UNIVERSITIES OF DSCHANG AND YAOUNDE II
FACULTY OF LAW AND POLITICAL SCIENCE
DEPARTMENT OF COMMON LAW
THIRD YEAR LAW

CIVIL PROCEDURE 2019/2020

By Dr. EWANG SONE Andrew
Seniour Lecturer in Laws

Course Outline

Chapter 01:
The Meaning of Civil Procedure and its application in Anglophone Cameroon

- SCCPR Cap 211 of the 1948 Laws of the Federation of Nigeria.
- The Rules of the Supreme court of England.
- The OHADA Uniform Act Organizing Simplified Recovery Procedures and Methods of Enforcement of Judgments
- The Cameroon Criminal Procedure Code 2005

Chapter 02:
The commencement of civil proceedings in the superior courts of Anglophone Cameroon

- By originating summons
- By writ of summons
- By Application or motion
- By Petition

Chapter 03
Simplified Recovery Procedure and the Undefended List

Chapter 04
Parties

- Nature of parties
- Joinder of Parties
- Non-joinder and Mis-joinder of parties
- Partnership
- Parties by intervention
- Alteration of parties
- Death of a sole plaintiff or one out of two or more plaintiffs
- Death of a sole defendant or one out of two or more defendants
- Procedure for an application for an order substituting another for a deceased plaintiff or defendant
- Marriage
- Representative Proceedings
- Third Party Proceedings

Chapter 05
Joinder and Consolidation of causes

-Joinder of causes of action
-Remedy for wrongful joinder of causes
Consolidation of causes
-Procedure for application for consolidation

Chapter 06:
Service of process and appearance

-Persons responsible for service
-Personal service
-How personal service is effected
-Proof of personal service
-Substituted service
-Procedure for substituted service
-Methods of substituted service
-Service in Cameroon for foreign tribunals
-Service out of jurisdiction
-Procedure for application for leave to serve out of jurisdiction
-Appearance
-Judgment in default of appearance
-Setting aside judgment obtained in the absence of a party.

Chapter 07
PLEADINGS

- Functions of pleadings
- Content of pleadings
- Facts which must be specifically pleaded

Chapter 08
Interim relief

-Interlocutory order as to injunctions
-Kinds of injunctions
-Interlocutory injunctions
-Power of court to grant junction by interlocutory order

Chapter 09
Equitable relief

- Set –off
- Counter-claim.
- Inter-pleader proceeding

Chapter 10
Interlocutory Applications

- Motions

- Motion Ex-parte
- Motion on Notice
- Order to show cause
- Interlocutory judgment

Chapter 11
Settlement of issues admission and payment into court
- Settlement of issues
- Admission
- Consent judgment
- Defence of tender

Chapter 12
Stay of Execution

Reading list:

- MBAH-NDAM J, **Practice and Procedure in Civil and Commercial Litigation**, PUA, 22 place, Yaounde-Cameroon, 2003
- AGUDA, **Principle of Practice and Procedure in Civil Actions in the High Court of Nigeria,** London, Sweet and Maxwell 1976.
- STUART.T, **A Practical Approach to Civil Procedure,** 3rd Edition, Blackstone Press Ltd 1997
- ANOUKAHA, F and TJOUEN A.D, **Les Procédures Simplifiées de Recouvrement et les Voies d'Exécution en OHADA,** PUA, Yaoundé, 1999.
- BARNARD, D and HOUGHTON M, **The New Civil Court in Action,** Butterworths, London, 1993
- Supreme Court (Civil Procedure) Rules (SCCPR) Cap 211 of the 1948 Laws of the Federation of Nigeria
- English Supreme Court Rules (ESCR) of Her Majesty's High Court of Justice in England
- The OHADA Uniform Act Organizing Simplifies Recovery Procedure and Methods of Enforcement of Judgments.
- **Justice Bea Abednego Kalla, Simplified Recovery in the Courts of First Instance and the High Court of Cameroon**, Jet Print, June 2009.
- The Applicability of the OHADA Treaty in Anglophone Cameroon. Proceedings of the OHADA Seminar held at the University of Buea 18-19 September 2003, under the Coordination of Prof. Martha S. TUMNDE née NJIKAM.
- Joseph Nzalie Ebi, **The Law on Succession to Property in Anglophone Cameroon**, Editions ARIKA, Yaounde, November 2011.
- Nelson Enonchong, **The Independence Principle of Letters of Credit and Demand Guarantees**, Oxford University Press, New York, 2011.
- Ngole Philip Ngwese & Joseph Binyoum, **Eléments de Contentieux Administratif Camerounais**, l'Harmattan, Paris, 2010

Chapter one

THE MEANING OF CIVIL PROCEDURE AND ITS APPLICATION IN ANGLOPHONE CAMEROON

Civil procedure, Criminal Procedure and Evidence are adjectival laws. These laws deal with the application of the substantive law. Substantive law defines the legal rights, duties and liabilities of parties to an action, while the adjectival law is concerned with the procedure followed at the trial of the suit and the proof of facts to which the principle of the substantive law are applied in the determination of the disputes between the parties. Rules of Civil procedure are meant to advance the course of justice by preventing impartiality and arbitrariness on the part of the judge in the course of judicial adjudication.

