THE EMPLOYMENT THEY WILL BE EVICTED FROM THE HOUSE WITHOUT NOTICE.

Comment [d234]: Peculiar to Lagos Tenancy LAW.

Comment [C235]: The key word is **LAWFUL OCCUPATION** of premises by the tenant in **ODUYE** v. **NIG. AIRWAYS LTD**; the Supreme Court stated that when a person occupied premises lawfully he becomes a protected tenant and it does not matter whether he pays regular rent, subsidised rent or indeed no rent. What is necessary to come within the Law is lawful occupation.

Comment [C236]: The case of *DR BEN CHUKWUMA V SHELL* says that service tenants are no longer tenants as stated in *sule v Nigerian cotton board,* that at the moment a service tenant is a licensee. This case was followed by NWANA V FED. CAP. DEV. AUTHORITY.

The Supreme Court had stated that once employment terminates, the occupation terminates and the employer need not go to court before the employee can be ejected thus contrary to the position of the law that once a person is in lawful occupation of premises such person should not be ejected by use of self help but in accordance with due process of the law.

NB: Difference between a service tenancy and service occupancy

- Service occupancy is when premises is given to a person depending on one's job while service tenancy is a person (usually an employee) given premises by his employer upon payment of some nominal rent---**CHUKWUMA V. SHELL PETROLEUM DEV. CO. LTD.**

3. Premises: This includes a house, building, together with appurtenances and land without any building there on---**S. 2 RPA.** This also includes premises used for business, residential and non-residential purposes—**S. 47 TLL**

C. Types of tenancies

1. Tenancy at sufferance: He enters into the occupation of the premises lawfully, but after the expiration of the tenancy he holds over possession without consent of the landlord (becomes a tenant at sufferance). The landlord can exercise his power of re-entry and eject the tenant without any notice to quit or recourse to court under the common law. **However, under the statute a tenant at sufferance is under the Recovery of Premises Laws or Act in Nigeria known as a statutory tenant that is protected by statute and can only be ejected when due process is followed---SULE v NIGERIAN COTTON BOARD; A.P LTD v OWODUNNI**

2. Tenancy at will: This is a tenancy relationship created where the landlord permits the tenant to occupy the premises **with no definite time.** Thus, the tenant occupies the premises **with the landlord's consent but no definite time to remain there.** The following are the instances where it can arise:

- When the tenant whose lease expires holds over possession of the property after expiration of tenancy.
- Where the person holds property before entering into a formal tenancy agreement.
- Where a person is allowed to occupy premises for an indefinite period, rent free---**ODUTOLA v. PAPERSACK NIG LTD; S. 8 (1)(a) RPA. It must be noted that tenancy at will can be determined at any time. The only requirement is a week's notice i.e. (7) Days Notice to Quit---S.13 (1) (a) TLL; DURUEKE V KASUMU**

NB: The difference between tenancy at will and tenancy at sufferance is that the former holds over possession with the consent of the landlord without a fixed period; while in the latter, the tenant holds over without the consent of the landlord.

3. Tenancy by estoppel: Estoppel on the part of the Landlord from denying the existence of a tenancy. In the same vein, once a tenant enters into lawful occupation, he cannot deny the existence of the tenancy---**UDE V NWARA**

4. License: A person is permitted to use premises without having any estate or exclusive possession of the premises. It arises out of privilege to use the premises by another who is the owner/lawful person in possession of the premises. A licensee does not have an estate in the premises. Also, the licensee does not have exclusive possession of the premises. **However, a licensee is entitled to 7 days notice of owner's intention to recover the premises---BEN CHUKWUMA V. SHELL DEV PET. LTD; NWANA V. FEDERAL CAPITAL DEVELOPMENT AUTHORITY.**

5. Statutory Tenant: Once his tenancy expires, the landlord cannot lawfully evict him as the tenant becomes protected by statute. Before ejecting a person from the premises, **Notice to Quit, Notice of intention to recover premises and then a lawful action is instituted against him** seriatim---**AP LTD v OWODUNNI**

6. Periodic Tenancy: Example is weekly, monthly, quarterly, yearly. It goes on from period to period until a notice to quit is issued on the tenant. The tenancy Agreement must evidence the nature of the tenancy. **Where the agreement is silent on the nature, reference will be had to the mode of payment or when rent is usually demanded---Section 13(6) TLL; 8(3) RPA.** It is pertinent to note that a tenant can change from a periodic tenant to **a fixed term tenant and such person does not need a notice to quit.**

7. Tenancy for a fixed period: This is otherwise known as **tenancy for a term certain.** They have definite commencement date and the duration is certain-----**ARBUKLE SMITH & CO LTD v AG WEST.** It does not have a renewal clause unlike periodic tenancy. It **terminates automatically by effluxion of time.** IT HAS BEEN STATED CATEGORICALLY THAT WHERE A TENANCY IS FOR A FIXED PERIOD, THERE IS NO REQUIREMENT FOR A NOTICE TO QUIT, **but seven (7) days of OWNERS INTENTION TO RECOVER PREMISES WILL BE ISSUED---Ss. 13(5) and 26 TLL; NWEKE V IBE.** However, where there is a proviso in the tenancy agreement enabling one or either of the parties to determine it earlier than by the stipulated time by a notice to quit, such notice must be served.

(b) Courts that exercise jurisdiction for the recovery of possession of premises

- Magistrate/District courts

Comment [C237]: Form TL4

Comment [C238]: **It carries with it an automatic renewal clause for the same period created commencing from the anniversary of the tenancy and so on until determination by a valid notice to quit.**

Comment [C239]: PLEASE KNOW WHEN A FIXED TENANCY CAN CHANGE TO A PERIODIC TENANCY. EXAMPLE: WHERE THE FIXED TENANCY CERTAIN EXPIRES AND THE TENANT, INSTEAD OF GIVING UP POSSESSION, HOLDS OVER AND PAYS RENT ON A PERIODIC BASIS WHICH IS ACCEPTED BY THE LANDLORD. IN THAT CASE, A PERIODIC TENANCY IS CREATED WHICH WILL HAVE TO BE DETERMINED BY THE APPROPRIATE NOTICE TO QUIT.

Comment [C240]: FORM TL5

Comment [C241]: **APPLIES TO LAGOS ONLY.**

Comment [C242]:
Instances where notice to quit is not required
- Tenancy for a fixed period
- In Lagos, where a monthly tenant is in arrears of rent for 6 months---**S. 13(2)TLL**
- In Lagos, where quarterly or half yearly tenant in arrears of rent for 1 year—**S. 13(3)TLL**
- In Lagos, where landlord wants to take over possession from licensee---**SECTION 14 TLL--Form TL4**
- In Lagos, where the premises is deemed abandoned (ORDER OF THE COURT FOR AN ORDER OF POSSESSION AND TO FORCE OPEN THE PREMISES IS RATHER SOUGHT)---**SECTION 15 TLL**

Comment [C243]: Excluded courts over recovery of premises are- CUSTOMARY & AREA COURTS. SECTION 2 RPA, ABUJA; SECTION 47 TLL.

Comment [C244]: Claimant may in addition claim arrears of rent and mesne profit. See **Section 28(1) (b) MCL, Lagos.** NOTE: THE DIFFERENCE BETWEEN ARREARS OF RENT AND MESNE PROFIT. Arrears of rent is accumulated rent owed to the landlord during the period of the tenancy. Mesne profits means the rents and profits accruing from the use and occupation of the premises after the termination of the tenancy until possession is delivered. It is paid as compensation. NOTE: THE MENSE PROFITS IS CALCULATED AT THE CURRENT MARKET VALUE OF THE PROPERTY **WHILE THE ARREARS OF RENT IS AGREED BY THE PARTIES---Ss. 31 and 47 TLL; HENDERSON V SQUIRE.** There is a difference between rent and mesne profit. Rent is tied to tenancy. During the tenancy period, the tenant is to pay rent. Once the tenancy relationship terminates, the tenant pays MP which is payment for use of the premises. Mesne profit is usually calculated with prevailing market value but in practice, the last rent paid until the possession is given up, is used.

- High Courts

1. Magistrate/District Court: In Lagos, the Magistrate Courts have the flat rate of N10, 000, 000. Thus for recovery of premises, **the annual rental value must not exceed N10, 000, 000, if the action is to be commenced in the Magistrate Court.** Once the annual rental value is ten million or less, the MC will have jurisdiction regardless of the fact that the total sum of the arrears of rent exceeds ten million. In Abuja, the District Court has civil jurisdiction. Thus, for recovery of possession of premises, where the annual rental value is within the jurisdiction of the District Court, the action will be commenced there. The monetary jurisdiction is N5, 000, 000 (five million naira)

2. High Court: Where the annual rental value exceeds the flat rate jurisdiction of the Magistrate or District Court, the action would be commenced in the High Court. Note that even when the matter falls under the jurisdiction of the Magistrate Court, it can still be commenced in High Court but it would not be diligent of a lawyer to do so. This is because proceedings in the MC are summary proceedings and would be dispensed with quickly. It must be noted that recovery of vacant lands or premises is not covered under the recovery of premises laws in some states. In such cases, the common law position will apply---**COLE v. BEGHO. However, in Abuja and Lagos, the Recovery of Premises Act and Law respectively, are applicable to vacant lands.**

Comment [C245]: See section 2 of both laws that define premises to include 'land without buildings thereon'.

2. STATE AND DISCUSS THE MATERIAL FACTS TO BE PROVED FOR RECOVERY OF POSSESSION OF PREMISES AND THE PROCEDURE FOR RECOVERY OF POSSESSION OF PREMISES

(a) Material facts to be proved for recovery of possession of premises

Comment [C246]: GROUNDS FOR RECOVERY OF POSSESSION OF PREMISES

- Arrears of rent.

Comment [d247]: MONIES DUE TO THE LANDLORD BEFORE TERMINATION OF TENANCY.

- Tenancy has been duly determined by notice to quit and landlord has taken irretrievable steps to sell the property.
- Tenant has committed a breach of an express term of the agreement.
- The premises is required for a purpose which is in public interest---**OLAOYE V MANDILAS**

Comment [C248]: in this case the owner of thepremises instituted the action with the ground that he wanted to build an 8-story building for commercial purposes his application was struck out because it wasn't in public interest.

- Tenant is guilty of nuisance or conduct that is inimical to interest or annoyance of the landlord or other neighbors, Example Immoral or illegal purposes-----**COKER V ADETAYO**
- Premises is overcrowded and dangerous to health of occupants.
- Premises is subject to abatement order issued by a public authority.
- Premises requires substantial repairs
- **Premises is required by the landlord for his personal use, or children over 18 years or his parents---COKER V ADETAYO**
- The premises has been abandoned.

Comment [C249]: THE LAST TWO ARE ADDED BY THE TLL

- Premises is unsafe and unsound and is dangerous to human life or property.
  SEE **Ss. 25 AND 26 TLL**

(b) Procedure for recovery of possession of premises

- Service of notice to quit
- Service of notice to tenant of owner's intention to recover/apply to recover possession of premises
- Institution of proceedings to recover possession of premises
- Trial
- Judgment
- Enforcement and Ejection

1. Service of notice to quit: Not applicable where tenancy expires by effluxion of time, i.e, fixed tenancy or tenancy for term certain. In Abuja, **Forms B,C, D.** are used. In Lagos, **Forms TL2 and TL3** are used, depending on the status of the person giving the notice.

Who may issue the notice to quit?

- Generally, it is the landlord as the owner of property. He may however delegate the function to his agent or legal practitioner and **such delegation must be by A WRITTEN AUTHORITY to the agent or legal practitioner. Thus, any oral instruction given to issue notice to quit is not valid---S. 2 RPA; S. 47 TLL; AYIWOH V AKOREDE.**

How the length of notice to quit is determined?

- **By agreement between the parties:** This is because as a general rule, landlord and tenant relationship is based on contract. Where the parties do not agree to the length of notice; then
- **By statute:** Where there is no express agreement between the parties on length of notice to quit:
  - **a.** Tenant at will or weekly tenant----A week's notice (7 days)
  - **b.** Monthly Tenancy-----A month's notice
  - **c.** Quarterly Tenancy------A quarter's notice (3 months notice---Lagos and Abuja).
  - **d.** Half-yearly Tenancy, 3 months notice (Lagos)---**S. 13(1)(d)TLL.**
  - **e.** Yearly Tenancy-------Half a year's notice (6 months notice)---**8(1)RPA, S. 13(1) TLL**

NB: Length of notice to quit must not be less than the period stipulated by the statute or as agreed by the parties or else **it will be null and void**---**A.P V OWODUNMI.** However, the length of notice to quit can be more than the period required---**OCHIE V AJOSE.**

What determines the nature of the tenancy and invariably the length of notice to terminate the tenancy? In the absence of any evidence to the contrary it shall be determined **by reference to the time when and how rent is paid or demanded**---**S. 8(3) RPA; S.13 (6) TLL**

Comment [C250]: The laws governing Recovery of Premises provide the procedure that a landlord intending to recover possession must follow. These procedures are designed to primarily protect the interests of the tenant against that of the landlord and to place limitations on the common law rights of the landlord---**OKEDARE v. HANID**

Comment [C251]: Form B (In Abuja used when it is the Landlord that is giving the Notice), Form C (In Abuja used when the Landlord authorizes a person to give the Notice) or Form D.

Comment [d252]: TL2 USED WHEN THE LANDLORD IS ISSUING IT HIMSELF. TL3 IS USED WHEN THE LANDLORD AUTHORISES A PERSON TO ISSUE ON HIS BEHALF. NB: FORM C AND TL3 ARE COMMONLY USED.

Comment [C253]: The court held that the requirement of a written authority to the event will apply to notice to quit and notice of intention to recover premises. On the other hand, in the case of **OLUSI V SOLANA, NIANDA V ALAKE,** the court criticized decision in AYIWOH V AKOREDE as too wide and held that written authority of landlord will only apply to 7 DAYS NOTICE OF OWNERS INTENTION TO APPLY TO RECOVER POSSESSION. HOWEVER, in the latter case of **COKER V ADETAYO,** the court held that written authority of the landlord applies to the 2 statutory notices---BAR PART II.

Comment [C254]: The Gregorian's Calendar under Section 18(1) Interpretation, i.e one calendar month **is not applicable in recovery of premises**. A month in recovery of premises means **one clear calendar month,** i.e 1st of any month to the last day of the month (1 AUGUST 2019- 31 AUGUST 2019) THUS, YOU CANNOT CALCULATE BETWEEN TWO MONTHS--**OYEKOYA V G.B OLLIVANT, ARUKU V FAYOSE**

Comment [C255]: Abuja and under the exempted areas in Lagos- Notice to be **3 clear calendar months to expire on eve of anniversary. NB:** In Lagos, 3 months notice to quit may terminate **on or after the expiration of the tenancy---S. 13(4) TLL .** Thus, it can be given at any time provided 3 months notice is given (BAR PART 11 give at least 4 months notice).

Comment [C256]: In Abuja and under RPL in Lagos governing the exempted areas in Lagos, **6 calendar months that must expire on the eve of the anniversary of the tenancy, or else the notice to quit will be invalid---AFRICAN PETROLEUM V. OWODUNMI; OWOADE V TEXACO AFRICA LTD.** NOT APPLICABLE UNDER THE TENANCY LAW IN LAGOS BY VIRTUE OF STATUTORY PROVISION---**13(4) TLL**. Thus, In Lagos, under the Tenancy Law, recovery of premises from yearly tenant need not terminate on the anniversary or eve of anniversary provided six months' notice is given. It may terminate on or after the date of expiration of the tenancy---**S. 13(4)TLL**

Under termination of tenancy by operation of law, is service of notice to quit necessary?

Service of notice to quit is not necessary. However, it is advisable to serve 7 days notice of owner's intention to apply to recover possession.

When is notice to quit given?

Any time before the date of termination or expiration of current term of tenancy---**S. 9 RPA**

Content of notice to quit

- It must be certain, definite and unambiguous.
- It must state that the tenant should quit and deliver up possession of the property, with all appurtenances to the landlord
- It must clearly describe the property sought to be recovered and where it is situated.
- It must state the kind of tenancy.
- It must state the date of the expiration of the tenancy.
- It must state the date the tenant should quit and deliver up possession.
- It must be dated and signed by the person giving the notice

Form of notice to quit (Must notice to quit conform strictly with the form or specimen in the statutes?)

A form used which differs from the prescribed form shall not make the notice to be invalid, if the difference is not material, or calculated to mislead, and so long as it contains the essentials of a valid notice to quit---**S. 31 RPA; S. 23 TLL; ADEJUMO v. HUGHES**

Effect of service of notice to quit

Once it is served on a tenant and it expires, it automatically terminates the tenancy---**U.I.C.LTD V HAMMOND NI. LTD.** Thus, there is no more landlord and tenant relationship. Thereafter, landlord is referred to as the "owner" and the tenant as the "occupier"---**CHIWETE V AMISSAH.**

What happens where landlord collects rent from tenant after termination of tenancy?

It implies that a tenancy relationship has been revived. This is because such payment and acceptance of rent will be evidence of intention of the parties to create a new tenancy---**HAMILTON V HOLMES.** THIS SHOULD NOT BE DONE.

2. Service of notice to tenant of owner's intention to recover/apply to recover possession of premises: At common law, the landlord, on the effluxion of time or on the expiration of a valid notice to quit, had the right to go to court for repossession. But, under the Recovery of Premises Laws, an additional requirement of seven (7) days' notice of owner's intention to recover possession must be served on the tenant before the landlord can go to court. **On the expiration of that seven (7) days' notice, the tenant automatically becomes a statutory tenant and cannot be evicted by force but by a lawful court order.** If the landlord evicts by force, he will be liable in damages for unlawful eviction. Thus, no self-help---**IHEANACHO v. UZOCHUKWU**

Comment [C257]:
In Lagos, some tenancies automatically terminate by operation of law. They are:
- **1 monthly tenant who is in arrears of rent for 6 months---S. 13(2)TLL**
- **2 Quarterly or Half-yearly tenant who is in arrears of rent for 1 year---S. 13(3)TLL**

Comment [d258]: THE SAME DATE IN 4 AND 6.

Comment [d259]: There is a difference between the date of issue and the date of service. The date of issue is the date on the notice on which it was made, while the date of service is the date the notice was served on the tenant. The date of service is of importance as the length of the notice will start counting from that date. In **NNADOZIE v. OLUOMA,** the notice that was prepared on 29th March requiring the tenant to quit and deliver up possession of the premises on the 30th April which was served on the tenant on 1st April was held to be invalid as the commencement date was date of service--- **ENIFENI v. ADEMOYE.**
Upon the expiration of a valid notice to quit, the tenancy ends. See UIC v. HAMMOND (Nig) LTD.

Comment [d260]: **NB:** IF WHAT IS RECEIVED FROM THE TENANT IS ARREARS OF RENT, NO NEW TENANCY CAN THEREBY BE CREATED.

When do you serve the notice of owner's intention, i.e. 7 days notice?

It is when the tenant has failed to deliver up possession after the expiration of the notice to quit---**S. 7 RPA; S. 16 TLL; U. I. C. v. T. A HAMMOND**

NB: Compliance with Form not mandatory. **NB: This indicates owner's intention to proceed to court within the jurisdiction where the property is situated on a date not less than 7 clear days from date of service. T**HE DATE THE NOTICE WAS GIVEN MUST NOT BE COUNTED. THE LANDLORD CAN GO TO COURT AFTER THE EXPIRATION OF THE 7 CLEAR DAYS.

What happens where action is commenced in court before the expiration of 7 days after date of service? The action will be a nullity---**LASAKI V DABIAM**

What happens where action is filed before the end of 7 days after service of notice but the matter is not heard by court until after 7 days? The action will still be valid---**IHENACHO V UZOCHUKWU**

NOTABLES

Service of statutory notices

ABUJA: By personal service on the tenant. Where the tenant is evading service or cannot be found, there can be substituted service by pasting on some conspicuous part of the premises---**S. 28 RPA, CHIWETE V AMISSAH**

LAGOS: By proper service: any manner of service that will ensure that the person to be served will have knowledge of the notices to be served---**S. 17 TLL**

NB: Service can be effected **by landlord, his agent or legal practitioner.** A BAILIFF IS NOT NECESSARY.

Time for effecting service

Statutory notices can only be served between the hours of **6:00am and 6:00pm** on a week day, **6:00am and 2:00pm** on Saturdays. Any service effected after 6:00pm on a week day will be deemed to take effect at 6:00am the following day. Service effected after 2:00pm on Saturday or any time on Sunday will be deemed to take effect at 6:00am on Monday.

3. Institution of proceedings to recover possession of premises: After expiration of the 7 days notice above, if the tenant fails to deliver up possession. The owner/legal practitioner may:

- In Abuja and exempted areas in Lagos, apply for the issuance of **a writ** (High Court) OR **Plaint in FORM F** (Magistrate Court) against tenant.
- In Lagos, file **a Writ** (High Court) OR **a claim in FORM TL 6B** AND **an ordinary summons in Form TL6A** will be issued by the court upon filing of the claim.

Comment [C261]: Before substituted service can be valid, the server must establish that he made several efforts at personal service without any success---**CHIWETE V AMISSAH.**

Comment [C262]:
Proper service of notices on a tenant of residential premises shall be personal service and will include but not limited to all the manners stated in **S. 18 TLL**. The manner includes:
- Service on the person
- Delivering it to an adult residing at the premises to be recovered
- By courier where the tenant cannot be found, by delivering same to the premises sought to be recovered, and the courier must show proof of delivery
- Affixing the notice on the prominent part of the premises sought to be recovered and providing corroborative proof of evidence.

Proper service of notices on a tenant of a business premises shall be as stated in **S. 19 TLL.** The manner includes:
- Delivering it to a person at the business premises sought to be recovered.
- Affixing the notice on the prominent part of the premises sought to be recovered and providing corroborative proof of evidence

Comment [d263]:
ORDINARY SUMMONS, IN LAGOS UNDER RPL.

Comment [C264]:
TAKE NOTE: FORM F AND FORM TL 6B shall contain the following:
- That the claimant is entitled to the possession of the premises
- A brief and accurate description of the premises
- The period of tenancy and rent payable on the property.
- Date of termination of the tenancy by notice to quit or effluxion of time
- The fact that the plaintiff claimant also served a notice of intention to apply to recover possession. A copy of this notice must be attached.
- A description of the mode of service of the 7 days' notice.
- That upon the notice being served, the tenant has refused or neglected to deliver up possession.
- Must state the grounds for seeking recovery
- State the present rental value of the premises
- Must contain the reliefs to be claimed namely:
  a. Possession of the property
  b. Arrears of rent or mesne profits:

NB: Action will be commenced in the judicial division or magisterial district where the property is situated.

4. Trial: It should be noted that judgment for recovery of premises cannot be entered in default of appearance or defence---**PHILIPS V NIGERIAN GENERAL SECURITY AND SAFETY CO.** This is because at the hearing, relevant statutory notices and letter of Authority given to the agent issuing the notices must be tendered or at least any secondary evidence of such notices must be given. Thus, the matter must be set down for hearing. Where the owner seeks to tender the secondary evidence of any of the statutory notices, the original of which is in possession of the tenant, any secondary evidence of the contents of the documents is admissible pursuant to **S. 90(a) EA**. **It is not mandatory to issue notice to produce the original to the defendant since the originals of the documents are themselves notices.**

Burden of Proof is on the owner, once he discharges it, it shifts on the defendant to adduce evidence as to why possession should not be granted to the owner. The standard of proof is determined on the balance of probabilities. The owner may pray for certain reliefs

Tenant can counterclaim in the following instances:

- Where there is a claim for compensation for unexhausted improvement made on the property with the **written consent** of the landlord.
- Where expenses had been incurred on the property with the **written consent** of the landlord.
- Where excess rent has been paid on the property----**AKANBI V ADEYEMI**

5. Judgment: After the hearing and proof of necessary facts, the court may make an order for possession of the premises either immediately or on or before such date **(within 6 months from the date of the order)** as the court may direct---**S. 27 TLL**

Where mesne profit is claimed or a sum for use and occupation of the premises, once such is proved, judgment is to be entered for the amount so proved---**S. 31 TLL**

6. Enforcement and Ejection: The modes of enforcing judgments if provided for under **Ss. 39 - 43 TLL.** By **S. 39 TLL,** where the landlord is entitled to possession of any premises, the Court may issue **a warrant for possession** notwithstanding that the counter claim is undetermined or unsatisfied. Thus, the mode of enforcing an order for possession is by a Warrant for Possession.

Where the date of vacation of premises is not stated in the judgment, warrant of possession is to be filed after **14 days of delivery of judgment**. In Lagos, warrant of possession **is to be in force for 3 months and can be renewed for another 3 months not exceeding 3 renewals---S. 41 TLL.** In Abuja, it is 3 months and no longer---**S. 23 RPA**

By **S. 42 TLL**, the warrant of possession shall entitle the landlord a justified entry, with such assistance as he deems necessary and be given possession of the premises. Under the RPA, it is warrant of possession and **under Sherriff and Civil Process Act, it is known as writ of Possession** (non-money judgment only for the judgment on recovery of possession of the premises and not the rents and mesne profits). Where judgment **includes arrears of rent and**

Comment [C265]:
The following are the reliefs to be sought
1. An order granting possession/ recovery of possession
2. An order for payment of arrears of rent, if applicable
3. An order for mesne profit
4. Damages if the property was damaged by the tenant

Comment [C266]: NOTICE TO BE GIVEN WITHIN 3 DAYS.SECTION 16 RPA.

Comment [C267]:
Reference to Arbitration and other ADR
The alternative dispute resolution mechanisms applies to actions for recovery of possession of premises. Once there is an arbitration clause in the tenancy agreement, the parties are bound by it and such clause is not construed as an ouster clause. The arbitral award is entered as judgment of the court. The arbitral award must be registered in court within **three (3) months from the date of the award---S. 30 TL**
By section 32(1) TL, the court is enjoined to promote reconciliation, mediation and amicable settlement of parties in recovery of premises. By section 32(2) TL, the court may refer the proceedings or any part of it to mediation at the Citizens Mediation Centre (CMC) or the LMDC. By section 32(3) TL, **the consent of the parties is not required before the court can make such referral.** Under the Recovery of Premises Act in Abuja, no such provisions, but parties can still resort to arbitration.

mesne profit, writ of Fifa or garnishee proceeding will also be taken out. Court may order possession to be given to **claimant either immediately or at the expiration of a time stipulated by the court. Example in Lagos, court can give up to 6 months to the tenant within which to give up possession---S. 27(4)TLL; 19(1)RPA.** Thus, there cannot be enforcement of the judgment by way of ejection unless the period expires, otherwise the landlord will be liable for forceful or unlawful ejection and to special damages---**SECTION 29(1) RPA**

3. DRAFT A NOTICE TO QUIT, NOTICE TO TENANT OF OWNER'S INTENTION TO RECOVER POSSESSION OF PREMISES, AND A WRIT OR PLAINT COMMENCING AN ACTION FOR RECOVERY OF POSSESSION OF PREMISES

(a) Written authority to issue Notice to quit

K. C ANEKE
NO. 2 LAW SCHOOL ROAD, VICTORIA ISLAND, LAGOS
07053531239

OUR REF: **YOUR REF:** **DATE:** **17 April 2019**

Cundy Smith,
No. 3 Law School Drive,
Victoria Island,
Lagos.
Dear Sir,

AUTHORITY TO ISSUE NOTICE TO QUIT AND OTHER RELEVANT NOTICES TO THE TENANTS IN KOKO LODGE, SURULERE

I, K. C Aneke of No. 2 Law School Drive, Victoria Island, Lagos, hereby appoint you Mr. Cundy Smith, a legal practitioner, to act on my behalf with respect to the issuance of notices to the tenants in occupation of my property at No. 7 Uyo Road, Surulere, Lagos, known as KOKO Lodge.

I undertake to pay the necessary fees.

Please find a copy of the Tenancy Agreement.

Thank you for your Agreement.

Yours faithfully

(signature)

K. C Aneke

ENCL: Tenancy Agreement

Comment [C268]:
FORCEFUL AND UNLAWFUL EJECTION
Can a landlord resort to forceful eviction of tenant or use of self help? He cannot use self help. He must apply for a warrant of possession. In Ihenancho v Uzochukwu, the landlord will be liable for damages in trespass.
TENANT CAN CLAIM THE FOLLOWING BY INSTITUTING AN ACTION: an action in trespass.:
1 Declaration that ejection was unlawful
2 Order for restoration
3 General damages for trespass.
4 Special damages for any destruction done to defendants property.
NOTE: **There's penalty in Lagos for any person who attempts to or forcibly ejects or molests a tenant or willfully damage any premises. Section 44 TLL.**

Comment [C269]: CLAIM AND PARTICULARS OF CLAIM IN MC

(b) Notice to quit

CUNDY SMITH & CO
LEGAL PRACTITIONERS AND SOLICITORS
No. 3 Law School Drive, Victoria Island, Lagos
Email: kundycmith@gmail.com
Phone: 07053531239

OUR REF: **YOUR REF:** **DATE: 19 April 2019**

Mr. Akinola Wahab
No. 7 Uyo Road,
Surulere,
Lagos
Sir,

NOTICE TO QUIT

I, Cundy Smith, as legal practitioner to K. C Aneke, your landlord, hereby and on his behalf, give you notice to quit and deliver up possession of the 3 bedroom bungalow with the appurtenances situate at No 7, Uyo Road, Surulere, Lagos, and known as Koko Lodge, in the Lagos Magisterial District which you hold of him as a yearly tenant thereof, on the 30th November 2019.

Comment [C270]: When you expect the tenant to deliver possession and the date the notice to quit expires

Dated this 19th day of April 2019

(signature)
Cundy Smith
Solicitor to the Landlord,
Cundy Smith & Co.,
No. 3 Law School Drive,
Victoria Island,
Lagos.

(c) Notice to tenant of owner's intention to recover possession

CUNDY SMITH & CO
LEGAL PRACTITIONERS AND SOLICITORS
No. 3 Law School Drive, Victoria Island, Lagos
Email: kundycmith@gmail.com
Phone: 07053531239

OUR REF: **YOUR REF:** **DATE: 1 December 2019**

Mr. Akinola Wahab
No. 7 Uyo Road,
Surulere,
Lagos
Sir,

NOTICE TO TENANT OF OWNER'S INTENTION TO APPLY TO COURT TO RECOVER POSSESSION OF PREMISES

I, Cundy Smith, legal practitioner to K. C Aneke, **the owner,** do hereby give you notice that unless peaceable possession of the 3 bedroom bungalow with the appurtenances situate at No 7, Uyo Road, Surulere, Lagos (which **you held** of the owner under a yearly tenancy, which was determined by notice to quit given by the owner on the 19th day of April, 2019 and expired on the 30th of day of November 2019, and which premises are now held over and detained from the said owner) is given to the owner on or before the expiration of seven (7) clear days FROM the date of service of this notice, I shall apply to court for summons to eject any person therefrom.

Dated this 1st day of December 2019

(signature)
Cundy Smith
Solicitor to the Landlord,
Cundy Smith & Co.,
No. 3 Law School Drive,
Victoria Island,
Lagos.

(d) Claim at the Magistrate Court

Comment [C271]: SAME STRUCTURE AS YOUR CLAIM AND PARTICULARS OF CLAIM. HOWEVER, SEE YOUR CLASS NOTE FOR SPECIFICS

NOTABLES

FORMS FOR RECOVERY OF PREMISES:

ABUJA:

- Form B: notice to quit by Landlord himself
- Form C: notice to quit by agent/legal practitioner
- Form D: notice to quit by Landlord to quit lodgings.

LAGOS:

- Form TL1: general form of title of proceedings
- Form TL2: notice to quit signed by landlord in person
- Form TL3: notice to quit signed by agent or legal practitioner
- Form TL4: notice of owner's intention to apply to recover possession (with notice to quit)
- Form TL5: notice of owner's intention to apply to recover possession (no notice to quit)
- Form TL6A: summons. See section 24 TL
- Form TL6B: particulars of claims. See section 24 TL

Comment [d272]: Form F.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. The tenancy law of Lagos State applies to all but one of the following are in Lagos State.

A. Victoria Island

B. Ikeja GRA

C. Ikoyi

D. All of the above

2.___may from time to time by order published in the state official gazette, exempt the application of the TLL to any other area/premises in Lagos State.

A. The Governor of Lagos State

B. The Attorney General of Lagos State

C. The State House of Assembly

D. The Chief Judge of Lagos State

3. ___is a tenancy where the tenant enters into occupation of the premises with the consent of the Landlord but upon the expiration of the tenancy, he holds over possession without the consent of the Landlord.

A. Tenancy at will

B. Tenancy at sufferance

C. Tenancy by estoppel

D. Licence

4. The tenancy relationship created where the landlord permits the tenant to occupy the premises with no definite time is____

A. Tenancy at will

B. Tenancy at sufferance

C. Tenancy by estoppel

D. Licence

5. The tenancy relationship in 4 above requires___

A. The 2 statutory notices

B. A week's notice to quit

C. 7 days notice to quit

D. 7 days notice of owner's intention to recover the premises

6. Where a person is permitted to use premises without having any estate or exclusive possession of the premises, what exits is___

A. Tenancy at will

B. Tenancy at sufferance

C. Tenancy by estoppel

D. Licence

7. NO QUESTION

8. ____tenancy carries with it an automatic renewal clause for the same time as it was created commencing from the anniversary of the tenancy until determined by a valid notice to quit.

A. Fixed

B. Periodic

C. Statutory

D. Service

9. All these require a notice to quit except___

A. Tenancy at will

B. Tenancy at sufferance

C. Periodic tenancy

D. Tenancy for a fixed period

10. The tenancy identified in 9 above requires___

A. A week's notice to quit

B. 7 days notice to quit

C. A week's notice of owner's intention to recover possession

D. 7 days notice of owner's intention to recover possession

11. All these courts but one have jurisdiction over recovery of premises.

A. Magistrate/District courts

B. High courts

C. Customary/Area courts

D. None of the above

12. Under the statute, a monthly tenant requires__notice to quit.

A. 1 month

B. 30 days

C. 31 days

D. 1 clear calendar month

13. Under the statute, a quarterly tenant requires__notice to quit.

A. 4 months

B. 3 months

C. 6 months

D. 1 month

14. Under the statute, a half-yearly tenant requires___notice to quit.

A. 4 months

B. 3 months

C. 6 months

D. 1 month

15. Under the statute, a yearly tenant requires__notice to quit.

A. 6 months

B. 4 months

C. 3 months

D. 12 months

16. In Lagos, the following tenancies but one terminate by operation of law.

A. Monthly tenant in arrears of rent for 6 months

B. Quarterly tenant in arrears of rent for 1 year

C. Half-yearly tenant in arrears of rent for 1 year

D. Yearly tenant in arrears of rent for 6 months

17. A tenant sought to be evicted automatically becomes a statutory tenant upon the expiration of___

A. 7 days notice of owner's intention to recover possession

B. Notice to quit period of time

C. 14 days from the date of the last notice

D. None of the above

18. Where the action for recovery of premises is commenced in court before the expiration of the time as in 17 above, the action is____

A. A nullity

B. Voidable

C. Valid

D. Inchoate

19. Where the action as in 18 above is however not heard by the court until after the expiration of the time frame required by law, the action is____

A. A nullity

B. Voidable

C. Valid

D. Inchoate

20. On a week day, statutory notices can only be served between the hours of__

A. 5am-8pm

B. 8am-6pm

C. 6am-6pm

D. 6am-2pm

21. On Saturdays, statutory notices are to be served between the hours of__

A. 5am-8pm

B. 8am-6pm

C. 6am-6pm

D. 6am-2pm

22. Any service as in 20 above after the prescribed closing time will be deemed to take effect at___

A. 5am the following day

B. 6am the following day

C. 5am on Monday

D. 6am on Monday

23. Any service as in 21 above after the prescribed closing time will be deemed to take effect at___

A. 5am the following day

B. 6am the following day

C. 5am on Monday

D. 6am on Monday

24. Where a tenant fails to enter appearance or file a defence, the landlord may do__

A. Apply for default judgment for default of appearance

B. Apply for default judgment for default of defence

C. Apply for the matter to be set down for trial

D. All of the above

25. In Lagos, warrant of possession is to be in force for___

A. 6 months/renewable for another 3 moths

B. 3 months/renewable for another 3 months not exceeding 3 renewals

C. 3 months/no renewal

D. 6 months/no renewal

26. In Abuja, as in 25 above, it is____

A. 6 months/renewable for another 3 moths

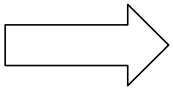
B. 3 months/renewable for another 3 months not exceeding 3 renewals

C. 3 months/no renewal

D. 6 months/no renewal

ANSWERS

1. **D**
2. **A**
3. **B**
4. **A**
5. **B**
6. **D**
7. **BONUS**
8. **B**
9. **D**
10. **D**
11. **C**
12. **D**
13. **B**
14. **B**
15. **A**
16. **D**
17. **A**
18. **A**
19. **C**
20. **C**
21. **D**
22. **B**
23. **D**
24. **C**
25. **B**
26. **C**



15. ELECTION PETITION

1. EXPLAIN AND DISCUSS THE GENERAL PRINCIPLES INCLUDING THE COURTS THAT EXERCISE JURISDICTION FOR ELECTION PETITIONS

(a) General principles in Election Petitions

- Election petition is sui generis. It is a special procedure guided by its own rules---**ORUBU V NEC**
- Time is of the essence. Time limit must be complied wit
- Election petitions and appeals enjoy accelerated hearing and are given precedence over other cases
- There must be strict compliance with the prescribed procedure
- All actions arising from the conduct of an election are commenced **by way of petition**---**S. 133(1) Electoral Act**
- Election tribunal **shall be constituted not later than fourteen (14) days before the day of the election---S. 133(3)(a) Electoral Act** and by **S. 133(3)(b) Electoral Act**, its Registries must be open for business **seven (7) days before the election.**
- Where quorum is not formed or quorum is subsequently lost during the proceedings, any decision so reached is a nullity.
- An election petition **must be filed within twenty-one (21) days after the date of the declaration of the result of the election---S. 285(5) CFRN; S. 134 Electoral Act.** The date the result is declared is excluded from the computation, and if the next day is a Sunday or a public holiday, both days are equally excluded---**S. 15(2) Interpretation Act, Order 23 FHC (civil procedure) Rules; YUSUF v. OBASANJO**
- There is no extension of time within which to file the petition. Once a petitioner fails to file his petition within the 21 days, he is statute barred and loses his right to relief---**KAMBA v BAWA; MOGHALU v. NGIGE. However, it must be noted that by paragraph 45(1) of the First Schedule to the Electoral Act, as amended, the court or tribunal may extend the time within which to do any other thing under the Act, except filing a petition and determining a petition.**
- An election tribunal **shall deliver its judgment in writing within 180 days from the date of filing the petition---S. 285(6) CFRN; S. 134(2) Electoral Act, ABUBAKAR v. GONI**
- An appeal from a decision of an election tribunal or court **shall be heard and disposed of within sixty (60) days from the date of the delivery of judgment of the tribunal or court---S. 285(7) CFRN. Section 134(3) Electoral Act** says **90 days for determination of appeal** RECONCILE THAT
- By **S. 285(8) CFRN**, in all final appeals from election tribunals, the court may adopt the practice of first giving its decision and reserving the reasons thereof to a later date.