Civil procedure is the body of rules that regulates the conduct of civil proceedings. It lays down the methods whereby such proceedings are commenced, the steps that are to be taken at any particular stage thereof and how such steps are to be taken. It also provides for the method of enforcing the resultant judgment. Civil procedure provides a framework for the settlement of disputes. It thus puts into practice the operation of substantive civil law. As distinct from criminal procedure, civil procedure deals with the rules governing the proper conduct of civil litigation.

The origin of these rules is traceable to the Judicature Acts 1873-75; on which is founded the modern legal system of England and other common world countries. These Acts established the Supreme Court of Judicature consisting of a High Court and a Court of Appeal, thus replacing the variety of Superior and appellate courts that had come into existence in England during a period of over 600 years. This is basically the type of court system that the North –West and South-West Regions inherited from England and Nigeria. In these Acts was inserted a provision empowering a Rule Committee to make Rules applicable in the newly created High Court. A rule committee set up for that purpose published its report and this became the English Supreme Court Civil Procedure Rules and was made a schedule to the Judicature Acts.

Civil procedure in the Superior Courts of Anglophone Cameroon, i.e. the High Court and Court of Appeal is governed by a number of texts:

1- Supreme Court (Civil Procedure) Rules cap 211 of the 1948 Laws of the Federation of Nigeria:

By 1948, the federal territory of Nigeria which was a British colony, drew inspiration from the English Supreme Court Rules, and made its own rules for the High court that come into existence during the 1945 judicial organization. In 1954, Southern Cameroon ceased to be part of the Eastern Region of Nigeria, acquired a quasi-federal status and its High Court become an adjunct of the Lagos High Court. On November 26 1955, Sir James Wilson Robertson, Governor –General and Commander in chief of Nigeria caused to be enacted the Southern Cameroons High Court Law.

Section 11 of this law provides that the common law, the doctrine of equity and the statutes of general application which were enforceable in England on the 1st day of January 1900 shall, in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force within the jurisdiction of its High Court.

The legislature of the Southern Cameroons never made it own Rules of the Supreme Court. This may have been due to the fact that, judges who sat in the Southern Cameroons High Court were judges of the High Court of Lagos. These rules ever though they have been substantially repealed in Nigeria, they remain applicable in Anglophone Cameroon.

The application of these rules in the North West and South West Regions is also guaranteed by Art 68 of the 1996 constitution. These articles provide that "all those laws which were in force in the two federated states of Cameroon before 1972 will continue to apply in so far as our parliament has not yet legislated on matters pertaining to them. See Art. 38 of the 1972 Constitution.

2- Rules of the Supreme Court of England:

The High Court in Anglophone Cameroon, in addition to any other jurisdiction conferred on it by local legislation, has power and authorities which are vested in her Majesty's High Court of Justice in England. This is by virtue of Section 10 of the S.C.H.C.L 1955 which provides that: "The jurisdiction vested in the High Court shall, so far as practice and procedure are concerned, be exercise in the manner provided by this law, or any other written law or by such rules and orders of court as may be made pursuant to this law or other written law and in absence thereof, in substantial conformity with the practice and procedure for the time being of her majesty's High Court of Justice in England."

This section implies that if the SCCPR is silence on any particular point of practice and procedure that also refers to the Supreme Court Rules then the practice and procedure to be followed in respect of that particular point shall be that for the time being in force in Her Majesty's High Court of Justice in England. Thus **once the SCCPR makes provision for an aspect of practice and procedure, the corresponding English Rules can no longer be applied**. In this light it was decided in **Domingo Paul V. Mrs. F. A. George (1959) 4 F.S.C 198** that in so far as there are provisions in this rules dealing with the question of adequacy of pleadings it would be wrong to make resort to English Rules. In England, Civil Procedure is governed by the Rules of the Supreme Court (R.S.C.).

In view of section 11 of SCHCL 1955, a typical example of pre-1900 English legislation applicable in Anglophone Cameroon is the **Married Women's Property Act 1882. Section 17** is to the effect that *"In any question between husband and wife as to the title to, or possession of property either of them may make on order to the High Court or to a County Court and the judge may make such order with respect to the property in dispute… as he thinks fit."* Romer L.J. said in **Cobb V. Cobb (1955) 2 All E.R. 697 at p. 700:**

"I know of no power that the court has under Section 17 to vary agreed or established titles to property.."

See Teh V. Teh, Suit No. HCB/37/MC/82, unreported; Atem V. Atem, Suit No. HCSW/77/MC/82, unreported; Shu V. Shu, Suit No. HCB/16/85, unreported; Elad V. Elad, Suit No. HCSW/3MC/85, unreported.

Section 15 of the SCHCL 1955 provided as follows:

"The jurisdiction of the High Court in probate, divorce and matrimonial causes and proceedings may subject the provisions of this law and in particular of section 27, and to rules of court, be exercise by the court in conformity with the law and practice for the time being in force in England." See Inglis J. in **Dianna Ahone Enongenekang V. Andrew Enongenekang. (Suit No. CASWP/28MC/82 unreported)**.

A close look at section 15 renders it transitory. It will cease to apply as soon as parliament enacts our own laws of general application. Prof. Calson Anyangwe, **(The Cameroon Judicial System Ceper Yaounde 1987 PP. 223-224)** has made a number of observations as regards the provision of section 15.

Firstly, the direction to apply in probate divorce and matrimonial causes and proceedings, the law and practice for the time being in force in England is not imperative, for section 15 uses the discretionary "May" and not mandatory "shall".

Secondly, the phrase "for the time being in force in England" means currently in force in England. Thus the law in probate divorce and matrimonial causes and proceedings in former southern or west Cameroon changes as those of England on those subjects.

Thirdly, the application of section 15 is subjected to section 27 which directs the court to observe and enforce the observance of any customary law rule which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being enforce.

Section 15 as is said above will not apply in all instances where legislation changes in England after 1900. For example, the English Law Reform Miscellaneous Provisions Act 1970 does not apply in Anglophone Cameroon. This is because section 1, which deals with an agreement to marry, is not a matrimonial cause. For this reason, the law on this subject in Anglophone Cameroon continues to be that as common law: **Samuel Esobe Epitime V. Ruth Nange Mbong (1968) W.C.L.R. 41,** as approved by **Ronate Tapong V. Joshua Mobit, Appeal No. BCA/31/74, unreported.**

3- The OHADA Uniform Act Organizing simplified Recovery Procedures and Methods of Enforcement of Judgments

The desire for regional integration led to the creation of "L'organisation pour L' Harmonization en Afrique du Droit des Affaires". (Organization for the Harmonization of

Business law in Africa) commonly known by it French acronym as "OHADA". The organizations came into existence pursuant to the OHADA Treaty of 17th October 1993. This treaty was ratified in Cameroon by President Decree No. 96/177 of 5th September 1996 after the authorization of the national Assembly given through law No. 94/4 of 4th August 1994. The main aim of the treaty is to harmonize Business law through the drafting and adoption of common rules that are simple and adapted to the realities of the economies of the contracting states. Also, arbitration as a means of settling contractual disputes shall be encouraged through the instrumentality of the organization.

The treaty creating OHADA was adopted by sixteen African states on the 17th of October 1993 by Heads of States and heads of Delegation at Port-Louis. Composed of 63 articles, the treaty also aimed at preserving a judicial integration of its Members states as well as other countries which adhere to it. The institution put in place to help the organization to function are both technical and political.

As of date, many Uniform Acts have seen adopted by the council of ministers among which is the Uniform Act Organizing Simplified Recovery Procedures and Methods of Enforcement of judgments, which apart from summary payment injunction procedure has also instituted a summary procedure for the delivery or restitution of personal property. (See Book I part 1 and 2).

4- Law No. 2005/007 of 17 July 2005 on the Criminal Procedure Code

The Cameroon Criminal Procedure Code (CCPC) is also relevant with regards to joint trails. This is because joined trail embodies both civil and criminal procedures. See SS. 59-77, 129, 385, 386.

5- **Evidence Ordinance, Cap. 62 of the Laws of the Federation of Nigeria, 1958**.

CHAPTER TWO

THE COMMENCEMENT OF CIVIL PROCEEDINGS IN THE SUPERIOR COURTS OF ANGLOPHONE CAMEROON

In Cameroon the territorial jurisdiction of a High Court covers the Division in which it is located. This court has jurisdiction with regard to Civil, Commercial and labour matters to hear and determine suits where the amount of damages claimed is above ten million francs and also to entertain, hear and determine suits and proceedings relating to the states of persons and especially to civil status, marriage, divorce, legitimacy adoption and succession, subject to the legal provisions applicable to traditional courts as regards ratione personae jurisdiction. (Ratione personae jurisdiction simply refers to the issues over which the customary court continues to exercise jurisdiction).

There are four (4) different methods by which a litigant may commence his action or civil proceeding in the High Court, namely:

- By originating summons
- By writ of summons
- By application or motion
- By petition.

If a law or rule prescribes that proceedings in respect of a particular cause of action shall be commenced by one method, it would be wrong for a litigant to commence proceedings in respect of that particular action by any of the other method(s).