Comment [C273]: Election petition is the process meant to challenge the validity of an election. An election petition is a special procedure on its own (sui generis).

Comment [C274]: The requirement as to time in section 285(6) CFRN within which a tribunal or court shall deliver its judgment is sacrosanct, strict and cannot be extended. This rule also covers trials de novo ordered on appeal. Such trial de novo can only take place **within the 180 days from the date of filing the petition.** See ABUBAKAR v. GONI (2012) 7 NWLR (Pt. 1298) 147, where in interpreting the said section 285(6) CFRN, the SC per Rhodes-Vivour laid the following principles:

a.The period of 180 days is not limited to trials only but also to de novo trials that may be ordered by an appeal court
b.Once an election petition is not concluded within the 180 days from the date the petition was filed by the petitioner, an election tribunal no longer has jurisdiction to hear the petition and this applies to rehearings
c.The period of 180days shall at all times be calculated from the date the petition was filed.
d.Courts do not have the vires to extend the time assigned by the Constitution. The time cannot be extended, or expanded, or elongated, or in any way enlarged. The time fixed by the constitution is like the Rock of Gilbraltar or Mount Zion which cannot be moved. If what is to be done is not done within the time so fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter.
e.The court of appeal in its appellate jurisdiction has no power to order the retrial of a petition which had lapsed by effluxion of time. There is no statutory provision for such a step.

However, while it is salutary that the provision as to time sought to cure the mischief of prolonged election petitions, deserving de novo cases should not be shut out on grounds of this technicality as this would defeat the purpose of the provision. Moreso, mischievous parties and counsel may capitalize on it to raise frivolous objections and go on appeal when they are overruled on as a tactic to waste time. This raises ethical issues which would be considered subsequently.

Comment [C275]: GET CLARIFICATION IN CLASS

Applicable laws

The following are the laws applicable to election petition as stated in **OBI v. MBAKWE**

- The CFRN, 1999 as amended
- Electoral Act 2010, as amended
- The Rules of Procedure for Election Petitions (First Schedule to Electoral Act)(RPEP)
- The Election Tribunal & Court Practice Directions 2011-made by the President, Court of Appeal
- Federal High Court (Civil Procedure) Rules 2019 (where electoral act is silent). NB: Petitions filed under the old rules will be governed by the new 2019 rules. This is because if a law relates to the procedure to be followed, it can apply retrospectively but if it deals with substance, it does not as it will only apply to current events.
- Evidence Act 2011.

(b) Courts with jurisdiction in Election Petitions

The following are the courts with jurisdiction over election petition, their composition and their subject matter. The courts with jurisdiction are:

- Court of Appeal
- The National and State Houses of Assembly Election Tribunal (NET)
- The Governorship Election Tribunal (GET)

1. Court of Appeal: The jurisdiction of the court of appeal in election petition is over the office of president and vice-president and it is EXCLUSIVE---**OBASANJO V. YUSUF. The jurisdiction of the court of appeal in this regard is exclusive and the composition of the court is at least three (3) justices of the court of appeal---S. 239(1)(2) CFRN**

2. National and State Houses of Assembly Election Tribunal: It is to be established in each state of the federation and the FCT. Their jurisdiction is to determine whether a person has been validly elected as a member of the National Assembly or State House of Assembly---**S. 285(1) CFRN**. Their jurisdiction is exclusive. The composition as found in the 6th schedule, CFRN is

- The chairman who shall be a judge of the HC; and
- Two other members appointed from judges of High Court, Kadis of Sharia Court of Appeal, judges of the Customary Court of Appeal or other members of the judiciary not below the rank of chief magistrate. They are to be appointed by **President of the Court of Appeal (PCA) in consultation with Chief Justice of the State, the Grand kadi of the Sharia Court of Appeal or the President of the Customary Court of Appeal of the state – section 1(1)(3) of sixth schedule. The quorum/composition is the chairman and at least, one member**

3. Governorship Election Tribunal: There shall be a Governorship Election Tribunal for each state of the federation ---**S. 285(2) CFRN**. The jurisdiction is to determine whether any person has been validly elected to the office of Governor or Deputy-Governor of a state. Composition and quorum is the same as the National and State House of Assembly Election Tribunal

Comment [C276]:
Before any election can be conducted in Nigeria, there must be an Electoral Act in place.

The following are the elective positions awarded in Nigeria:
- The office of the President of FRN
- The office of the Vice-President of FRN
- The office of Governor of a state
- The office of the Deputy-Governor of a state
- Members of the National Assembly (Senate and House of Representatives).
- Members of the House of Assembly of States
- Chairman of Local Government Area/ Vice Chairman
- Councillor of LGA

The foregoing except the last two are regulated by the Electoral Act 2010. The various laws enacted by state regulates the last two being residual matters to the state. See section 7 CFRN; AGAbia&ors v. AG Federation.

Comment [d277]: IN THE GOVERNSHIP ELECTION TRIBUNAL OF EDO STATE

Comment [C278]: The jurisdiction is on any of the following:
- Whether any person has been validly elected into the offices of the president or vice-president
- Whether the term of office of the president or vice-president has ceased; or
- Whether the office has become vacant.

Comment [C279]: **NB:** In the FCT Abuja, the Electoral Act prescribes the procedure for election into Area Councils in Abuja. It establishes the Area Council Election Tribunal for the FCT and an Area Council Election Appeal Tribunal for the FCT. The decisions of the appeal tribunal on area council elections is final. The Electoral Act does not create election tribunals for local government councils as they are under the exclusive jurisdiction of the states. **THE FEDERAL HIGH COURT:** The Federal High Court now has jurisdiction to entertain all inter-party or pre-election matters and to decide whether the term of office has elapsed of the members of the National Assembly or State Houses of Assembly. See S. 27 of the 1st Alteration Act to the 1999 Constitution

2. STATE AND DISCUSS THE CONTENT AND MATERIAL FACTS TO BE PLEADED AND PROVED IN ELECTION PETITION CASES

(a) Contents of Election Petition

- Heading of the appropriate court or tribunal
- Petition number
- Heading
- Parties
- The right of the petitioner to present the petition
- The holding of the election, the result of the election, the scores of the candidates and the person returned as the winner.
- Grounds for the petition
- Facts in support of the grounds for the petition
- Prayers/reliefs sought
- Address for service and occupier
- Signature of the petitioner or his solicitor, if any, named at the foot of the election petition---SEE **PARA. 4(1) FIRST SCHEDULE TO ELECTORAL ACT.**

NB: By **PARA. 4(7) OF THE FIRST SCHEDULE TO THE ELECTORAL ACT** as amended, failure to comply with the above requirements or any of them renders the petition defective and it may be struck out.

1. 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 political party whose candidate won the election---**BUHARI v. YUSUF**
- The **Chief Electoral Officer of the Federation** where the petition relates to the election of President or Vice President,
- The **Chief Electoral Officer of the State** where the election relates to that of Governor or Deputy Governor of that state,
- The **Electoral Officer of a Senatorial district, Federal constituency, State constituency** where the election relates to a Senator, member of House of Representatives, member of State House of Assembly respectively.
- The **Returning officer:** Where the petition complains about the conduct of a Returning Officer or Presiding Officer, he shall for all purposes be joined as a Respondent.

  NB: INEC is to be joined as a respondent where the petition contains a complaint against any INEC official and there is no need to join individual electoral officer, once INEC is

Comment [C280]: IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNAL

Comment [C281]: IN THE MATTER OF THE PETITION OF GOVERNORSHIP ELECTION

Comment [C282]: The petition may state that the petitioner participated in the election, indicating the capacity in which he participated and upon the platform.

Comment [C283]: This clause is very important as it helps to ascertain whether the petition was presented within time or not etc. **Failure to include it is fatal---OJONG v DUKE**

Comment [C284]: SEE DISCUSSION BELOW

Comment [C285]: On the signing of the petition, the petitioner or all the petitioners or the solicitor must sign at the foot of the petition---**ORIZU v. OZOEGWU**

Comment [C286]: **NB: Where there is an election, the losers cannot bring a joint petition and you cannot make another aggrieved party as co-petitioner. Each aggrieved person must commence/present his petition independently. However, the tribunal may consolidate them for ease of hearing.**

Comment [C287]: The party can file a petition to challenge the conduct of the election or the result so long as it participated in the election. To participate in an election, the political party or its candidate need not have participated in the polls on the polling day. It is sufficient that the political party had validly nominated and sponsored a candidate at the election---**PPA v SARAKI**

Comment [C288]: 1. 2.The person whose election is complained of (that is, the person who won the election)

joined as a respondent. INEC is to defend the petition on its behalf and on behalf of the officer concerned. Thus, the non-joinder of such officer is not fatal so long as INEC is joined.

2. Grounds for an election petition---DINUA

- **Disqualification:** That a person whose election is questioned (respondent) was, at the time of the election, not qualified to contest the election;
- **Invalid by reason of corruption/non-compliance:** That the election was invalid by reason of corrupt practices or non-compliance with the provisions of Electoral Act;
- **Not duly elected:** That the respondent was not duly elected by majority of lawful votes cast at the election; or
- **Unlawful exclusion after valid nomination:** That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election. SEE **S. 138(1) (a) – (d) ELECTORAL ACT; OBI v. ENWEREM; SARAKI V. PPA**
- **Affidavit of qualification contains false information submitted to INEC**

a. **Disqualification:** That a person whose election is questioned was, at the time of the election, not qualified to contest the election. The grounds for disqualification are provided under the constitution. The grounds are basically the same for all offices except for the age requirement which varies from office to office. Therefore, by **Ss. 66 (for membership of the NA); 106(for membership of SHOA); 137(for president); 182 (for governorship) CFRN** a person would not be qualified to contest an election if:
   i. He is not a citizen of Nigeria. A candidate **for the Presidential or Governorship elections must be citizens of Nigeria BY BIRTH.** It must be noted that except in cases prescribed by NASS, a person shall not be qualified if he has voluntarily acquired the citizenship of a country other than Nigeria or has made a declaration of allegiance to such other country.
   ii. He has been elected into such office at any two previous occasions (applicable to President and Governor only)
   iii. He is adjudged a lunatic or a person of unsound mind under any law in Nigeria.
   iv. He is an undischarged bankrupt
   v. He has presented a forged certificate to INEC
   vi. He is under a death sentence or a sentence of imprisonment or fine for an offence involving dishonesty or fraud by a court of competent jurisdiction.
   vii. He is employed by the public service of the Federation or of a State and he does not resign, withdraw, or retire from such employment **thirty (30) days before the date of the election**.
   viii. He is a member of a secret society-- See definition of secret society in section **318 CFRN; Regd TRUSTEES OF AMORC v. AWONIYI**
   ix. The age of qualification for **Presidential candidates is 40 years (reduced to 35 by the Not Too Young To Run Act)** (s. 131(b) CFRN), it is **35years (retained and not reduced by the NTYTRA) for both Governors and Senate**; and it is **30years (reduced to 25 by the NTYTRA) for both House of Representatives and House of Assembly.**
   x. He is not a member of a political party and is not sponsored by that party
   xi. He has not been educated up to at least, School Certificate or its equivalent

Comment [C289]: the non-compliance must be substantial as to substantially affect the election---**BUHARI VOBASANJO**

Comment [C290]: Where the person was validly nominated and cleared but excluded from the election by his party through unlawful/substitution, it will be a pre-election matter and an intra-party dispute; and the election tribunals lack jurisdiction over intra-party disputes and pre-election matters. The aggrieved person cannot petition but can seek redress in the ordinary courts---**AMAECHI v. INEC; ODEDE v INEC** (High Court). The political parties have the power to substitute their candidates before the election, but such substitution must be lawful and done in accordance with the law. Where such substitutions are unlawfully done, the courts would intervene to uphold the candidacy of the victim---**UGWU v. ARARUME.** The courts have even declared a wrongfully substituted candidate the winner of an election in place of a victorious wrongful candidate---**AMAECHI v. INEC.** Under the Electoral Act 2010 as amended, substitutions can only be made in the following instances: in the case of death or in the case of withdrawal by a candidate.
A withdrawal by a candidate will only be valid and allowed **if done not less than forty-five (45) days before the election.** In the case of death; if a nominated candidate dies **after the time for filing nominations BUT BEFORE the elections, the Chief National Electoral Commissioner or the Resident Electoral Commissioner shall cancel the poll in which the deceased candidate was to participate and INEC shall fix another convenient date for the election within fourteen (14) days**.

Comment [C291]: Although not provided under section 137(1) Electoral Act as amended, **a person who was validly nominated and cleared, but is unlawfully excluded from the election by INEC can file an election petition either alone or with his political party pursuant to section 138(1)(d) Electoral Act---PPA v SARAKI**

Comment [C292]: Within a period of **ten (10) years prior to the election**, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of a contravention of the Code of Conduct.**---ACTION CONGRESS V INEC** However, it must be noted that the indictment of a person for fraud or embezzlement by a judicial or administrative panel of inquiry does not automatically disqualify that person from contesting election---**AMAECHI v INEC**

Comment [C293]: In determining whether a person in the public service has resigned, withdrawn or retired at least 30 days before the date for the election, the relevant conditions of service relating to the mode of resignation, withdrawal or retirement must be complied with. See MELE v. MOHAMMED; See also MBUKURTA v. ABBO where it was held that a person on leave of absence was still in the employment of his employer for the period of leave had not met the requirements of resignation, withdrawal or retirement.

NB: Where the candidate who won the election was not qualified to contest, the petitioner who claims to have polled the next majority of votes cannot be declared winner by the tribunal unless the facts of disqualification were notorious and within the knowledge of the electorate. If the facts were not notorious, the tribunal must nullify the election and order a fresh one---**BAYO v. NJIDDA**

3. Prayers/Relief sought: The prayers and reliefs to ask for must be one of those contained in **Paragraph 4(3)(a) First Schedule to Electoral Act**, they are:

- That the petitioner be declared validly elected having polled the highest number of lawful votes cast at the election; OR
- That the election be declared nullified and a consequential order of bye-election/fresh election be made.

NB: The two prayers cannot be asked at the same time as such would amount to contradictory prayers. A court cannot nullify an election and still declare a person winner of such election. They can only be asked for in the alternative---**IGE v. OLUNLOYO, OPIA v. IBRU.** Also note that your relief must accord with your grounds. For instance, ground two is not compatible with prayer for declaring the petitioner winner. The most appropriate relief for ground two is the prayer for nullification of the election and a consequential order for fresh election. The only ground that can lead to the relief of declaring and returning him winner is ground three which is that the respondent was not elected by a majority of the lawful votes cast. The other three grounds can work only with the relief of nullification of the election and re-run.

(b) Material facts to be pleaded

Here state all the facts and surrounding circumstances that constitute the grounds of appeal. Just like facts in divorce petition (state everything that happened. Note that you can use sub paragraphs).. Examples:

- Election did not take place in certain polling units (please give details of these polling units)
- Election materials were not provided
- Incidence of ballot box snatching
- Unlawful campaign on the scheduled for election
- Incidence of over voting, etc.

NB: Relying on a fact like snatching of ballot box using agents, requires evidence to show that it was the respondent that mobilized them (make reference to the respondent. This is because an agent acting independently will not affect the validity of the votes)---EGOLUM v. OBASANJO; BUHARI v. OBASANJO

3. EXPLAIN THE PROCEDURE AND SEQUENCE OF EVENTS INVOLVED IN ELECTION PETITIONS UP TO THE CONCLUSION OF TRIAL

- Election stage
- Presentation of election petition
- Service of the processes on the Respondent

- Entry of appearance and Reply by the Respondent
- Pre-hearing notice
- Hearing of the petition
- Judgment
- Appeals

1. Election stage: The stages of election are**:---NAVCD**

1. 1. Nomination
2. 2. Accreditation of voters
3. 3. Voting
4. 4. Collation
5. 5. Declaration of results

NB: No election tribunal/court can declare any person a winner at an election in which such person has not fully participated in all stages of the election**----S. 141 ELECTORAL ACT**

2. Presentation of election petition: The originating process is an election petition. By **Paragraph 3(1) of the First schedule to the Electoral Act** as amended, **the election petition shall be presented to the SECRETARY OR REGISTRAR OF THE ELECTION TRIBUNAL/COURT either by the petitioner or his solicitor.** Thus, a petition is presented when it is actually brought by the petitioner or his solicitor, if any, named at the foot of the petition before the Secretary or Registrar of the Tribunal for filing, coupled with

a. the payment of filing fees/obtaining a receipt **(Form TF002)** for same; and
b. the payment of security for costs**---OZOBIA v. ANAH**

An election petition must be presented at the registry of the appropriate court or tribunal. Presenting the petition in a wrong court or tribunal is a fundamental error which cannot be rectified**---OGBOLUMANI v. OKOBI**. **The electoral act does not provide for the transfer of a petition from one tribunal to the other. Thus, a petition filed at a wrong tribunal shall be struck out----OLANIYONU v. EME AWA. Where it is not subsequently re-filed before the appropriate tribunal within the 21 days period, it becomes statute barred and the cause of action is barred----MOGHALU V NGIGE**

NB: Time to file petition and reply: An election petition must be filed within twenty-one (21) days after the date of the declaration of the result of the election---S. 285(5) CFRN. The date the result is declared is excluded from the computation, and if the next day is a Sunday or a public holiday, both days are equally excluded**---YUSUF v. OBASANJO**

3. Service of the processes on the Respondent: Generally, service of the petition and frontloaded documents is to be by personal service. However, if the respondents cannot be found at the places listed by petitioners for service, then, upon application by the petitioner, supported by affidavit showing that reasonable efforts have been made to effect personal service, the tribunal may order substituted service. Substituted service shall be effected in the same manner as it is done in other civil cases.