1- Originating Summons

This is an unusual method of commencing proceedings in the High Court. It is confined only to cases where special statutory provisions are made for its use. It does not provide for the existence of a defendant and a plaintiff. If it is not clear whether to commence proceedings by issuing a writ or by originating summons then the former procedure (writ issuance) may be adopted. See **Ademiliyu V. A.C.B. Ltd (1965) N.M.L.R. 24.**

The Supreme Court Civil Procedure Rules do not make provision for the use of an originating summons. The only justification for its use is to be found in section 10 SCHCL 1955. The practice and procedure for an originating summons will therefore be found outside SCCPR. **See O. 7 r. 3 of the English Rules of the Supreme Court. (E.R.S.C.)** Mindful of Section 10 (SCHCL) 1955, the West African Court of Appeal (W.A.C.A) pointed out in **Chairman of Lagos Executive Development Board V. Onimole and other (1940) 6 WACA 96 at p. 98** that *"… A civil summons under the Supreme Court Ordinance provides at once a plaintiff and defendant, and the whole subsequent procedure under the Rules of the court is based on the fundamental fact that there is a plaintiff and a defendant. An originating summons does not provide either a plaintiff or a defendant so that it is rather difficult to apply the Rules of the Supreme Court strictly to originating summons".*

This however does mean that an originating summons on the face of it will not show a plaintiff and a dependant. The practice is that the person filing the originating summons is considered and labeled on the heading as plaintiff. Every other person who has an interest to see the issue resolved is set out in the heading of the writ as defendant is defendants.

As mentioned earlier, the SCCPR does not make provision for the use of an originating summons, by virtue of section 10 SCHCL 1955 the courts are bound to make recourse to the practice and procedures of Her majesty's high court of justice in England. In England, it would be appropriate to commence by an originating summons where an application made to the High Court or a judge under any act of parliament unless in the Rules of the Supreme Court or in the Act of parliament itself the application is expressly required or authorized to be commenced in some other way. If the Act of parliament (or statute) stipulates that certain form be used, then only those forms must be used. Where the statute is silent in this regard recourse in made to Order 7 of the English Supreme Court Rules.

Or 7 r3 (i) of the English RSC provides that every originating summons must include a statement of a question on which the plaintiff seeks the determination or direction of the High Court or as the case may be a concise statement of the relief or remedy contained in the proceedings began by the originating summons with sufficient particulars to identify the causes of action in respect of which the plaintiff claims that relief or remedy.

An originating summons would be appropriate in the following cases:

i- **In a claim for the possession of land in occupation by a trespasser.** Possession is (9/10th) ninth-tenth of the law. **Daniel Nde Ndenka V. Mokam Clement**, Appeal No. BCA/11/93, cf. Juridis Périodique, No. 34, 1998, pp. 39-43. In **Njie Ngonje V. Nje, Suit No CASWP/36/89 (unreported),** it was held that a person in illegal occupation of land belonging to another does not pay rents. He pays what in law is called ***"mesne profit".*** This has been defined to mean the profits lost by the owner of land by reason of his having been wrongfully dispossessed of his land. A claim for ***mesne profits*** is usually joined with the action for ejectment.

ii- **Summons under the Married Women Properly Act 1882, section 17**, concerning disputes between spouses as to the ownership of property. **See Romer L. J. in Cobb V. Cobb**, **supra**.

Under O. 5 r. 4 (a) of the English RSC, an originating summons will be appropriate where the sole or principal question at issue is, or likely to be one of the construction of an Act of Parliament or any instrument made under any Act of parliament or any deed, will, contract or other documents or some other question of law; or of which there is likely to be any substantial dispute of facts. In **Isaac Fon V. Jacob Aduh Suit No CASWP/59/91; (See Juridis Periodique No 26 P. 52)** in finding that the respondent used wrong procedure in commencing the proceedings which gave rise to this appeal, their Lordships (Justices Ngayi Bawak and Najeme) ruled that claims of a contentious nature by the beneficiaries against trustees charging

breach of trust or default in the performance of their duties which properly constituted it, commenced either by a writ or originating summons should commence by writs.

Generally, it would be improper to commence proceedings by originating summons where the facts are likely to be in dispute, as to constitute hostile proceeding. See **Theophilus Doherty V. Richard Doherty (1958) M.M.L.R. 241.** Where the facts are not substantially in dispute, the originating summon procedure will be very proper. In **Felicia Adeleke V. Victor A. Williams,** an action for the partition of an estate commenced by originating summons was held to be proper before the High Court.

An originating summons is an alternative to a writ to commence an action, rather than setting out the whole story of the case like a statement of claim. It sets out the issue for the court to decide or the relief sought, rather than the facts on which the case is based, which are set out in the supporting affidavits. It is not technically a pleading. An originating summons must be used to start certain actions as we saw above. It is more suitable than a writ for certain actions such as:

- Where the construction of an act of parliament or some other question of law arises;
- Where the interpretation of a document rather than a question of fact arises.
- Where evidence is more suitably presented in affidavit form rather than orally.

An affidavit is essentially a written sworn statement of evidence from one individual. It may be used because such evidence is normally used in this type of action as in originating summon action or it may be used by agreement between the parties or used in certain other circumstances as allowed by statutes or by the rules of court. In actions began by writ, oral evidence in court is preferred and affidavits are only allowed where this is unnecessary or difficult. Because the affidavit is a form of evidence, it should normally follow the rule of evidence and it should for example not normally contain any hearsay.