Comment [C294]:
By paragraph 3(2), **a copy of the petition to each respondent and 10 copies of the petition to the court is to be delivered to the secretary/registrar.**

Comment [C295]:
STEPS TO BE TAKEN BY THE SECRETARY
- He posts a Certified copy for onward transmission to the person required by law to adjudicate and determine the petition.
- Notifies the respondent.
- Notifies the tribunal members who will sit over the matter.

Comment [C296]:
Filing fees must be paid and Receipt of payment (Form TF002) of the filing fees must be obtained from the Secretary/registrar in respect of the filing fees so paid. Failure to pay the filing fees renders the petition invalid and it will be struck out unless the tribunal orders otherwise---**EZEANI v. OKOSI.**

Part payment of filing fees is not fatal especially where the error is that of the secretary/registrar of the tribunal. In such a case, there will be stay of proceedings pending full payment of the filing fees.

Comment [C297]: By **Paragraph 2(1) of the First schedule to the Electoral Act** as amended, at the time of presenting the petition, the petitioner must give security for all costs which may become payable by him **to a witness summoned on his behalf or to the respondent**. **Failure to pay security for costs is not fatal but the proceedings will be stayed until the security for costs is extracted from the petitioner---NWOBODO v. ONOH; OMOBORIOWO v. AJASIN**

The security for costs is **an amount of #200, 000 to be deposited with the tribunal by the petitioner.** There shall be a **further deposit of another #200, 000 to make up for the costs of service of notices, registered postings, and all other expenditures which may be occasioned by the petitioner---Paragraphs 3 and 4 respectively of the Election Tribunal and Court Practice Directions made by the PCA on the 1st of April, 2011.**

Comment [C298]:
The system of frontloading applies to the election tribunal and the following documents are to be frontloaded along with the petition:
- The election petition
- A list of the witnesses that the petitioner intends to call in proof of the petition
- Written statements on oath of the witnesses; and
- List and copies of every document to be relied on at the hearing of the petition.

By **Paragraph 4(6) of the First schedule to the Electoral Act** as amended, the effect of failure to comply with this frontloading requirement is that the petition would not be accepted for filing by the Registrar---**UDUMA v. ARUNSI**
A respondent's reply to the petition is also expected to be accompanied by the documents listed above---**Paragraph 12(3) of the First schedule to the Electoral Act** as amended. However, no such requirement is applicable to the petitioner's reply to the respondent's reply under **Paragraph 16 of the First schedule to the Electoral Act** as amended

4. Entry of appearance and Reply by the respondent: The respondent, upon being served with the petition and frontloaded documents, **is to enter an appearance by filing a memorandum of appearance**. Thereafter the respondent **files his reply** to the election petition in the registry **within 14 days from receipt of election petition. HOWEVER, IT MUST BE NOTED THAT A RESPONDENT CAN FILE A REPLY WITHOUT FILING A MEMORANDUM OF APPEARANCE.** The respondent is to provide/deliver **10 copies of his reply to the court and a copy each for all the parties to the petition.**

The respondent's reply is to be filed **within fourteen (14) days of the service of the petition---Paragraph 12(1) of the First schedule to the Electoral Act**. The petitioner's reply to the respondent's reply shall be filed **within five (5) days from the day he received the respondent's reply.** A petitioner's reply is in answer to the new issues raised in respondent's reply. This reply is limited to new issues and the time given is not to be extended--**Paragraph 16 of the First schedule to the Electoral Act**

Where the respondent has a preliminary objection, he should file a conditional appearance. If the respondent fails to file his memorandum of appearance, he can still file his reply to the petition. **NB: In election petition you cannot counter claim. You only defend or keep quiet.**

Content of reply

- The facts admitted
- The facts denied
- The facts he relies on in opposition to the election petition
- The facts and figures clearly and distinctly disproving the claim of the petition
- Signature of the respondent or solicitor

NOTABLES

Amendment of election petition and reply

In election petitions, an amendment can only be made to the petition **within the 21 days period allowed for the presentation of the petition.** Within the 21 days, any of the contents of the petition can be amended. However, after the expiration of the 21 days period, no amendment can be made to the petition---**OPIA v. IBRU; NGIGE v. OBI**

This same rule applies to amendments to the respondent's reply and the petitioner's reply. Thus, **such amendments can only be made within the time limited by the Act for filing them, which is 14 days and 5days respectively from the date of service of the petition and the respondent's reply respectively**. However, in all cases, minor amendments such as clerical and typographical errors may be allowed by the tribunal at any time before judgment---**IGE v. OLUNLOYO**

Where an amendment can be made, application for amendment is by Motion on Notice, affidavit and written address. The time for doing anything in the petition may be abridged upon ex parte application even though the court can order service.

Comment [C299]: However the effect of failure to file memo of appearance is that he will be deemed to have waived personal service and all subsequent processes will be deemed duly served on him by pasting it on the Notice board at the Tribunal Registry.

Comment [C300]: The following documents are to be frontloaded with the reply
- A list of the witnesses that the respondent intends to call in proof of the petition
- Written statements on oath of the witnesses; and
- Copies or list of every document to be relied on at the hearing of the petition.

Comment [C301]: THE PRACTICE AND PROCEDURE AT the election tribunal is similar to that of the FHC and the FHC civil procedure rules apply. Thus the procedures for joinder, amendments etc. under FHC civil procedure rules apply to election petitions.

5. Pre-hearing notice: This notice is for the **Pre-hearing conference or session**. In election petitions, the pre-hearing session is just like the case management conference. The procedure for applying for the issuance of the pre-hearing notice is as follows:

- **Within 7 days of filing and service of the last pleading**, whether petitioner's reply or respondent's reply, the petitioner applies for the pre-hearing notice in **Form TF008.** The application is by **Motion on Notice, Affidavit and Written Address.** Note that if the petitioner fails to apply within the prescribed seven (7) days, he can bring a motion for extension of time within which to apply for the pre-hearing notice. **Provided it is within the 180days for the hearing of the case**
- The tribunal or court issues the pre-hearing notice **accompanied by a pre-hearing information sheet in Form TF009.**
- Where the petitioner fails to do so, the respondent may
    a. Bring the application.
    b. Apply for an order dismissing the petition (MON)
- Where both petitioner and respondent failed to apply for pre-hearing notice, **the tribunal shall dismiss the petition as an ABANDONED PETITION---SALVADOR v. INEC**
- The pre-hearing session must be completed **within fourteen (14) days of its commencement.**

Comment [C302]: **The order of dismissal is final and the tribunal or court shall be functus officio**

Comment [C303]: At the pre-hearing session, the tribunal or court addresses the following among others
- Amendments and further particulars
- Interlocutory applications
- The admission of facts, documents and other evidence by consent of the parties.
- Formulation and settlement of issues for determination
- Hearing and determination of objections on point of law
- Giving directions for hearing of the petition.
- Preliminary objections

Effect of failure to attend the pre-hearing session

Like the CMC, attendance of parties at the prehearing session is mandatory. If the petitioner fails to attend, the petition will be dismissed. If the respondent fails to attend, judgment will be entered against him.

Upon application by the person whom judgment at pre-hearing session was against, of **which application is accompanied by an undertaking signed by such person and his legal practitioner to participate fully in the pre-hearing session,** the order of the court may be set aside. The undertaking signed by the applicant and his solicitor must be attached to the affidavit.

All the interlocutory application/motions are to be taken at the pre-hearing session. Thus, interlocutory applications are not allowed at the election tribunal, they are only limited to pre-hearing session. However, at the hearing with the leave of court, motions can be moved---**NGIGE v. OBI**

Applications at the pre-hearing session are by way of motion, affidavit and written address. **The respondent to the application has seven (7) days to file his counter affidavit and/or written address (if on point of law only).**

6. Hearing of the petition: Election petitions are to be heard in an open court or tribunal. Notice of the time and place of the hearing (may be Form TF005) is to be given by the secretary or registrar to the parties **at least five (5) days to the day fixed for the hearing**.

On the date fixed for the hearing, if neither of the parties are present, the tribunal shall strike out the petition and no application can be brought to re-list except good cause is shown. If only the petitioner appears and is present, the petitioner will be asked to prove his case, if burden of proof lies on him and judgment will be given (final judgment). If only the respondent appears and is

present, the respondent shall be entitled to the final judgment of dismissing the petition. Where both parties are present, then hearing commences.

Note that in appropriate cases, the principle of severance of pleadings will also apply to allegations in election petitions---**NWOBODO V ONOH**

The filing and service of final written addresses shall be as follows:**10--7--5**

Comment [C304]: See paragraph 46(10)-(13) of the First Schedule to the Electoral Act 2010 as amended

- When the party beginning has concluded his evidence, if the other party does not intend to call evidence, the party beginning shall **within ten (10) days after close of evidence, file a written address.**
- Upon being served with the written address, the other party shall file his own written address **within seven (7) days.**
- Where the other party calls evidence, he shall **within ten (10) days after the close of his evidence, file a written address.**
- Upon being served with the other party's written address, the party beginning shall file his written address **within seven (7) days.**
- The party who files the first address shall have a right of reply **on points of law only** and the reply shall be filed **within five (5) days** after the service of the other party's address.

7. Judgment: An election petition tribunal must deliver its judgment **within 180 days from the date of the filing of the petition in writing----S. 285(6) CFRN; ANPP v. GONI**. By **S. 140 Electoral Act**, the following orders can be made by the tribunal or the court in the election petition:

- Where the court or tribunal finds that the returned candidate was not validly elected on any ground, the tribunal or court shall nullify the election.
- Where the court or tribunal finds that the person returned had the majority vote cast but was not qualified to contest the election; a fresh election shall be entered.
- Where the court finds that the candidate returned did not secure the majority of valid votes cast at the election, the court or tribunal shall declare as elected the candidate who scored the highest votes cast at the election and satisfied the requirements of the constitution and the Electoral Act.
- The court may uphold the petition and order that the person returned was not validly returned on grounds of lack of qualification
- Order a fresh election in whole or in part for irregularity.

8. Appeals: An appeal from the tribunal or court's decision is to be filed **within 21 days from the date of the decision of the tribunal----S. 143 Electoral Act.** The appeal is to be heard and disposed of **within 60 days from the date of the delivery of the judgment of the tribunal or of the Court of Appeal---S. 285(7) CFRN.** There is no room for extension of the time.

Appeal from the National and State House of Assembly Election Tribunal lie to the Court of Appeal. **This appeal is as of right---S. 246(1)(b) CFRN**. **It must be noted that the decision of the Court of Appeal in respect of appeals arising from the National and State House of Assembly Election Tribunal shall be final----S. 246(3) CFRN**

Appeal lies from the decisions of the Governorship Election Tribunal to the Court of Appeal **as of right----S. 246(1)(c) CFRN**. Appeal also lies from decision of the Court of Appeal in that respect to the Supreme Court---**S. 233(2)(e)(iv) CFRN**. **The appeal is as of right.** Thus, only governorship election tribunals enjoy two steps of appeals. First to the CA, then to the SC.

Appeal lies from the decision of Court of Appeal sitting as Presidential election tribunal to the Supreme Court. The appeal is as of right---**S. 233(2)(e)(i) CFRN. NB:** The person returned as elected remains in office pending the determination of the appeal

NB: The secretary/registrar of the tribunal has **ten (10) days, from the date of the Notice of Appeal, to compile the Records of Proceedings**.

NB: Appellant's brief of argument must be filed **within ten (10) days from the date of service of the Records of Proceedings**. Respondent's brief of argument is to be **within five (5) days from the date of service of the appellant's brief.** Reply brief is to be filed **within three (3) days of service of respondent's brief**. Note that the time specified cannot be extended---**MARWA v. NYAKO.**

Comment [C305]: 10-5-3: ten days for appellant's brief, five days for respondent's brief and three days for reply brief.

4. DISCUSS STANDARD OF PROOF IN ELECTION PETITIONS: (A) ON A GENERAL PROOF (B) WHERE FRAUD, ILLEGALITY, CRIME, ETC IS ALLEGED

Generally, the standard of proof is on the balance of probabilities or preponderance of evidence as provided in **S. 134 EA**. However, where there is allegation of fraud or crimes generally, then the proof of such is beyond reasonable doubt as in criminal cases---**S. 135(1) EA; NWOBODO v. ONOH; IKPEAZU V OTTI**

5. DRAFT AN ELECTION PETITION AND THE REPLY TO IT.

IN THE COURT OF APPEAL
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

PETITION NO: EPT/0558/2015

THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 28TH OF MARCH, 2015

BETWEEN

1. **DR GOODLUCK JONATHAN**
2. **PEOPLES DEMOCRATIC PARTY (PDP)**

PETITIONERS

AND

1. **GENERAL MOHAMMED BUHARI (RTD)**
2. **ALL PROGRESSIVE CONGRESS (APC)**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

RESPONDENTS

PETITION

THE PETITION OF DR. GOODLUCK JONATHAN OF OTUEKE IN BAYELSA NORTH LOCAL GOVERNMENT AREA OF BAYELSA STATE, AND THE PEOPLES DEMOCRATIC PARTY, WHOSE NAMES ARE HEREIN SUBSCRIBED

1. Your 1st petitioner, Dr. Goodluck Jonathan was a candidate at the above election (or claims to have had a right to contest or be returned at the above election). He was validly nominated by his political party, your 2nd petitioner, for the Presidential election AND your 2nd petitioner is a registered political party that participated in the above election and sponsored your 1st petitioner.
2. And your petitioners state that the election was held (or was scheduled to hold on) on Saturday the 28th of March, 2015, when the following were scored (depending on your grounds for challenging the election, you may add: despite the fact that there was no election in some parts of the federation/state/constituency):

NAME	PARTY	VOTES
i. Goodluck Jonathan	PDP	200
ii. Mohammed Buhari	APC	500
iii. SuleLamido	ANPP	12
iv. Nasir El-Rufai	HOPE	09

Mohammed Buhari was declared winner of the election and returned elected by the 3rd Respondent (you may add: though there was no election on the said date)

GROUNDS FOR THE PETITION

1. Your petitioners state that the grounds on which they rely for the petition are as follows (NOTE that the ground(s) must be one or more of those specified in section 138(1)(a)-(d) of Electoral Act as amended. You can couch them as follows):
   - **a.** That the 1st respondent was not qualified to contest the election in the first place
   - **b.** The return of the 1st Respondent as winner of the election for the office of President of the FRN held on the 28th of March, 2015 was invalid by reason of a substantial non-compliance with the provisions of the Electoral Act 2010 as amended
   - **c.** That the 1st respondent was not duly elected by a majority of the lawful votes cast (as no lawful vote was cast in … polling unit(s), state, LGA, etc)
   - **d.** If applicable, you can add the last ground that though the 1st petitioner was validly nominated by the 2nd petitioner, the 1st petitioner was unlawfully excluded from the election by the 3rd Respondent

FACTS IN SUPPORT OF THE GROUNDS FOR THE PETITION

1. Your petitioners state that the facts in support of the grounds for the petition are as follows:
   a. Here state all the facts and surrounding circumstances. Just like facts in divorce petition (state everything that happened. Note that you can use sub paragraphs)
   b. ……
   c. ……
   d. ……

PRAYERS

WHEREOF your petitioners prays this Court/Tribunal for the following:

a. A DECLARATION that the 1st Respondent, Mohammad Buhari, was not duly elected and returned as winner of the election to the office of _____ held on the 28th of March, 2015
b. A DECLARATION that the election to the office of _____ held on the 28th of March, 2015 is null and void
c. AN ORDER FOR A BYE ELECTION into the office of _____ on a date to be fixed by the 5th Respondent.
d. A DECLARATION that the 1st Respondent, Mohammad Buhari, was not duly elected and returned as winner of the election to the office of _____ held on the 28th of March, 2015 having failed to secure a majority of the lawful votes cast at the election
OR
e. IN THE ALTERNATIVE, DECLARATION the 1st petitioner is the winner of the election to the office of _____ held on the 28th of March, 2015 having secured/polled a majority of the lawful votes cast as the said election.

ADDRESS FOR SERVICE

1. 1st PETITIONER
DR GOODLUCK JONATHAN
No 5 Otueke Market Road,
Bayelsa North,
Bayelsa
OCCUPIER:
Dr. Goodluck Jonathan

2. 2nd PETITIONER
PEOPLES DEMOCRATIC PARTY (PDP)
Plot 34, Wuse Zone 4
Abuja
OCCUPIER:
Peoples Democratic Party (PDP)

3. 1st RESPONDENT
GENERAL MOHAMMED BUHARI (Rtd)
No 3 KasuwanNamaVillage
Katsina South
Katsina State
OCCUPIER:
General Mohammed Buhari (Rtd)

4. 2nd RESPONDENT
ALL PROGRESSIVE CONGRESS (APC)
Wadada House
Wuse Zone 4
Abuja
OCCUPIER:
All Progressive Congress (APC)

5. 3rd RESPONDENT
Independent National Electoral Commission
INEC National Headquarters
Wuse Zone 2,
Abuja
OCCUPIER:
Independent National Electoral Commission (INEC)

THE NAME OF THE PETITIONER'S SOLICITOR IS:

K. C Aneke SAN

WHOSE ADDRESS FOR SERVICE IS:

K. C Aneke & Co.

Barristers & Solicitors

No. 2 Law School Drive,

Victoria Island,

Lagos.

kundycmith@gmail.com

07053531239

SIGNED BY

_____

Dr. Goodluck Jonathan

SIGNED BEFORE ME THIS _____ DAY OF _____, 2015

_____
SECRETARY

IN THE COURT OF APPEAL
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

PETITION NO: EPT/0558/2015

THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 28TH OF MARCH, 2015

BETWEEN

1. **DR GOODLUCK JONATHAN**
2. **PEOPLES DEMOCRATIC PARTY (PDP)**

PETITIONERS

AND

1. **GENERAL MOHAMMED BUHARI (RTD)**
2. **ALL PROGRESSIVE CONGRESS (APC)**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

RESPONDENTS

REPLY TO THE PETITION OF DR. GOODLUCK JONATHAN BY THE 1ST RESPONDENT

SAVE AND EXCEPT as expressly admitted in this reply, the respondents deny every allegation of fact made in the petition as if same were herein set out and traversed seriatim.