The use of affidavits varies according to the type of proceedings and writs. There are limited circumstances in which affidavits can be used as evidence at the trial of an action though there are some types of essays that are normally conducted on affidavit evidence especially actions began by originating summons; and there are some types of proceedings where affidavit can be important in the conduct of the case such as in application for ancillary relief on divorce. Affidavits are often required to support applications for interlocutory applications as provided by the rule of court. This thus gives a wide variety from complex affidavits that may be the basis of a case to (former) affidavits that are straight forward. See **Newman V. Newman (1985) 15 Family law Div. P. 52. In W V. W (1989) 19 Fam. Law 19,** an order made following a wife's application for financial relief was set aside because she had failed to give full and frank disclosure, but it was held that she could reapply as long as the husband could be properly compensated in costs.

The importance of the content of an affidavit should not be under estimated. An affidavit is evidence and must include every point that is part of the client's and relevant to the application. It should not include inadmissible matters such as hearsay except where necessary in interlocutory proceedings. The structure must be clear so that the affidavit evidence can be easily introduced by the counsel and understood by the judge. The affidavit should lay a clear factual base or all the agreements that the lawyer would wish to make in a case, but should not contain legal arguments.

That an originating summons is an alternative to the writ of summons procedure, available to the litigant in every event was seen in **Commissioner of Lands and others V. Asagie and Another (1973) 6 SC 155,** where the Supreme Court of Nigeria held that when a statute provides for an application to be made to the court but does not prescribe the procedure, the application can only be made by an originating summons. In the case of **NBN V. Valakija (1978) 10 S.C.59 Esso J.S.C.** said that, as the name itself indicates it is a summons, which actually originates the action as opposed to the issue of an ordinary summons which is merely an interlocutory step in on action commenced by application for writ of summons.

The **advantages** accruing to the use of the method of originating summons are that: there are no pleading in general; no witnesses in particular; the question or questions for decision being raised directly by the summons itself, the evidence being essentially by affidavit; there is therefore often no necessity to resort to any interlocutory proceedings such as discovery.

An originating summons, in the main is prepared in the same manner as an application for a writ of summons, and invariably follows the same chronology. Concerning the drafting of an originating summons, **see Mbah-Ndam; Practice and Procedure in Civil and Commercial Litigation, PUA, Yaounde, 2003, pp. 69-72.**

2- Writs of summons

The commencement of civil proceedings by writs of summons is the most common of all the methods of commencing civil proceedings. The SCCPR, provides for the use of this method in the most absolute of terms when they state that "every suit shall be commenced by a writ of summons signed by a Judge, Magistrate or other officer empowered to sign summonses". **See generally O. 2 r 1.**

The writ or writ of summons as it is commonly referred to is simply a formal document, also authenticated by the court and containing a claim by one person described as plaintiff commanding the defendant to attend court at a particular place, date and time to defend a claim made against him by the plaintiff and in default of him doing so suffering the disadvantage of the plaintiff being allowed to proceed to judgment and execution.

The plaintiff shall be required to pay the prescribed fees on the application of a writ of summons on his behalf. It could be seen that, after making the application and paying the prescribed fees, the plaintiff must have done all he is statutorily required to do with regard to the issuing of the writ of summons and the commencement of the action. In the case of **Nawode V. Senor 1919,** Ademola **CJ,** referring to the obligations of the plaintiff who had applied for a writ of summons said *"The test for commencement of an action which according to English rule and the local rule of the court appear to me to be this; has the plaintiff done all that is required of him by law to commence his action?"*

In England all he has to do is to buy a writ and endorse it. In Nigeria he has to make an application to the Registrar and pay the necessary fees. From there on his responsibilities ceases and what is left to be done is the domestic affairs of the court and its staff. From the time the plaintiff delivers his application and pays the necessary fees, he will in the opinion of Prof. Peter Yana Ntamark of blessed memory, be correct to say that an action or suit has been commenced.

The practice in Anglophone Cameroon is that the plaintiff's statement of claim is usually fully endorsed in his application for a writ of summons. It thus saves the time of subsequently serving a full statement of claim to the defendant.

There are (02) two types of endorsements of a writ of summons. In his application a plaintiff may simply make a general endorsement, for example, breach of contract for failure to supply goods. This is a general endorsement. The plaintiff would be required later to file his statement of claim in detail.

Secondly, he may proceed by way of fully endorsed writ. This means that, at time he filed his application for the writ of summons, he attached his statement of claim to it. This saves the plaintiff the trouble of subsequently filing a statement of claim. The statement of claim so filed by the plaintiff is his pleading in the action and he can only amend it by leave of the court. When the action is called up for hearing, all that the counsel for the plaintiff need to do is to apply to the court to adopt his application for writ of summons as he filed and served the statement of claim.

The use of the word *"command"* in the definition of a writ of summons not withstanding, a writ of summons is not a command, to the defendant to attend court and answer claims against him, but simply an invitation with the view to acquaint him with the fact that a suit has been instituted against him so that if he wishes to contest he may take the necessary steps. This is so because, if it were truly a command, failure to appear at the appointed time and place would amount to contempt of court.

The purpose and function of writs of summons is to:

- Notify the defendant of it having been issued by the competent High Court.
- Inform him that he must either satisfy the claim put forward by the plaintiff and attach to the writ or return to the Registry of the said High court the accompanying acknowledgement of service specifying in it whether or not he intends to contest the suit.
- Inform him that if he fails to satisfy the claim or return the acknowledgement or again, fail to appear on the stipulated date and time, the plaintiff will proceed to judgment in the suit.

It should be noted that, now as concerns practice and procedure in the High Courts of the North West and South-West Regions, the appellation "writ" or "writ of summons" is outdated and gradually being replaced by the phrase "Civil Summons" **(See to this effect Mbah Ndam p.46).**

A typical example of drafting a writ of summons can be seen at page 47 of **Mbah Ndam (supra).**

Summarily the application for a writ of summons will be seen to take the following form:

- The heading of the suit**:** This gives the court in the division before which the action is brought, sitting in the chief town of that division. E.g. In the High Court of Mezam Division, Holden at Bamenda.
- A suit number on the right hand corner.
- The parties clearly set out e.g. Mary Anne V. John Paul.
- The inscription in bold letters "APPLICATION FOR A WRIT OF SUMMONS".
- Numbered paragraphs with particulars supplied where necessary under heading written out in capital letters.
- Monetary estimate of the relief claimed under heading written out in capital letters.
- Date, specifying places and dates signature of counsel for plaintiff at the right hand bottom side.
- Full address of plaintiff(s) and defendant(s) on left bottom side immediately after signature of counsel for the plaintiff and under the heading "ADDRESS FOR SERVICE"

EXAMPLE OF DRAFTING AN APPLICATION FOR WRIT OF SUMMONS

On March 19th 2020, Miss Mercy Ngum was travelling in her car, Pegeot 607 immatriculated N.W. 1212 A from Dschang to Bamenda. At Santa she observed a car coming from the opposite direction at great speed and it zig-zagged as it came along. The driver left his own side of the road and collided with Miss Mercy Ngum on her correct side of the road. Miss Mercy Ngum suffered the following injuries: fracture on her right jaw and she lost 5 front teeth. She also lost her expensive hand-bag containing 200.000 Frs and her wrist watch she had bought from New-Life Enterprise Bamenda for 200.000 Frs, the previous day. Her car was damaged beyond repairs.

Miss Mercy Ngum works with Drive Yourself Car Hire Company Bamenda and earns 300.000 frs per month. She is unmarried and was hospitalized for 30 days and bought medicines for 800.000 frs and paid 250.000 Frs. X-rays and minor operations.

The other car, a Mercedes 200, is driven by Mr. Atoh Suh and the property of SONEL Bamenda. Miss Mercy Ngum's car was insured 3rd party by Zarian Royal Co Ltd and the insurance will run until October 2019. The Mercedes was insured by ZENITH Insurance Co Ltd in Douala and it will run until December 2019.

Draft a statement of claim or writ of summons brought to the (Bamenda) High Court.

IN THE HIGH COURT OF MEZAM (JUDICIAL) DIVISION
HOLDEN AT BAMENDA
Suit No H.C.B/_____/_____

BETWEEN:
MERCY NGUM …….. Plaintiff
AND

1. Atoh Suh
2. Sonel Co Ltd Bamenda
3. ZENITH Insurance Co Ltd Douala …….. Defendants

APPLICATION FOR WRIT OF SUMMONS

1. The plaintiff claims the sum of 27.45 million CFA Frs. being special and general damages against the 1st, 2nd and 3rd defendants jointly and severally for injuries sustained in an accident caused by a motor vehicle driven by the 1st defendant, employed by the 2nd defendant and insured by the 3rd defendant;
2. The 1st defendant who is driver and employee of 2nd defendant was in possession and control of the said motor Vehicle herein mentioned;
3. The 2nd defendant is the employer of the 1st defendant;
4. The 3rd defendant is carrying out insurance business and contracts to indemnify against 3rd parties for injuries caused by the said vehicle; and
5. The plaintiff as a result of the accident has suffered damage and personal injuries to property caused by the 1st defendant who on 19th of March 2018 negligently drove his vehicle, to wit, the Mercedes owned by the 2nd defendant, insured by the 3rd defendant and collided with the plaintiff's Peugeot 607.

PARTICULARS OF NEGLIGENCE
(Gotten from police report and knowledge of counsel)
The first defendant was negligent in that:-

a) He drove his car negligently;
b) He failed to keep proper look-out;
c) He drove excessively without regard to other road users; and
d) He failed to slow down sufficiently when he approached the plaintiff's car.

PARTICULARS OF INJURIES
(Gotten from medical report)

i- Fracture on the right tibia;
ii- Fracture on her left arm;
iii- Fracture of her right jaw; and
iv- Loss of her 5 front teeth.