Comment [C306]: SAME STRUCTURE AS A STATEMENT OF DEFENCE

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Election tribunal shall be constituted not later than___

A. 21 days after the day of the election

B. 21 days before the day of the election

C. 14 days before the day of the election

D. 14 days after the day of the election

2. Registries of election tribunals must be open for business__the election

A. 14 days before

B. 7 days before

C. 14 days after

D. 7 days after

3. Election petition must be presented within___

A. 14 days after the date of the election

B. 14 days after the declaration of the result of the election

C. 21 days from the date of the declaration of the result of the election

D. 21 days after the date of the declaration of the result of the election

4. NO QUESTION

5. An election tribunal shall deliver its judgment in writing within___days from the date of filing the petition.

A. 90

B. 60

C. 180

D. 120

6. An appeal from a decision of an election tribunal or court shall be heard and disposed of within___days from the date of delivery of judgment.

A. 90

B. 60

C. 180

D. 120

7. All these are qualified to be members of a National and State House of Assembly except___

A. Judge of a High court

B. Kadi of the Sharia Court of Appeal

C. Judge of the Customary Court of Appeal

D. Magistrate

8. The quorum/composition of the tribunal in 7 above is___

A. Chairman and at least one member

B. Chairman and at least two members

C. Three members

D. Two members

9. The decision of the Area council election appeal tribunal on area council elections is___

A. Appealable to the Court of Appeal

B. Appealable to the Supreme Court

C. Appealable to the High Court

D. None of the above

10. The court with jurisdiction to entertain all intra-party or pre-election matters and to decide whether the term of office of members of the National

Assembly or State House of Assembly has elapsed is the___

A. National Industrial Court

B. Federal High Court

C. Court of Appeal

D. Supreme Court

11. A withdrawal from the election by a candidate will only be valid and allowed if done not less than__days before the election.

A. 45

B. 35

C. 25

D. 15

12. All these but one are true

A. A candidate for Presidential or Governorship election must be a citizen of Nigeria by birth

B. A person who has voluntarily acquired the citizenship of another country or has made a declaration of allegiance to such country shall not be qualified for elections except in cases prescribed by the National Assembly

C. For the offices of President or Governor, any person who has been elected into such office for any two previous occasions shall not be qualified for election

D. None of the above

13. A public officer who wishes to contest an election in Nigeria, must resign, withdraw or retire from such employment___days before the date of the election.

A. 30

B. 40

C. 21

D. 14

14. To disqualify a candidate from contesting in an election, it must be shown that within a period of___prior to the election, he has been convicted and sentenced for an office involving dishonesty or he has been found guilty of contravention of the code of conduct.

A. 10 years

B. 15 years

C. 20 years

D. 25 years

15. Under the Not Too Young To Run Act, the age qualification for Presidential, Governorship, Senatorial and Houses of Assembly & Representatives' elections is____respectively.

A. 35/35/25

B. 40/35/30

C. 45/40/35

D. 35/30/25

16. Where a nominated candidate dies after the time for filing of nominations but before the elections, the poll in which the deceased candidate was to participate shall be cancelled and INEC shall fix another convenient date for the election within___days.

A. 14

B. 7

C. 21

D. 28

17. ___copies of the petition is to be delivered to the secretary/registrar

A. 10

B. 5

C. 8

D. 2

18. Under the Electoral Act, a petition presented in the wrong court/tribunal is to be__

A. Struck out

B. Dismissed

C. Transferred

D. None of the above

19. A respondent served with a petition is expected to file__after entering appearance

A. Statement of defence

B. Counter-affidavit

C. Reply

D. Answer to petition

20. The step in 19 above is to be done within__days from the receipt of the election petition.

A. 10

B. 21

C. 14

D. 12

21. The petitioner's reply to the process in 19 above shall be filed within___days from the day of receipt.

A. 5

B. 7

C. 14

D. 3

22. All these are true as regards election petitions except___

A. No counter-claim to election petitions

B. Failure to file a memorandum of appearance means waiver of personal service

C. If the respondent fails to file a memorandum of appearance, he can still file his reply to the petition

D. None of the above

23. Application for pre-hearing notice is to be made within__days of filing and service of the last pleading.

A. 14

B. 7

C. 5

D. 3

24. Pre-hearing session/conference must be completed within__days of its commencement.

A. 14

B. 7

C. 5

D. 3

25. At the pre-hearing session, counter-affidavit/written address to applications are to be filed within__days.

A. 14

B. 7

C. 5

D. 3

26. Notice of the time and place of the hearing is to be given by the secretary/registrar to the parties at least___days to the day fixed for the hearing.

A. 14

B. 7

C. 5

D. 3

27. Final written addresses are filed and replied in the following number of days__

A. 14-14-7

B. 21-21-7

C. 10-10-5

D. 10-7-5

28. An appeal from the tribunal/court's decision is to be filed within___days from the date of the decision of the tribunal/court.

A. 21

B. 14

C. 90

D. 60

29. The secretary/registrar of the tribunal has___days from the date of the notice of appeal to compile the records of proceedings.

A. 90

B. 60

C. 14

D. 10

30. Appellant's brief of argument must be filed within__days of service of records of proceedings, respondent's brief of argument is to be filed within___days from the date of service of the appellant's brief. Reply brief is to be filed within___days of service of respondent's brief.

A. 45-35-10

B. 10-8-4

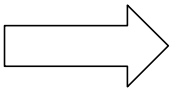
C. 10-5-3

D. 10-10-5

ANSWERS

1. **C**
2. **B**
3. **D**
4. **BONUS**
5. **C**
6. **B**
7. **D**
8. **A**
9. **D**
10. **B**
11. **A**
12. **D**
13. **A**
14. **A**
15. **A**
16. **A**
17. **A**
18. **A**
19. **C**

20. C
21. A
22. D
23. B
24. A
25. B
26. C
27. D
28. A
29. D
30. C



16. MATRIMONIAL CAUSES

1. EXPLAIN AND DISCUSS THE GENERAL PRINCIPLES INCLUDING THE COURTS THAT EXERCISE JURISDICTION FOR MATRIMONIAL PETITIONS

(a) General principles

Applicable laws

- Marriage Act, Cap M6 LFN 2004
- Matrimonial Causes Act, Cap M7 LFN 2004
- Matrimonial Causes Rules 1983

NB: Matrimonial causes involve the practice and procedure that governs family relationship. This applies to nuclear family. In **HYDE V HYDE**, it was held that matrimonial causes will apply to only monogamous marriage which is the voluntary marriage between one man and a wife. Thus, the MCA applies to only statutory marriages that are contracted under the marriage Act. It will not apply to customary marriage or marriages contracted under Islamic law and church marriage per se. A statutory marriage may be celebrated **at the marriage registry** OR in a **licensed place of worship for that purpose** by a recognized minister of the church, denomination or body, according to the rites or usages of marriage observed in such church, denomination or body.

Comment [C307]: The law looks at a church marriage as a mere marriage so long as the place is not a licensed place of worship. At best it will be a church blessing. In **CHUKWUMA V CHUKWUMA, ANYAEGBUNAM V ANYAEGUNAM,** it was held that where a person has done traditional marriage and merely goes ahead to a place of worship not licensed, the church marriage is merely a church blessing and not a statutory marriage.

The marriage must be conducted in the hour of **8am and 6pm**, **at the registry it is 10am to 4pm**. It must be a place where the public has access to the marriage and it must be witnessed by two or more witnesses different from the officiating priests---**NWANGWA V UBANI, ANYAEGBUNAM V ANYAEGBUNAM.**

Matrimonial causes and reliefs

- Dissolution of marriage
- Nullity of marriage
- Judicial separation
- Restitution of conjugal rights
- Jactitation of marriage

NB: There are other consequential reliefs that may be granted under the matrimonial causes like maintenance, custody of children, among others.

1. Dissolution of marriage: Another name for dissolution of marriage is divorce. Under MCA there is only one ground for dissolution of marriage, which is that **the marriage has broken down irretrievably**---**S. 15(1) MCA; MEGWALU v. MEGWALU**. However, the court can only hold that a marriage has irretrievably broken down if at least one of the **facts** provided under **S. 15(2)(a)-(h) MCA** is proved. They are:

a. The respondent has **willfully and persistently refused to consummate the marriage**. Willful implies that it is within the capacity of the respondent to do so and persistent refusal implies that there must have been a request---**OWOBIYI V. OWOBIYI**
b. That since the marriage, the respondent had **committed adultery and the petitioner finds it intolerable to live with the respondent**. Intolerable implies repulsion. The petitioner must not have condoned the adultery. For instance, any act of subsequent sexual intercourse is condonation. Adultery is mostly proved by circumstantial evidence. Opportunity, evidence of STDs, cohabitation can be evidence of adultery among others---**AKINYEMI V. AKINYEMI; ERHARON V. ERHARON**. **Importantly, where facts are on adultery, there must be a co-respondent---EBE V. EBE**
c. That since the marriage, **the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent**. This seems like **an omnibus ground** and **S. 16 MCA** provides circumstances that can fall under the fact. Examples are rape, sodomy, bestiality, drunkenness, going in and out of jail etc. Note that cruelty falls under the ground---**JOHNSON V. JOHNSON; DAMULAK V. DAMULAK**
d. That the respondent **has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petitioner.** Desertion means living apart with intention to bring to an end all rights and duties of marriage. Living apart with consent of the other party does not amount to desertion. Note that such consent can be withdrawn and upon withdrawal of consent, the period for purpose of desertion begins to count. There is willful and constructive desertion. In willful desertion, the person that left is in desertion while in constructive desertion, the person in the house is in desertion (by conduct causing the other party to live apart).
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.** This is the no fault fact to be proved.
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 MCA**.
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.** Under the Evidence Act, such a party must be absent for 7 years---**S. 164(1) EA**
   NB: S. 30(1) MCA provides that institution of dissolution of marriage **cannot be brought where the marriage is under two years unless the leave of the court is sought**. The procedure for asking for leave is by **motion ex parte supported by affidavit---ORDER 4 RULES 1&2 MCR**. The petitioner must establish exceptional hardship on the part of the petitioner/applicant and exceptional depravity on the respondent---**AKERE V AKERE, MAJEKODUNMI V MAJEKODUNMI, WILLIAMS V WILLIAMS.**

NB: The parties to petition for dissolution of marriage are usually the husband and wife and are designated as petitioner and respondent. However, where adultery is relied on as a fact for

Comment [C308]:
The reason for joining the adulterer is to seek damages from him and the adulterer will be a co-respondent. **FAILURE TO DO SO** will vitiate the proceedings except the co-adulterer is dead, the person is **under the age of 14 years or an infant under 16 years**; or the **Court otherwise Orders that** the Co-adulterer is not to be joined.

What is the standard of proof of adultery in matrimonial proceedings ? The Balance of probabilities

When will the court not award damages for adultery? Section 31 MCA.
- Where the petitioner has condoned the adultery.
- Where the adultery has been committed for more than 3 years.
- Where adultery has not been stated as a fact for dissolving the marriage.

Comment [C309]:
Instances where the two years rule will not apply---S. 30(2) MCA
- Willful and persistent refusal to consummate the marriage - section 15(2)(a)
- Adultery since the marriage by the respondent and the petitioner finding it intolerable to live with the respondent - section 15(2)(b)
- Commission of rape, sodomy, or bestiality - section 16(1)(a)
- Institution of proceedings for decree of dissolution of marriage by way of cross proceedings

Factors/grounds that guide the court in granting leave under the 2 years rule-- S.30 (3) MCA. The petitioner must establish:
- Exceptional hardship on the part of the petitioner/applicant and
- Exceptional depravity on the respondent.--- **AKERE v AKERE, MAJEKODUNMI v MAJEKODUNMI, WILLIAMS v WILLIAMS.**

Comment [d310]:
- Name and address of parties
- Day the marriage was contracted
- Grounds relied upon to dissolve the marriage
- If there are children of the marriage and particulars of them (names, age, school).

Then date and sign. Thereafter attach the marriage certificate to the application.

irretrievable breakdown of marriage, the adulterer is to be joined as a co-respondent---**ERAHON V ERAHON**

Where a party to proceedings for dissolution of marriage is represented by counsel, what steps must counsel take?

- Certificate of reconciliation must be filed by counsel to accompany the petition---**ANYASO V ANYASO** (as in FORM 3 or FORM3A)

NB: The court or judge is also enjoined to try and reconcile the parties in a matrimonial cause proceedings in the following ways:

- The court can ask the parties inter se to try and settle amongst themselves and adjourn the proceedings
- The judge can call the parties to chambers with or without their counsel to try and reconcile the parties. Where the judge is not successful at reconciling the parties, the judge must resile from continuing the action and he will send the matter back to the chief judge for reassigning, unless the parties consent.
- The judge will refer the parties to conciliation **for 14 days.** Where the reconciliation cannot work, the trial will continue but the proceedings of the conciliation cannot be given in evidence during the trial.

2. Nullity of marriage: This could be in relation to void marriage or voidable marriage.On **nullity of a void marriage**, **the order of the court is not necessary to annul it**. However, parties still go to file a petition for a void marriage.

Comment [C311]:
DIFFERENCES BETWEEN A VOID AND VOIDABLE MARRIAGE
- A void marriage will be regarded as void ab initio and deemed to never had taken place, while a voidable marriage is valid and subsisting until annulled by the court
- A void marriage may be put in issue at any time even where the parties to the marriage are dead, a voidable marriage becomes unimpeachable once any of the parties to the marriage is dead.
- Anybody interested can challenge a void marriage, however, it is only the parties to the marriage that can challenge a voidable marriage

What circumstances will make a marriage void?

- Either party is at the time of marriage lawfully married to another person. **Ss. 33 and 35 MA,** provides that where a person has been legally married under customary law, he cannot go ahead and marry another person under the statutory act, this is because there has been a valid married under customary law. However, where the person contracts customary marriage, and he goes ahead to marry the same person to do a statutory marriage under the act, the marriage is valid and not void. The penalty for marrying another person while having a valid marriage, is **5 years imprisonment** pursuant to **S. 46 and 47 MA.** The criminal code in **S. 370** provides for **7 years imprisonment**---**R V PRINCEWILL**
- The parties are **within the prohibited degrees of consanguinity or affinity**. Consanguinity is by blood and affinity is by marriage. For affinity, application by way of MEP+A+WA can be made to a judge for leave permitting them to marry and such application must disclose special circumstances.
- The marriage is not a valid marriage under the law of the place where the marriage took place by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages.
- The consent of either of the parties is not a real consent because it was obtained by duress or fraud **or** that party is mistaken as to identity of the other party or as to the nature of the ceremony performed **or** that party is mentally incapable of understanding the nature of the marriage contract

- Either of the parties is not of marriageable age. The Marriage Act is silent on the marriageable age. However, the MA provides that where any one of them is under the age of 21, the consent of their parents or guardians must be sought. The Child's Right Act provides that a person will be a child if he is under the age of 18 years. Suffice it to say that any one above 18 years can get married but must seek the consent of their parents where they are below 21, otherwise it will be void.
- Both parties knowingly and willfully acquiesce to celebrating the marriage
    a. In a place that is not the office of registrar of marriage or licensed place of worship
    b. Under false names
    c. Without registrar certificate
    d. By a minister that is not licensed

On **nullity of a voidable marriage, the order of the court is necessary to annul it** and as such, a party who seeks to bring the marriage to be declared a nullity must file a petition for the marriage to be annulled.

Comment [C312]:
There are categories of persons that are barred from bringing a petition for nullify of a voidable marriage. Section 35 MCA.
- The person who is incapacitated from consummating the marriage
- The person that is epileptic cannot bring an application to nullify the marriage.
- The person who had veneral disease cannot bring a petition.
- The woman who was pregnant cannot bring a petition to void the marriage.

What circumstances will make a marriage voidable?

- Either of the parties is incapable of consummating the marriage.
- Either of the parties is of unsound mind or mentally defective or subject to recurrent attacks of insanity or epilepsy.
- Either party is suffering from a venereal disease in a communicable form.
- Where at the time of the marriage, the wife is pregnant by a person other than the husband---SEE **S. 5(1) MCA**

NB: The circumstances that will make a marriage voidable depends ON THE TIME OF THE MARRIAGE---**S. 5 MCA**

Comment [C313]:
Can any of this factors be condoned? Yes, a party can condone any of the factors, where at the time of the marriage any of the four factors are present and the party condoned it, after marriage the party cannot bring a petition to annul the marriage.

The court will not make a decree of nullity of a voidable marriage:
- Except the incapacity under section 5(1) MA, **existed also at the time of hearing the petition** and the incapacity is incurable or the respondent refuses to submit to medical examination or treatment.
- Where the petitioner has knowledge of the incapacity **at the time of the marriage or conduct of petitioner since the marriage or lapse of time**, and as such, it will be too harsh and oppressive to the respondent or contrary to public interest to make a decree. Section 36(2) MCA
- Where the marriage is voidable under section 5(1)(b-d) , a decree will not be made on that ground unless the court is satisfied with the grounds specified in section 37 MCA.

Effect of a decree of nullity of a voidable marriage

The marriage shall be annulled from and including the date the decree becomes absolute---**S. 38(1) MCA.** However, where the court annuls a marriage that ought to be valid, that order invalidating the marriage will not affect any child the parties had together, or legitimated during the marriage. Thus, the child will not be rendered illegitimate----**S. 38(2) MCA. NB:** MODE OF PETITION FOR A DECREE OF NULLITY OF A MARRIAGE IS BY **FORM 6. Where there are two petitions before the court, one to nullify the marriage and the other for dissolution, the court will hear that of the nullity first.**

3. Judicial separation: It will be applied for where the parties don't want a dissolution of their marriage, but they do not want to live together again and they want a formal order of the court. Facts on which petition for judicial separation can be as specified in Ss. 15(2) and 16 MCA---**S. 39 MCA.** The effect of judicial separation is that the marriage between the parties remain intact, but the parties cannot live together under the same roof. Either party to the marriage can bring an action in tort or contract against the other, although the marriage is still valid. Where any of the parties die, the property of the party will devolve on the other party. Thus, the party alive can have benefit of the deceased's estate.

4. Restitution of conjugal rights: The parties have been living apart but not based on judicial separation. However, the party can bring a petition for an order to compel that person that ran away to come back and cohabit with the party, but however he cannot consummate the marriage---**S. 47 MCA**.

5. Jactitation of marriage: An application can be made to court by way of petition on the GROUND that a party is **persistently asserting and falsely boasting that a marriage has taken place between that party and the petitioner---S. 52 MCA**. The making of the decree of JOM is at the discretion of the court and the court will grant such petition if in truth there has never been a marriage between the two parties in existence **(FORM 60)**

Where the petitioner had acquiesced, i.e. where the person has been condoning the relationship, such a person cannot bring a petition for jactitation of marriage---**AYENI V OWOLABI. NB:** There could be use of petitioner's name after dissolution of marriage, nullity of marriage or jactitation of marriage, provided that there is no persistent assertion or false boasting.

Note the ethical issue in Rule 15(3)(d) RPC on ADR option. ADR is only relevant in custody, maintenance and other ancillary reliefs and not for a decree of dissolution, nullity, judicial separation or jactitation of marriage proceedings.

NB: In the absence of marriage certificate, proof of marriage can be by a certified true copy obtained from the Registrar of Marriage.

6. Other consequential reliefs

Maintenance

What factors will the court take into consideration in ordering maintenance in matrimonial proceedings?

- Means of the parties
- Earning capacity
- Conduct of the parties---SEE **S. 70(1) MCA; MENAKAYA v MENAKAYA; ERAHON v ERAHON**

Custody of children

Who will qualify as a child of the marriage?

S. 69 MCA provides for the following:

- Any child adopted since the marriage by the husband and wife or by either of them with the consent of the other.
- Any child of husband and wife born before the marriage.
- Any child of husband or wife, if at the relevant time, the child was ordinarily a member of the household of the husband and wife.

Comment [C314]:
THE PROCEDURE FOR A PETITION FOR THE RESTITUTION OF CONJUGAL RIGHTS:
1.File a petition using **FORM 7**
2.A written request for cohabitation in a conciliatory language is made to the respondent except it is impossible to do so. **S. 49 of the MCA**

The Court will only make a decree for the **restitution** of **conjugal rights** if it is satisfied that the petitioner sincerely desires conjugal rights to be rendered by the respondent and he is willing in turn to render conjugal rights to the respondent.

Comment [d315]: If the party fails to come back, contempt of court. If the party fails to consummate the marriage willfully, it will be a fact to dissolve the marriage

Comment [C316]:
Includes
- Any child of the marriage who has not attained the age of 21 years
- Any child above 21 who is still being maintained.
- Any child of the spouses who has been adopted.
- Any child of one of the spouses who is now part of the family.

What will the court consider before granting custody?

The court will consider **the best interest of those children before granting custody---Section 71 MCA; NZELU v NZELU; WILLIAMS v WILLIAMS.** Thus **it can be:**

- **Custody to Parent:** The court can grant total custody to one parent, where one party is given total custody, the other party will be given right of access to visit the child. This right might be restrained, unrestrained or on supervision.
- **Custody to be joined or equal**
- **Custody to third party:** it can be granted to a third party where both parents are unfit to have custody of the child/children of the marriage.

(b) Courts with jurisdiction

The only court with jurisdiction for any of the above proceedings is any **State High Court** in Nigeria---**S. 2(1) MCA**. However, where the High Court of a State makes an order for maintenance, the order can be enforced in a court of summary jurisdiction in a summary manner. Thus, the Magistrate Court being a court of summary jurisdiction can enforce such order of maintenance, subject to its jurisdictional limit---**S. 2(1) (b) MCA**.

There is a single jurisdiction for the High Court as any High Court of any state of the federation can exercise jurisdiction irrespective of where the parties to the proceedings are domiciled. Thus for the purpose of matrimonial causes, there is only one domicile which is Nigeria, notwithstanding that the parties reside in different states---**S. 2(3) MCA**

The basis of a Nigerian court assuming jurisdiction in Matrimonial causes is DOMICILE. Thus, where it cannot be established that the petitioner was resident in Nigeria, the Court cannot have jurisdiction over such matrimonial causes---**BHOJWANI V BHOJWANI**. For a person to establish domicile, the person must show that he has properties in that place and an intention to reside in that place---**BHOJWANI V BHOJWANI**. At birth, the child takes the domicile of his father and where his father is late, the domicile of the mother. For a married woman, she takes the domicile of her husband, and she cannot take domicile of another place until the marriage breaks down. In the case of a deserted wife, she shall be deemed to be domicile in Nigeria, if she was domiciled in Nigeria immediately before her marriage or immediately before the desertion

The general rule is that it is the domicile of the petitioner that confers jurisdiction on the High Court of a state for the purpose of hearing matrimonial proceedings. The petitioner must be domiciled in Nigeria before the court can have jurisdiction----**S. 2(3) MCA, SEE BHOJWANI V. BHOJWANI, UGO V. UGO, OMOTUNDE V. OMOTUNDE**. Domicile in one word is the permanent home of a person. There are three types of domicile:

- Domicile of origin
- Domicile of choice; and
- Domicile of dependence

Comment [C317]: Note that because the Act has conferred on every High Court of a state jurisdiction on matrimonial causes, where the petitioner is domiciled in Nigeria, the jurisdiction of the court cannot be objected to. Even though where the petitioner and respondent are resident in Lagos and the petitioner decides to commence petition for dissolution of marriage in Zamfara High Court, which he can validly do. However, there is room for forum convenience (the court that is more convenient for the parties).

S. 9(2) MCA provides for the transfer of any matrimonial proceeding in a court where it was commenced to another court on the ground that the first court is not convenient for the parties and the latter is more convenient.--**ADEGOROYE V. ADEGOROYE; FOLORUNSHO V. FOLORUNSHO**

The transfer under this provision is subject to the discretion of the court and an application is to be brought for the petition to be transferred to a forum convenient. The provision of section 9(2) prevents forum shopping. Another practice which usually arises from the single jurisdiction granted is abuse of court process. This can happen when the petitioner is seeking dissolution of his marriage at all cost. Thus, he files a petition in Kano High Court and then when there is delay, without application for it to be struck out, files another petition in Enugu High Court. Section 9(1) MCA provides that upon such incidence, the court may stay proceeding. Importantly as a counsel, application should be made for one of the petitions to be struck out as these amounts to abuse of court process---**HARRIMAN V. HARRIMAN**.

Comment [C318]: Domicile of origin is given to a child on his birth. If legitimate, he takes the domicile of his father. If illegitimate, he takes the domicile of his mother.

Comment [C319]: Domicile of choice is the domicile taken by a person upon attaining majority. In this like, there must be residence in that state permanently or indefinite period and an intention to so remain. That is the animus. State here refers to country.

Comment [C320]: Domicile of dependence is a domicile given to persons dependent on others e.g. a child, wife, e.t.c. thus the domicile of wife follows that of the husband. Upon marriage, the wife takes the domicile of her husband. If the husband changes his domicile, the wife's domicile automatically changes. Hence, before a wife can bring matrimonial proceedings in Nigeria, she must be domiciled in Nigeria, that is, her husband must be domiciled in Nigeria.
However, where a wife was domiciled in Nigeria either immediately before her marriage or immediately before the desertion, she shall be deemed domiciled in Nigeria - section 7(b) MCA. Also, where at the date of instituting the proceeding, she has been resident in Nigeria for at least 3 years before instituting the matrimonial proceeding, she shall be deemed to be domicile in Nigeria - section 7(b) MCA. The special domicile so created is only for the purpose of matrimonial proceeding, thus limited.

2. 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

(a) Contents of a petition in matrimonial causes

- Heading of the court
- Petition number/
- Parties and status
- Title of petition
- Full names, occupation and address of each of the party to the proceeding. Surname of the wife immediately before marriage.
- Particulars of the marriage
- Particulars of the place of the marriage
- Particulars of a third party adulterer sought to be joined.
- Particulars relating to domicile or residents of the marriage in Nigeria
- Particulars of cohabitation of the parties to the marriage and its ceasing
- Particulars of children of the parties to the marriage and the children of either party to the marriage, if any. Name, date of birth,
- Particulars of previous proceedings between the parties to the marriage,
- Ground of the petition
- Facts relied but not evidence by which the facts are to be proved. Facts to support the ground.
- Condonation, connivance and collusion
- Proposed arrangement for children
- Custody
- Maintenance and settlement of property
- Reliefs sought
- Date
- Signature and address of petitioner's counsel
- Settler of petition
- Address for service on respondent

(b) Procedure in matrimonial causes

- Filing of petition as in **Form 6** with accompanying documents
- Service of petition
- Pleadings (answer to petition, reply, rejoinder and cross petition--where necessary)
- Compulsory conferences in matrimonial causes proceedings
- Setting down for hearing
- Trial/hearing of the petition
- Judgment
- Appeals

Comment [C321]:
NOTE THAT WHERE THE PETITION IS BROUGHT WITHIN THE TWO YEARS RULE, the first step would be to make an application for Leave to file a Petition for dissolution of the marriage **WITHIN 2 YEARS** by **Motion Ex Parte supported with affidavit stating the following**:
a.The grounds for the petition of dissolution
b.If previous application for leave have been made
c.If there are living children and whom they are with
d.Whether attempts at reconciliation have been made

1. Filing of petition as in Form 6 with accompanying documents: The following documents are to accompany a petition when it is being filed, namely:

- Notice of petition
- Original marriage certificate
- Acknowledgment of service **(Form 11)**
- Verifying affidavit.
- Certificate of reconciliation
- Discretion statement

2. Service of the petition: This is evidenced by filing with the petition an acknowledgment of service as there must be evidence of service before the court that petition has been served on the respondent before the court can commence hearing of the petition. It should be noted that the rules require this acknowledgment of service where the **service is by post.** However, it has been stretched to include personal service on the respondent though the acknowledgment in this instance need not necessarily be in Form 11. Also, **the absence of service has nothing to do with the competence of the suit itself, but the service itself.**

3. Pleadings (answer to petition, reply, rejoinder and cross petition): Answer to petition is a document prepared and filed by the respondent or co-respondent where he wants to respond to the petition. It is filed **within 28 days---ORDER 5 RULE 29 MCR**. It shall contain facts to controvert the petition. **Form 15** is used. **NB:** Where there is an intervention, the document filed by an intervener is also called an answer. The answer is in the position of a statement of defence.

NB: There could be an answer under protest by a respondent who intends to challenge the jurisdiction of the court on any ground. Where there is an answer under protest, the respondent is expected to bring a formal application before the court, **within 14 days after the answer under protest**, for direction as to the time and place at which the objection may be determined. Where the respondent fails to bring the application within the prescribed time frame, the objection will be taken as waived.

Rely to answer is **filed by the petitioner** where there are new facts raised by an answer to petition. This is as in **Form 17. Re-joinder** is **filed by the respondent** in further reply to new issues raised by the petitioner in his reply. Cross petition is an independent petition **filed by the respondent**. It is filed **within 28 days.** It is in **Form 15A.**

NB: If there is **a petition for dissolution of marriage** and the respondent answers by a **cross petition for a decree of nullity of marriage**, the **cross petition** will be heard **first**.

4. Compulsory conferences in matrimonial causes proceedings: This is held where the petition includes prayers for **maintenance**, **settlement** of property, custody or guardianship of an infant etc for the parties to agree on amicable settlement on the issues before the setting down of the petition for **hearing/trial---ORDER 11 RULES 33-34 MCR**

5. Setting down for hearing: The request to set down the petition for hearing is **to be made by the petitioner** by filing **Form 32** if the petition is **defended** by the respondent **OR Form 31** for

Comment [C322]: GIVES NOTICE TO THE RESPONDENT THAT A PETITION HAS BEEN FILED AGAINST HIM AND IT ALSO GIVES THE RESPONDENT DIRECTIVES ON THE STEPS HE OUGHT TO TAKE IN THE PROCEEDINGS

Comment [d323]: EVIDENCE OF PROOF THAT THERE IS A STATUTORY MARRIAGE BETWEEN THE PARTIES. WHER THE ORIGINAL IS LOST APPLY TO THE REGISTRAR OF THE MARRIAGE REGISTRY FOR A CTC

Comment [C324]: which the respondent will use to acknowledge that he has been served with the petition **O. 6 r. 3(1) of the MCR**

Comment [d325]: SWORN TO BY THE PETITIONER TO VERIFY THE TRUTHFULNESS OF ALL THE FACTS STATED IN THE PETITION. NORMAL AFFIDAVIT FORM……
THAT I AM THE PETITIONER IN THIS CASE
THAT I MARRIED THE RESPONDENT ON THE …..
THAT ALL THE FACTS STATED IN THE AFFIDAVIT ARE TRUE
THAT I DEPOSE TO THIS AFFIDAVIT…….

Comment [C326]: (**not** to be filed if it is a petition for a **decree of nullity of a void marriage**) to be **signed** by the solicitor as to the **steps** taken to settle the parties. **FORM 3 OF THE MCA AND O. 2 R. 2 OF THE MCR**

Comment [C327]: Made by any of the parties who has committed adultery. Where the petitioner commits adultery before filing the petition, he must file the discretion STATEMENT. Where he commits adultery after the filing, he should file the discretion STATEMENT immediately after committing the adultery. If it is the respondent, he files it with his defence. It must contain the day, time, place and with whom the adultery is committed with and the end result of the adultery. ERAHON V ERAHON.
CONDITIONS FULFILLED BEFORE A VALID DISCRETION STATEMENT WILL BE FILED
- It must be signed by the party making it
- Depose to a verifying affidavit verifying the truthfulness of the discretion statement,
- The statement must be enclosed in a sealed envelope marked discretion statement and must have the petition number of the petition written on the envelope.
- Certificate certifying that the discretion statement has been verified and signed and it must've been signed by a legal practitioner.

Comment [C328]:
SECTION 62 MCA
INTERVENTION BY ATTORNEY-GENERAL ON REQUE ST FROM COURT
In any proceedings under this Act where the court requests him to do so, the **Attor-ney-General of the Federation** may intervene in, an d contest or argue any question arising in, the proceedings.

SECTION 63 MCA
INTERVENTION OF ATTORNEY-GENERAL IN OTHER CASES
... [1]

an **undefended petition**---**ORDER 11 RULES 39-41 MCR.** The notice of the trial is to be given as is in **Form 33** MCR.

6. Trial/ hearing of the petition: Trial is to be held **in public and not in the chambers** except where there are special circumstances that require the interest of justice---**MENAKAYA V. MENAKAYA.** It was also held that **S. 103(1) & (2) MCA** did not permit a Court to sit in the chambers to hear matrimonial proceedings. **NOTE THAT** whether a petition is defended or not, there must be a hearing of the petition before the Court can made Orders for the dissolution of the marriage and other ancillary reliefs.

7. Judgment: After hearing the parties, the first order the court will make is a Decree Nisi, dissolving the marriage, and to see if the parties will reconcile. **After 3 months the decree nisi becomes absolute**---**Ss. 56-58 MCA; DEJONWO V DEJONWO**

Mode of enforcement of orders/ decrees of the court: It may be by attachment and sequestration, all with the leave of the Court that gave the Order--**ORDER 17 RULE 4 MCR**

8. Appeals: There is no right of appeal against a decree absolute in matrimonial causes—**S. 241(2) CFRN**. However, if it is a decree nisi, there will be a right of appeal.

Comment [C329]: It is the petitioner that sets down the matter for hearing. There is no room for default judgment in matrimonial proceedings, therefore all facts or matters must be proved, thus there are defended or undefended suit.

In defended suit, the parties join issues as there are petition, answer or cross-petition and answer; and reply. Defended suit is set down for trial in Form 32 MCR. Undefended suit is where parties have not joined issues because respondent did not file answer. It is set down in **Form 31** MCR. Then, **a Registrar Certificate** is issued that the matter is ripe for hearing.

Comment [C330]: When a party **appeals** against a **decree** nisi, it will not become **absolute** until **AFTER 15 DAYS OF THE DECISION GIVEN BY THE APPELLATE COURT.**

3. DRAFT A MATRIMONIAL CAUSE PETITION AND REPLY

(a) Petition

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT

BETWEEN

LYDIA BABA----------PETITIONER

AND

1. PAUL BABA----------RESPONDENT

2. ADA OGUN----------CO-RESPONDENT

To:

The above named High Court

PETITION FOR DISSOLUTION OF MARRIAGE

The petitioner, Lydia Baba, whose address is at plot 111, Balarabe Close, Victoria Island, Lagos and who is a legal practitioner, petitions the court for a decree of dissolution of marriage on the ground that the marriage has irretrievably broken down, against the respondent Paul Baba whose address is plot 121, Balarabe Street, Ikoyi, Lagos and the co-respondent is Ada Ogun, whose address is 7, Sharp Street, Ajegunle, Lagos whose occupation is a company secretary.

1. MARRIAGE

- **a.** The petitioner then a spinster was lawfully married to the respondent then a bachelor at the Marriage Registry, Lagos on 7th January, 2010.
- **b.** The surname of the petitioner immediately before marriage is Roberts

2. BIRTH OF PETITIONER AND RESPONDENT

The petitioner was born on 22nd March 1984 in Lagos state, Nigeria and the respondent was born in 1980 in Delta state, Nigeria.

3. 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; prior to the marriage and immediately after desertion, has been resident within the jurisdiction – Nigeria, Lagos.

4. CO-HABITATION

Particulars of the places at which and periods during which the petitioner and the respondent co-habited are as follows:

a. Immediately after marriage, the petitioner and the respondent lived at plot 121, Balarabe Street, Ikoyi, Lagos.
b. The date and circumstances in which co-habitation between the petitioner and the respondent first ceased are as follows: 14th September, 2012, the petitioner found a note written by the petitioner stating that he was leaving for Australia and never to come back to Nigeria.

5. CHILDREN

Nil

6. PREVIOUS PROCEEDINGS

Since the marriage, there have not been any proceedings in court between the petitioner and respondent.

7. GROUND FOR PETITION

That the marriage has irretrievably broken down

8. FACTS SUPPORTING THE GROUND

a. The fact that the respondent has repeatedly committed adultery with co-respondent, as he contacted veneral disease and the petitioner finds it intolerable to live with him.
b. That the respondent had constantly used every opportunity and slight provocation to inflict physical injury on the petitioner.

9. CONDONATION, CONNIVANCE AND COLLUSION

The petitioner has not condoned, connived at the facts specified above and not guilty of collusion in presenting this petition.

10. PROPOSED ARRANGEMENT FOR CHILDREN

Nil

11. CUSTODY

Nil

12. MAINTENANCE

The petitioner claim a lump sum of N100, 000, 000 as maintenance from the respondent

13. RELIEF

Decree of dissolution of marriage on the ground that the marriage has irretrievably broken down.