PARTICULARS OF DAMAGES
SPECIAL DAMAGES: (can be specifically proven and value quantified in financial terms)

- Loss of her hand bag plus content----------250.000
- Loss of wrist watch ----------200.000
- Damaged car ----------20.000.000
- Loss of earnings----------300.000

MEDICAL EXPENSES

- Drugs----------800.000
- X-ray etc----------250.000
- Hospitalization ----------450.000 (30 days X 15.000)
- Total----------22,250.000

GENERAL DAMAGES (mere estimates but plaintiff must assign figure to them)
- Loss of the use of certain organs of the body-------3.000.000
- Deformation ----------1.000.000
- Pain and suffering ----------1.000.000

COST
- Cost of proceedings ----------200.000
- Grand total ----------27.450.000 Frs.

"And the plaintiff claims damages" or "whereof the plaintiff claims damages" as filed and served.

Done at …….this ……day of ……2020

Signed: Harmony Bobga-Mbuton
Counsel for Plaintiff
Abalu-Bobga & Advocates
P.O. Box 315, Bamenda

ADDRESSES FOR SERVICE
Plaintiff – Miss Mercy Ngum
Drive Yourself Car Hire Company Bamenda

Defendant – Mr. Atoh Suh C/O Regional Office, SONEL, North-West, Bamenda
- ZENITH Insurance Co Ltd, Douala

3- Commencement by Application or Motion

Application as used in this ambit of the law does not bear its ordinary meaning. Proceedings could however be commenced by application or motion only when a statute or a rule of court expressly stipulates that the said proceedings shall be so commenced.

Proceedings by way of application within the Anglophone legal tradition, are often instituted when it is sought to obtain from the court the remedy of the prerogative writs of habeas corpus, the prerogative orders of mandamus, prohibition and certiorari; which constitute important documents for the control of the administration and for the effective administration of the court. The SCCPR contain no provisions relating to the application of these writs and orders. Such being the case, reference is made to the Rules of the Supreme Court of England by virtue of section 10 of the SCHCL 1955 and the appropriate rules of the Supreme Court of England is order 54.

The Writ of Habeas Corpus

The prerogative writ of habeas corpus is a process applied to control the abuses of public officials on the liberty of persons. It is used to challenge the detention of a person either in official custody or in private hands.

At common law, there were five different writs of habeas corpus; two are no longer in use. Those in use are:

1- **The writ of habeas corpus Adsubjiciendum;** this writ enables a person who has been illegally detained to be freed from illegal custody.
2- **The writ of habeas corpus Adtestificadum;** this is available to bring a prisoner to court to give evidence in a given case.
3-**The writ of habeas corpus Adrespondedum;** this is available to bring a prisoner to court to answer a criminal charge.

We are more concerned here with habeas corpus Adsubjiciendum. It is a remedy to secure the release of any person within the jurisdiction of the court. The purpose of this writ is to remedy against unlawful restraint of liberty, ie., to set free someone who is unlawfully detained. It is not meant to punish wrongdoers. As Lord Watson said in **Barnadu V. Ford, Gosages (1892) AC 322**,

"The remedy of habeas corpus in my opinion, is intended to facilitate the release of persons actually detained in unlawful custody and was not meant to afford the means inflicting penalty on those persons by whom they were at some time or other illegally detained."

Furthermore, the writ cannot be used to impeach* the correctness of a verdict or declaration made by the court of competent jurisdiction. See **Re Hinch (1961) 1 AER 707.** But the writ will lie where an inferior court acted without jurisdiction or in excess of jurisdiction. Nevertheless a person who has been sentenced by an inferior court is in lawful custody and the writ of habeas corpus cannot be used as a means of appeal for such a sentence. See **Ex-parte Cork (1954) 2 AER 440 and Re Anthers (1889) 2QBD 345.**

A writ of habeas corpus is a writ of right and will be granted where the applicant has been granted sufficient grounds for the award which the court must issue and in that circumstance the court will have no discretion to withhold it. As mentioned earlier it provides a remedy for unlawful restraint of liberty. It therefore follows that the writ will not be granted if the applicant acquiesces his or her own detention. E.g if a wife on her own volition decides to live apart from her husband, the writ will not be available to the husband so as to take her into custody.

The availability of the writ of habeas corpus

In Cameroon the constitution makes provision for the availability of the writ of habeas corpus. This is because the writ goes to the fundamental human rights of individuals. The preamble of the constitution is to the effect that no person shall be held in unlawful custody. The writ of habeas corpus and the other writs of mandamus prohibition and certiorari are provided for in the subsequent Ordinances on the organization of the judiciary of the republic of Cameroon. It figured first in Ordinance no. 72/4 of 26th August 1972 organizing the judiciary of the republic as amended by ordinance no. 72/21 of 19th October 1972 and later by law no. 89/19 of 29th December 1989, and has now been consolidated by law no. 2005/007 of 27th July 2005 on the new Criminal Procedure Code.