The petition was settled by K. C Aneke Esq., legal practitioner for the petitioner.

Filed on_____day of_____20____by K. C Aneke Esq. on behalf of the petitioner whose address for service is…….

FOR SERVICE ON:

1. Respondent

…….

2. Co-respondent

……..

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:……..

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT

BETWEEN

LINDA ROBERTS – BABA----------PETITIONER

AND

PAUL BABA ----------RESPONDENT

NOTICE OF PETITION

TO: PAUL BABA of No. 125 Akerele Drive, Ikoyi, Lagos.

TAKE NOTICE that a petition has been presented to the above-named court by Linda Roberts-Baba whose address is at No. 125 Akerele Drive, Ikoyi, Lagos, instituting proceedings for a decree of dissolution and also seeking any further orders with respect to the children of the marriage and maintenance.

1. A sealed copy of the petition is delivered to you with this notice.
2. If you intend to consult a solicitor in connection with this proceedings you should take to the solicitor all the documents delivered to you.
3. 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 enveloped is delivered to you for that purpose.
4. If you desire –
    a) To deny any facts alleged in the petition;
    b) To allege any additional facts for the consideration of the Court;
    c) To submit to the court that it should dismiss any of the proceedings instituted by the petitioner; or
5. To make any other submission to the court, you should file an answer to the Petition.

6. 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.

7. 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.

8. 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.

9. 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 of notice must be effected in accordance with the Matrimonial Causes Rules.

DATED THIS_____DAY OF_____2019

_____

REGISTRAR

K. C Aneke Esq
Petitioner's solicitor
K. C Aneke & Co,
No. 2 Law School Drive
Victoria Island,
Lagos.
kundycmith@gmail.com
0705531239

This notice of petition was settled by K. C Aneke Esq, legal practitioner for the Petitioner. Filed on_____day of_____20_____by K. C Aneke on behalf of the Petitioner whose address for service is No. 125 Akerele Drive, Ikoyi, Lagos.

FOR SERVICE ON:

The Respondent

Paul Baba
No. 125 Akerele Drive,
Ikoyi,
Lagos.

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:……..

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT

BETWEEN

LINDA ROBERTS BABA----------PETITIONER

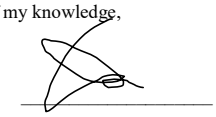
AND

PAUL BABA----------RESPONDENT

VERIFYING AFFIDAVIT

I, Linda Roberts-Baba, Nigeria citizen, Female, Christian, lecturer with the Ministry of Education, Lagos, residing at No. 125 Akerele Drive, Ikoyi, Lagos, make oath and state as follows:

1. That I am the Petitioner in this suit.
2. That I was lawfully and validly married to the Respondent and now seek dissolution of the marriage. *Attached to this is a certified copy of the marriage certificate with the respondent.*
3. That I verify the facts stated in my petition by virtue of my personal knowledge of same.
4. That the statements set forth in paragraph I to 11 of my petition are true and correct to the best of my knowledge, information and belief.



Deponent

Sworn to at the Lagos State High Court Registry, Lagos

this _____ Day of _____, 20_____

BEFORE ME

_____

COMMISSIONER FOR OATHS

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

SUIT NO:

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT
BETWEEN:
LYDIA ROBERTS BABA----------PETITIONER
AND
PAUL BABA----------RESPONDENT

CERTIFICATE RELATING TO RECONCILIATION

I, K. C Aneke Esq of K.C Aneke & Co., No. 2 Law School Drive, Victoria Island, Lagos certify that I am the Solicitor representing the Petitioner and that I have brought to the attention of the Petitioner the provisions of the Matrimonial Causes Act 1970 relating to reconciliation of the parties to a marriage and the approved Marriage Guidance Organisations reasonably available to assist in effecting a reconciliation between the Petitioner and Respondent and the possibility of a reconciliation between the Petitioner and Respondent being effected either with or without the assistance of such Organisation.

DATED THIS-------DAY OF -------- 2019

K. C Aneke Esq
Petitioner's solicitor
K. C Aneke & Co,
No. 2 Law School Drive
Victoria Island,
Lagos.
kundycmith@gmail.com
07053531239

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

SUIT NO:

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT

BETWEEN:

LYDIA ROBERTS BABA----------PETITIONER

AND

PAUL BABA----------RESPONDENT

ACKNOWLEDGEMENT OF SERVICE

I, Paul Baba, acknowledge that on ..... , ... day of. 2019

at_____received:

(a) A sealed copy of the Petition in these proceedings

(b) 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 Respondent and that I am the person to whom the notice of petition is addressed.

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

SIGNATURE

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

SUIT NO:

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT
BETWEEN:
LYDIA ROBERTS BABA----------PETITIONER
AND
PAUL BABA----------RESPONDENT

ANSWER UNDER PROTEST

The respondent in answer to the petition in this proceedings, objects to the jurisdiction of the above named Court upon the ground that the marriage between the petitioner and the respondent was only a church blessing synonymous to a customary marriage and not under the Marriage Act.

The respondent therefore asks the Court to strike out the petition as it lacked jurisdiction on the matter.

DATED THIS_____DAY OF_____ 2019

.....

Anietie Ekong
Counsel to the respondent/cross-petitioner
Aniete & Co
No. 5 Law School Drive
Victoria Island,
Lagos.
0804745675_
anietie@gmail.com

This answer was settled by Anietie Ekong , Legal Practitioner for the respondent. Filed on the ___day of ___2019 by Anietie Ekong on behalf of the respondent, whose address for service is at No. 3 Law School Drive, Victoria Island, Lagos.

FOR SERVICE ON:
The Petitioner
C/o Counsel
K. C Aneke Esq.
K. C Aneke & Co,
No. 2 Law School Drive
Victoria Island,
Lagos.
kundycmith@gmail.com
07053531239

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

SUIT NO:

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT
BETWEEN
LYNDA BABA ----------PETITIONER/CROSS RESPONDENT
AND
PAUL BABA----------1ST RESPONDENT/CROSS PETITIONER
ADA OGUN ----------2ND RESPONDENT

ANSWER AND CROSS PETITION

1. The 1st respondent in answer to the petition in these proceedings says:
2. The 1st respondent/ cross petitioner admits paragraphs 1,2,3,4,5,6,7,9,10 & 11 of the petition.
3. The 1st respondent/ cross petitioner denies paragraphs 8 of the petition.
4. The 1st respondent/ cross petitioner avers in response to paragraph 8 of the petition that the 1st respondent has been faithful to the petitioner since the marriage and has not contacted any sexually transmitted diseases of any kind. The only sexual partner that the 1st respondent has had since the marriage is the petitioner.
5. In further response to paragraph 8 of the petition, the 1st respondent/cross petitioner states that he never subjected the petitioner to any form of physical abuse.
6. **CROSS PETITION**
7. The respondent/cross petitioner pleads facts in paragraphs 1- 7 and 9 of the petition.
8.

Comment [C331]: JUST LIKE A PETITION

DATED THIS _____ DAY OF _____ 2019

.....

Anietie Ekong
Counsel to the respondent/cross-petitioner
Aniete & Co
No. 5 Law School Drive
Victoria Island,
Lagos.
0804745675_
anietie@gmail.com

This answer and cross petition was settled by Anietie Ekong , Legal Practitioner for the respondent. Filed on the ___day of ___2019 by Anietie Ekong on behalf of the respondent, whose address for service is at No. 3 Law School Drive, Victoria Island, Lagos.

FOR SERVICE ON:
The Petitioner/Cross respondent
C/o Counsel
K. C Aneke Esq.
K. C Aneke & Co,
No. 2 Law School Drive
Victoria Island,
Lagos.
kundycmith@gmail.com
07053531239

(b) Reply

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT
BETWEEN

LYDIA BABA----------PETITIONER

AND

1. PAUL BABA----------RESPONDENT

2. ADA OGUN----------CO-RESPONDENT

REPLY TO ANSWER

The Petitioner, in reply to the respondent's answer to the petition, says:

1. The petitioner denies the allegation in paragraph 4 of the answer to the petition.
2. The petitioner denies ever assaulting the respondent since the solemnization of the marriage.

Dated this_____day of _____-2019

_____

K. C Aneke Esq
Petitioner's solicitor
K. C Aneke & Co,
No. 2 Law School Drive
Victoria Island,
Lagos.
kundycmith@gmail.com
07053531239

This reply to answer was settled by K. C Aneke Esq, legal practitioner for the Petitioner. Filed on_____day of_____20_____by K. C Aneke on behalf of the Petitioner whose address for service is No. 125 Akerele Drive, Ikoyi, Lagos.

FOR SERVICE ON:

The Respondent

Paul Baba
No. 125 Akerele Drive,
Ikoyi,
Lagos.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Marriage under the Act celebrated in a licensed place of worship is to be conducted between the hours of___

A. 5am-8pm

B. 8am-6pm

C. 10am-4pm

D. Any time

2. Marriage as in 1 above at the court registry would be conducted between the hours of___

A. 5am-8pm

B. 8am-6pm

C. 10am-4pm

D. Any time

3. Which one of these is not a ground for dissolution of marriage?

A. Willful and persistent refusal to consummate the marriage

B. Adultery/intolerable behavior

C. Desertion

D. All of the above

4. The standard of proof of adultery in matrimonial causes proceedings___

A. Beyond reasonable doubt

B. Balance of probabilities

C. Satisfaction of the court

D. All of the above

5. The following statements are true about adultery as a fact for dissolution of marriage except___

A. Where the petitioner has condoned the adultery, the petitioner would not be awarded damages for adultery

B. Where adultery has been committed for more than 3 years, the petitioner cannot be awarded damages for adultery

C. Where adultery has not been stated as a fact for dissolving the marriage, the petitioner cannot be awarded damages for adultery

D. Adultery per se is a fact for dissolution of marriage

6. In an attempt to reconcile the parties, the Judge will refer the parties to conciliation for___days.

A. 14

B. 15

C. 21

D. 30

7. Where there are two petitions before the court, the first marked "A" is to nullify the marriage and the second marked "B" is for dissolution of the marriage, the court will first hear__

A. "A"

B. "B"

C. "A" or "B"

D. Anyone

8. Where the parties have been living apart but not via any judicial order, a party who wishes to compel the other person to come back and cohabit with the party can bring a petition for an order of___

A. Restitution of conjugal rights

B. Jactitation of marriage

C. Judicial joinder

D. Consortitum

9. ADR is relevant for all except__

A. Custody of children of a marriage

B. Maintenance

C. Ancillary reliefs

D. Matrimonial causes

10. Mr. A and Mr. B got married in Enugu State under the Marriage Act and the marriage was celebrated in the High Court registry Enugu. On the 1st day of July 2019, Mr. A wishes to bring a petition for dissolution of his marriage with Mrs. B. He may bring such petition before the High Court of___

A. Enugu State

B. Lagos State

C. Kaduna State

D. All of the above

11. The document prepared and filed by the respondent/co-respondent in response to a petition is called___

A. Answer to petition

B. Reply

C. Statement of Defence

D. Counter-affidavit

12. The document in 11 above is to be filed within___days

A. 14

B. 28

C. 30

D. 90

13. The respondent in 11 above is expected, where such is under protest, to bring a formal application before the court within___days after the document of protest is filed, for direction as to time and place at which the objection may be determined.

A. 14

B. 28

C. 30

D. 90

14. An independent petition filed by the respondent is___

A. Reply

B. Rejoinder

C. Cross-petition

D. Answer to petition

15. The document as in 14 above is to filed within___days

A. 14

B. 28

C. 30

D. 90

16. Where the respondent wishes to further reply to new issues raised by the petitioner in his reply, the respondent is to file____

A. Answer to petition

B. Reply

C. Rejoinder

D. Cross-petition

17. The following documents but one may be filed by the respondent

A. Answer to petition

B. Reply

C. Rejoinder

D. Cross-petition

18. Where there is a petition for dissolution of marriage marked "A" and a cross-petition for decree of nullity of marriage marked "B",____will be heard first.

A. "A"

B. "B"

C. "A" and "B"

D. Anyone

19. NO QUESTION

20. Where a party appeals against a decree nisi, it will not become absolute until after___of the decision given by the appellate court.

A. 3 months

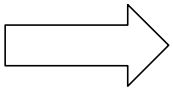
B. 15 days

C. 30 days

D. 60 days

ANSWERS

1. **B**
2. **C**
3. **D**
4. **B**
5. **D**
6. **A**
7. **A**
8. **A**
9. **D**
10. **D**
11. **A**
12. **B**
13. **A**
14. **C**
15. **B**
16. **C**
17. **B**
18. **B**
19. **BONUS**
20. **B**



17. FUNDAMENTAL RIGHTS ENFORCEMENT, SANCTIONS AND COSTS

1. 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.

(a) General principles

There are natural rights, human rights and fundamental rights. There are differences among them. Natural rights are rights that pertain to individual by virtue of the fact that they are human. These rights need not be codified before they can be regarded as 'natural right'. Human rights are the rights that are recognized by laws. Fundamental rights are the rights that have a constitutional backing---**UZOUKWU V EZEONU.** In Nigeria, such rights are contained in chapter IV CFRN. For the purpose of this discuss, enforcement of fundamental rights would be limited to the chapter IV, CFRN and by extension, the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. Human rights for the purpose of enforcement includes fundamental rights. The rules use human rights also.

For the purpose of enforcement, the principal law is the Fundamental Right (Enforcement Procedure) Rules 2009, which repealed the 1979 Rules. The rules are made pursuant to **S. 46(3) CFRN by the Chief Justice of Nigeria**. In addition, **where a lacuna exist in the rules in the course of any human rights proceeding, the civil procedure rules of the court (High Court where the action is commenced) shall be resorted to---ORDER 15 RULE 4 FREP RULES.**

Applicable Laws

- CFRN
- Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules)
- The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

The overriding objectives of the FREP Rules

- The Courts are to expansively and purposively interpret chapter IV of the 1999 Constitution and the African charter of the Human and Peoples' Rights to advance the rights and freedoms of individuals.
- The Courts are to respect municipal, regional and international bills of Rights brought to its attention
- The court may make any consequential orders it deems just and expedient to promote enforcement of FHR

Comment [C332]: Fundamental Rights refer to any of the rights provided for i**n CHAPTER IV CFRN** and includes any of the rights stipulated in the **African Charter on Human and Peoples Right (Ratification and Enforcement) Act--ORDER 1 RULE 2 FREP**

Rights under CFRN 1999 may be divided into two
- Rights that relate to fair hearing – not really dealt with under FREP Rules – normally apply for judicial review or state that no fair hearing on appeal of the case.
- Substantive rights e.g. right to life, dignity

Comment [C333]:
The preamble to the 2009 Rules enjoins courts to constantly seek to give effect to the overriding objectives of the Rules. The parties and their legal representatives shall help the court to further the overriding objectives of these Rules.

Advantages of FREP Rules
- It is speedy due to the use of affidavit evidence
- There is no requirement for locus standi – anyone can file an application for himself or as representing a victim
- There is no statutory limitation as action is not time barred
- It is less technical procedure

Disadvantages
- It is a restrictive claim as it is limited to Chapter IV CFRN and African Charter on Human and People's Rights
- If there are factual disputes, the court will have to ask for oral evidence to resolve these disputes. This is why originating summons is not advisable as only used for non-contentious matters. But hearing oral evidence will delay the matter.

- The Court is to proactively enhance access to justice for all classes of persons especially the poor, illiterate, uninformed, vulnerable, the incarcerated and the unrepresented.
- The Court is to welcome public interest litigation in human rights field and no such action is to be struck out for want of locus standi, e.g. human rights activists can bring actions not particularly affecting their interests.
- The Courts are to pursue the speedy and efficient enforcement of Fundamental rights of the applicants.
- Human rights suits are to be given priority in deserving cases e.g. are the liberty of an applicant by the Courts etc.

In human right litigation, the applicant includes any of the following:

- Anyone acting in his own interest – the person whose rights have been breached.
- Anyone acting as a member of, or in the interest of a group or class of persons
- Anyone acting on behalf of another person
- Anyone acting in the public interest, and
- Association acting in the interest of its members or other groups or individuals

Also, any person who desires to be heard in Human Right application and **who appears to be a proper party whether or not he has been served any of the relevant processes or has any interest in the matter**, may be heard---**ORDER 13 RULES 1 FREP RULES**.

Again, amici curiae who are friends of the court may be encouraged in human rights application and may be heard at any time if the court's business allows it---**ORDER 18 RULE 2 FREP RULES**. The respondent could be **an individual, corporate, the government, any person who has legal personality and who is alleged to have infringed the provisions of chapter IV CFRN and African charter**---**ABDULHAMID V. AKAR; THERESA V. NWAFOR**.

Comment [C334]: In Theresa's case, the widow had brought human rights action against the family of her deceased husband. The deceased and applicant had been married under the Act. When the husband died, the family compelled her to stay with the corpse, for the purpose of complying with the burial rites. The respondent objected that fundamental rights cannot be enforced against individual. The Supreme Court found otherwise and held that it can be enforced against individuals.

VERY IMPORTANT: Note that an application for the enforcement of fundamental right **shall not be affected by any limitation statute whatsoever**. The Public Officer Protection Act is not excluded---**ORDER 3 RULE 1 FREP RULES**

Who can enforce rights?

- Infants – can enforce the right through next friend---**BADEJO V. MIN. OF EDUCATION**; **SOFOLAHAN V FOWLER**
- Deceased: no cause of action. FR is in personam---**EZECHUKWU V. MADUKA**. Contrast right to damages by estate or beneficiaries---**BELLO V AG (Oyo)** - so they can claim for damages through another process but not through the enforcement of fundamental rights.
- Different individuals in the same suit, family rights, representative capacity – not enforceable because personal rights---**OPARA V SPDC**. **There is a difference between an action in a representative capacity and an action on behalf of person who do not have legal capacity e.g. an infant or lunatic.** Persons who do not have legal capacity

would bring an action in his own name but through his next friend or guardian ad litem. So there can be no representative action or class action in fundamental right enforcement but individual actions can be consolidated. So if the different individuals bring their application they can be consolidated. Contrast: Joinder of several applicants in one application - not allowed because fundamental rights are personal to each individual. Two or more persons cannot file single application.

- Any person, including a foreigner in Nigeria

(b) Procedure under FREP

The mode of commencement is by originating process **without leave of court** and Form No 1 in appendix may be used as appropriate. **ORDER 2 RULE 2 FREP RULES** provides that leave of court is no longer necessary before bringing an application.

Originating motion is most often used and **any other form is appropriate as long as it is accepted by the court**. **The originating motion is motion on notice**. The originating motion is to contain the following:

- Name/heading of court/judicial division/venue
- Suit number
- In the matter of an application for an order of the enforcement of a fundamental right.
- Parties
- Title
- Body
- Relief sought, (declaratory reliefs)
- Statement as to attachment of affidavit and exhibits
- Date and signature
- Address for service

The originating motion is to be accompanied with the following documents:----**SAW**

- **Statement of facts** setting out the name and description of the applicant, the relief sought, the grounds upon which the reliefs are sought.
- **Affidavit** setting out the facts upon which the application is made.
- **Written address**, a succinct argument in support of the grounds of the application

Where respondent intends to oppose the application, **he shall file his written address within 5 days of the service on him of such application.** The written address may be accompanied by a counter-affidavit. This is where he wants to depose to a contrary fact. If opposing the application on ground of law alone, there is no need for an affidavit, counter-affidavit. The applicant upon being served with respondent written address **may file and serve an address on points of law within 5 days on being served.** The address – Reply may be accompanied with a further affidavit (when new contrary facts arise in counter-affidavit)----SEE **ORDER 2 RULES 6-7 FREP RULES.**

Comment [C335]: ORIGINATING MOTION BROUGHT PURSUANT TO SECTION 46 of the 1999 CONSTITUTION OF THE FRN (as amended) , ORDER 2(1) OF THE FUNDAMENTAL RIGHT(ENFORCEMENT PROCEDURE) RULES, 2009 AND UNDER THEINHERENT JURISDICTION OF THIS COURT.

Comment [d336]: Necessary particulars should be supplied in the reliefs like section of law or type of right breached and the reliefs can be a declaration, injunction, damages, apology e.t.c.
A DECLARATION that the action of the respondent is unconstitutional.
AN ORDER releasing the applicant from prison custody.
AN ORDER for damages

Comment [C337]: Note the following on the affidavit
- The affidavit can be deposed to by the applicant himself
- By a person who has personal knowledge of the facts
- By a person who was informed of the facts by the applicants

The other categories of person can swear where the applicant is in custody or if for any reason is unable to swear to an affidavit. It must be stated in the affidavit that the applicant is unable to depose personally to the affidavit

Where the respondent intends to challenge the jurisdiction of the court, he is to file

- A notice of preliminary objection
- Counter-affidavit, where he is opposing facts.
- Written address---SEE **ORDER 8 RULES 1 and 2 FREP RULES**

Comment [C338]:
Note therefore that the Repondent can file a response in the following ways:
1.Written Address only;
2.Written address with Counter Affidavit
3.Notice of Preliminary objection, Counter Affidavit and Written Address;
4.Notice of Preliminary objection and written address

Where he decides not to file a counter-affidavit, he is presumed to have admitted the facts in affidavit----**ORDER 8 RULE 3 FREP RULES**

In this like, there would be two applications before the court. **The court will take both applications and hear both preliminary objection and substantive application.** The court can make either of the following orders:

- Strike out the application for want of jurisdiction
- Set aside the service of original application---**ORDER 8 RULE 5 FREP RULES**

If the court assume or did not decline jurisdiction, it can go ahead and give its ruling on substantive application---**ORDER 8 RULE 6 FREP RULES**

Service of court process

- Originating application and order of court is to be served by a sheriff, deputy sheriff, bailiff, or other officer of the court.
- Service may be effected between 6 a.m and 6 p.m
- Service is not to be effected on Sunday or public holidays unless authorized by court in exceptional circumstances.
- Personal service on persons to be served where it is an order for production of applicant, personal service would include, if the person directed to as police officer, a prison superintendent or other public officer, leaving it with such person.
- Where personal service with or without attempt at it, appear to the court that it cannot be conveniently effected, substituted service upon application may be ordered. This includes:
    - **a.** Delivery to adult members of abode or business place last known
    - **b.** Delivery to agent on prove that such in ordinary course will come to knowledge of the party
    - **c.** Delivery to any senior officer of any government agency that has office where breach occurs.
    - **d.** By advertisement in official gazette, federal government official gazette or some newspapers circulating within the jurisdiction; o
    - **e.** Notice put up in court, public place within judicial division, last known place of abode or business---**ORDER 5 RULE 7(a)-(e) FREP RULES**

NB: Service is important as where a person who ought to be served is not served; the court may adjourn the hearing of the application---**ORDER 7 RULE 9 FREP RULES**

Hearing

The date for hearing of the application **is to be fixed within 7 days of filing of the application**---**ORDER 4 RULE 1 FREP RULES**. Application for enforcement of fundamental rights is to be

treated as urgent matter and the court will not entertain or grant frivolous adjournments, except that which is **extremely expedient**---**ORDER 4 RULE 2 FREP RULES**. The hearing of the application is to be on the parties' written address---**ORDER 12 RULE 1 FREP RULES**.

There must be heading of court and other preliminary matters. Oral arguments **are allowed for twenty minutes from each party on matters not contained in written address and which to his knowledge after filing his written address**---**ORDER 12 RULE 2 FREP RULES**. **If on the date set for adoption of written address and either of the parties is absent, the court may suo moto or on application (oral) of the counsel to the party present, order that the addresses be deemed adopted,** if the court is satisfied that:

- Parties had notice of the date of adoption as he was present in court that day it was made; or
- He was served with the notice of the day of adoption---**ORDER 12 RULE 3 FREP RULES**.

Ex Parte application

Because time is already being abridged in fundamental right enforcement application, where a party desires interim orders on ex parte application, the court may only hear ex parte application on interim reliefs, **where exceptional hardship will be done to the applicant especially when life or liberty of the applicant is involved**---**ORDER 4 RULE 3 FREP RULES**. The application ex parte is to be supported by affidavit, setting the grounds why delay in hearing the application would cause exceptional hardship---**ORDER 4 RULE 4(a) FREP RULES**. It may be supported by an address. This is in addition to the originating motion application.

Amendment and consolidation

Amendment is **permissible on only the statement of facts**, as further affidavit can deal with new issues in counter-affidavit---**ORDER 6 RULE 3 FREP RULES**. Amendment is **by application supported by an exhibit of the statement of facts to be amended.** The applicant upon grant of amendment is to amend within the time stated or apply for extension, else amendment would be deemed abandoned---**ORDER 6 RULE 4 FREP RULES**.

Consolidation may be granted by the judge upon application of the applicant where the applications relating to infringement of rights is

- Pending against several parties
- In respect of the same matter; and
- On the same grounds
- The same issues---**ORDER 7 RULES 1 & 3 FREP RULES**

NB: If the applications are before different judges, then application can be made to the Chief Judge to re-assign to one of such judges---**ORDER 7 RULE 2 FREP RULES**.

Effect of non-compliance with rules

Non- compliance at any stage in course of or in connection with the proceedings **shall be treated as an irregularity and not nullify such proceeding except if such non-compliance relate to:**

Comment [C339]: ADJOURNMENTS
Adjournment may be granted where **"extremely expedient** provided that the court shall be guided by the urgent nature of application under those Rules"
In granting adjournment, the court shall bear the overriding objectives in mind. Thus since the applications require urgent consideration, adjournment should be rarely given---**ORDER 4 RULE 2 FREP RULES**

Comment [C340]:
The content of written address is as follows:
1.Introduction
2.Statement of facts – brief, with reference to exhibit if any attached
3.Issues arising for determination
4.Argument on each issue
5.Prayers and reliefs
6.Conclusion
7.List of authorities
8.Date and signature
9.Address for service

- Mode of commencement of the application; or
- The subject matter is not within Chapter IV of the CFRN or the African charter on Human and Peoples Right (Ratification and Enforcement) Act--**ORDER 9 RULE 1 FREP RULES**

Orders the court can make

The court is empowered to make orders as it may consider just or appropriate. The orders are:

- Orders contained in Chapter IV CFRN
- Orders in African charter on Human and Peoples Right (Ratification and Enforcement) Act
- Damages
- Declaration, injunction, mandatory order
- Apology---SEE **ORDER 11 RULE 1 FREP RULES**

Interim orders as provided in ORDER 4 RULE 4 FREP RULES

- Grant bail or order release of applicant from detention.
- Production of applicant on the date the matter is fixed for hearing if unlawful or wrongful detention is alleged.
- Injunction restraining respondent from acting - maintaining statute quo
- Others orders like access to counsel and family members; mandatory order not to arrest again.

Comment [C341]: Scope of FREP RULES
- Right must fall under Chapter IV CFRN
- Rights protected by the African charter
- Universal declaration of Human rights 1948 (applied in bakassi peninsula case) such as rights under European Convention on Human Rights – courts may have regard to this
- Enforcement of such rights can be against the government, government agencies or private individuals---**ABDULHAMID v. AKAR**

(c) Courts with jurisdiction

Jurisdiction here is vested in the "High Court"---**S. 46(1)(2) CFRN; ORDER 2 RULE 1 FREP RULES**. "High Court" has been defined as the FHC and SHC/HC FCT – **ORDER 1 RULE 2 FREP RULES.** However, the court to go to must be the court having original jurisdiction over the said subject matter where the infringement arose from. Thus, it is appropriate to commence it at the Federal High Court **if it is a matter within the original exclusive jurisdiction of the Federal High Court.** The division of the FHC must be the one where the infringement occurred and if there is no division, then the one that is administratively covering that state----**TUKUR V. GOV OF GONGOLA STATE; NDLEA V OMIDINA; ADETONA V. I G ENTERPRISE LTD; INAH V. UKORI**

Comment [C342]: As per SHC, assuming the infringement spans through more than one State, the Court that will have jurisdiction on the matter will be **any of the High Courts in either of the two or more States---MADIEBO V. NWANKO; UZOUKWU V. EZEONU II.** However if there is a place where **substantial infringement took place**, the Court in the area will have the jurisdiction. **NB:** The National Industrial Court also has exclusive jurisdiction over contravention of Chapter IV in relation to employment and labour relations---**S. 254C(1)(d) CFRN**

2. DRAFT APPLICATIONS UNDER THE FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES

IN THE FEDERAL HIGH COURT
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009

AND

IN THE MATTER OF AN APPLICATION BY MR. R FOR AN ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

MR. R.....APPLICANT

AND

1. **INSPECTOR GENERAL OF POLICE}**

…….....RESPONDENTS

2. **COMPTROLLER GENERAL OF PRISONS}**

ORIGINATING MOTION

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

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

1. AN ORDER FOR the unconditional release of the applicant

2. AN ORDER restraining ……

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

AND TAKE FURTHER NOTICE that on hearing of this application, the said Applicant will use the affidavit of MRS. R and the Exhibit therein referred to

DATED THIS____DAY OF_____2019

K. C Aneke
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Lagos.

kundycmith@gmail.com

07053531239

FOR SERVICE ON:
1st Respondent
Inspector General of Police
Police Command Headquarters,
Abuja.
2nd Respondent

Comptroller General of Prisons

Nigerian Prisons Service Headquarters
Abuja.

IN THE FEDERAL HIGH COURT
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009

AND

IN THE MATTER OF AN APPLICATION BY MR. R FOR AN ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

MR. R.....APPLICANT

AND

1. **INSPECTOR GENERAL OF POLICE}**

…….....RESPONDENTS

2. **COMPTROLLER GENERAL OF PRISONS}**

STATEMENT PURSUANT TO ORDER 2 RULE 3 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES, 2009

1. NAME AND DESCRIPTION OF THE APPLICANT

MR. R, a Legal Practitioner who resides at no 12, Garki Layout, Kano

2. RELIEF SOUGHT

a. Declaration that the arrest and detention of the Applicant by the 1st Respondent on the 12th of July, 2007 is unconstitutional, null and void and a breach of the fundamental human right of the Applicant

b. Declaration that detaining the Applicant without formally informing him of the reasons for his arrest is unconstitutional and a breach of the fundamental human right of the Applicant

c. Declaration that the torture carried out on the Applicant by the 1st Respondent is unconstitutional and a breach of the fundamental human right of the Applicant

d. Declaration that the refusal to charge the Applicant for any offence before a court of law for over 40 days is unconstitutional and a breach of the fundamental human right of the Applicant

e. Declaration that the threat on Ms. Q, the Legal practitioner representing the Applicant resulting in the withdrawal of the said Ms. Q from further representing the Applicant by the 1st Respondent is unconstitutional and a breach of the fundamental human right of the Applicant

f. Declaration that the trial, conviction and sentencing of the Applicant is unconstitutional and a breach of the fundamental human right of the Applicant

g. Declaration that the imprisonment of the Applicant in an over-crowded prison and confinement to a cell with a 250 watt electric bulb left on day and night by the 2nd Respondent is unconstitutional and a breach of the fundamental human right of the Applicant

h. An order compelling 2nd Respondent to release the Applicant from the prison and confinement forthwith

i. ₦250,000,000.00 (Two-hundred and fifty Million naira) damages for unlawful arrest, detention, torture, trial, and imprisonment of the Applicant

3. GROUNDS UPON WHICH THE RELIEFS ARE SOUGHT

a. The Applicant has fundamental rights to dignity, personal liberty, fair hearing and freedom of movement under sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended)

b. The Applicant was arrested on the 12th of July, 2007, detained and tortured without any justification by the 1st Respondent

c. The Applicant was not informed formally of the reason for his arrest nor was he charged to court within a reasonable period of time required by the Constitution of the Federal Republic of Nigeria.

d. The Applicant was also denied right to representation by a Legal practitioner when the Legal Practitioner of his choice was threatened to withdraw from representation by the 1st Respondent

e. The Applicant was tried by a Mr. T a Judge who has interest in the case being a child of Minister of Justice and a close friend to the President.

f. The Applicant was imprisoned in an overcrowded prison and subjected to inhuman condition by being detained in a cell with a 250 – watt electric bulb left on day and night by the 2nd Respondent

g. The arrest, detention, torture, trial and imprisonment of the Applicant constitutes a breach of his fundamental human rights to dignity, personal liberty, fair hearing and freedom of movement under sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended)

DATED THIS____DAY OF_____2019

K. C Aneke
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kundycmith@gmail.com
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FOR SERVICE ON:
1st Respondent
Inspector General of Police
Police Command Headquarters,
Abuja.
2nd Respondent
Comptroller General of Prisons
Nigerian Prisons Service Headquarters
Abuja.

3. EXPLAIN THE SIMILARITIES AND DIFFERENCES BETWEEN FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES AND JUDICIAL REVIEW/WRIT OF HABEAS CORPUS

(a) Similarities between FREP RULES and Judicial review

- They are both constitutionally provided for
- They have similar reliefs

- Both applications are accompanied by similar documents – affidavit, statement, written address.

(b) Differences between FREP RULES and Judicial review

- **TIME:** Time bar in judicial review, no time bar under FREP RULES
- **LEAVE:** Leave is required in judicial review; no leave is required for fundamental right.
- **LOCUS STANDI:** Locus standi is not applicable to Fundamental right whereas Locus standi is applicable to judicial review
- **RULES:** HCCPR guides judicial review whereas Fundamental Rights (Enforcement Procedure) Rules guide fundamental rights enforcement.
- **SCOPE:** Fundamental rights focuses on breach of Chapter IV CFRN and ACHPR while judicial review is wider.

4. LIST, EXPLAIN AND DISCUSS THE PRINCIPLES, SCOPE AND APPLICATIONS OF SANCTIONS AND COSTS IN CIVIL LITIGATION

Comment [C343]: LISTEN IN CLASS

Types of orders as to costs

- **An Order as to costs of action** (loser pays the winner for costs of prosecuting the case). This is because costs are not punitive---**AG LEVENTIS V. OBIAKOR**
- **No order as to costs** (here each party bears his own costs)
- **Costs in the cause**. Here, the judge postpones the award of costs on an interlocutory matter to the end of the matter. So that at the end of the case, the winner would get the costs in the action and the postponed costs---**DIKE V UNION BANK.**
- **Application dismissed with costs**. Here, where a person brings an application and the application is dismissed and the court awards the costs against the party that brought the application. The respondent is paid the costs
- **Costs in any event**. This means from the application brought, such as an interlocutory application to amend the other party must be compensated for time spent.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. Pursuant to the provisions of section 46(3) CFRN, the FREP Rules are made by the____

A. Chief Justice of Nigeria

B. Chief Judges of States

C. Body of Benchers

D. Supreme Court of Nigeria

2. The respondent in a FREP action could be all except__

A. Individual

B. Corporate body

C. Government

D. None of the above

3. The time limit for bringing an application for enforcement of fundamental right is___

A. 5 weeks

B. 2 years

C. 14 days

D. No time limit

4. Where a respondent intends to oppose the application, his written address is to be filed within___from the date of service on him of such application.

A. 5 days

B. 5 weeks

C. 7 days

D. 7 weeks

5. The applicant when served with a written address as in 4 above may file and serve address on points of law within___on being served.

A. 5 days

B. 5 weeks

C. 7 days

D. 7 weeks

6. Where a respondent files a notice of preliminary objection challenging the jurisdiction of the court and the application of the applicant for enforcement of his fundamental rights is also before the court, the court will hear____

A. Notice of preliminary objection

B. Application of the applicant for enforcement of his fundamental rights

C. A and B together

D. A or B as the court wishes

7. Service of court processes is to be effected between___

A. 5am-8pm

B. 6am-6pm

C. 8am-6pm

D. Anytime

8. The date of hearing of the application is to be fixed within___days of filing of the application.

A. 5

B. 7

C. 14

D. 21

Comment [C344]:
ANSWERS
1.A
2.D
3.D
4.A
5.A
6.C
7.B
8.B

Page 321: [1] Comment [C328] **CundySmith** **4/20/2019 5:55:00 PM**

SECTION 62 MCA

INTERVENTION BY ATTORNEY-GENERAL ON REQUEST FROM COURT

In any proceedings under this Act where the court requests him to do so, the **Attorney-General of the Federation** may intervene in, and contest or argue any question arising in, the proceedings.

SECTION 63 MCA

INTERVENTION OF ATTORNEY-GENERAL IN OTHER CASES

In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, or in relation to the custody or guardianship of children, where the Attorney-General of the Federation **has reason to believe that there are matters relevant to the proceedings that have not been, or may not be, but ought to be, made known to the court,** he may, at any time before the proceedings are finally disposed of, intervene in the proceedings. NB: THIS POWER OF THE AGF MAY BE DELEGATED TO AN AGS---**SECTION 64 MCA**.

SECTION 65 MCA

INTERVENTION BY OTHER PERSONS

(1) In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, where a person applies to the court for leave to intervene in the proceedings and the court is satisfied that that person may be able to prove facts relevant to the proceedings that have not been, or may not be, but ought to be, made known to the court, the court may, at any time before the proceedings are finally disposed of, make an order entitling that person to intervene in the proceedings.

(2) An order under this section may be made upon such conditions as the court thinks fit, including the giving of security for costs.