All these writs can be issued by the High Court. Before these enactments Prof. P.Y NTAMARK had submitted that by virtue of section 10 SCHCL 1955 the High Court of Cameroon was vested with the jurisdiction to issue these writs. The prerogative writ of habeas corpus was issued by the High Court in **Peter Baseh V. Commissioner of Brigade Mobile**

---

* *That is, to find a public official guilty of an offence in connection with his job.*

Mixte Bamenda (1978) Suit No. HCB/12M/78 (unreported). The prerogative writ of certiorari was issued by the Bamenda High Court in **Godfred Fogam v. Mankon Customary Court (1972) Suit No. HCB/83M/72 (unreported).** See also **D.O. Ndop V. Batowe Zacheus Yenkong (1978) App No. BCA/2/78 9 (unreported).**

The High Court may issue an order of certiorari not only in respect of proceedings in the customary and Alkali courts but also in respect of proceedings in the court of First Instance as this court is also lower than the High Court.

The 1989 law, revising the 1972 ordinances deals with the writ of Habeas corpus, Mandamus, certiorari and prohibition, section 10(1). It is interesting to note that the 1989 law repealed the prerogative writs of prohibition, mandamus and certiorari except in administrative litigation. Since it is difficult to apply these writs in non-administrative matters, it is only the writ of habeas corpus that seems to have been applied all over Cameroon since 1989. This is particularly the case as the writ of habeas corpus has been consolidated by the new Criminal Procedure Code of 2005 and the 2006 Law on Judicial Organisation.

Habeas corpus under the New Criminal Procedure Code of 2005

Under the new criminal procedure code, the president of the High Court of the place of arrest or detention of a person or any other judge of the same court shall have jurisdiction to hear applications for immediate release, based on grounds of illegal arrest or detention, or failure to observe the formalities as provided by law. See section 584 (1) CCPC of 2005. Thus one of the ways of obtaining the habeas corpus is by seising the jurisdiction of the High Court. The new code also makes it possible for the state counsel to grant the remedy under section 137 (2) of the code. The provision of habeas corpus proceedings in the new code is the desire of the State to respect the freedom of citizens and human rights by stamping out cases of illegal and arbitrary arrests.

Section 588 of the new code also provides that the procedure of habeas corpus shall also be applicable to measures of deprivation of liberty taken against any person who has been acquitted, discharged or released by an ordinary court of law or by a special tribunal. In the case of **Retired Justice Nyoh Wakai and 172 Others V. The People (1997) 1CCLR 127,** it was held that, when the required period of time within which any person can be detained under the law has elapsed, such a person is entitled to be released as of right. It should be pointed out that the motion on notice filed on behalf of the detainees by 22 Barristers at the High Court of Bamenda during the heat of multi-party politics in Cameroon in the early 1990s was not a writ of habeas corpus strictly speaking; it was simply and purely an application for an order to grant bail.

However, the High court in granting bail also examined the irregularities surrounding the detention of some of the prisoners, thereby ordering the release of some 38 detainees including Dr. Hameni Bieleu who had been arrested at Nkongsamba, taken to Yaounde and later to Bamenda to be subjected to the then state of emergency.

It was further held in the Nyoh Wakai case that the procedure whereby a person could be detained for 7 days, then 15 days and finally two months renewable once, giving a maximum of 4 months 21 days is a flagrant irregularity. This doctrine of flagrant irregularity known in French as **voies de fait** has been described as one of the most subtle notions of French Administrative

law as it indicates some irregularity on the part of the administration which is so flagrant and gross that it can not be regarded as an administrative act at all, but is treated as if it were the act of a private person, thereby losing the privilege of being adjudicated upon only in the administrative context and falling within the competence of the ordinary court of law.

The doctrine has further been described by **Justice Vera Ngassa** in the case **of Jesco Manga Williams V. The Fako Land Expropriation Commission and Chantier Naval (2005) 2 CCLR pages 99 and 114:** "*Voies de fait* is in my opinion something so flagrant and obvious that any right thinking man will conclude that the administrator was either acting on his own or certainly not acting for the interest of the administration he claims to serve. For example, where an administrator seizes an individual's land or slaps him, in which case I will agree with counsel for the defence that the tortfeasor should be stripped of his administrative coverage and sued in his personal name". See also **Njilele J. in D.O Oku and another V. Oku Rural Radio Association and another. Appeal no. BCA/17/2005 p.9 (unreported).** In **Mve Ndongo and another V. Ngaba Victor arret no. 16 of 17th October 1968** (unreported) the Supreme Court of Cameroon defined Voies de fait administrative as "acts which are so manifestly irregular that they lose their administrative character".

In **Etengeneng Joseph Tabe V. Governor Oben Peter Ashu and another. 1998 1CCLR. 9,** the High Court of Fako, in granting an application for a writ of Habeas corpus found inter alia as follows:

- In a habeas corpus application, the main concern to the court is the man's detention in prison and not the merits of the case.

-The writ of habeas corpus is of such reverent and transcendent authority that no privilege of person or place can stand it; and that HYDE C. J correctly stated the law when he said "whether the commitment be by the king (the president or the executive power of the state) or others, this court (the High Court) is a place where the king (president…) shall sit in person and we have power to examine it and if it appears that any man… wronged by this imprisonment we have power to deliver and discharge him; if otherwise he is to be remanded by us to prison again".

-Where there is an allegation of impropriety or illegality by an administrative authority and as in the present case, the said authority does not even enter appearance or attend to show cause it is to be presumed that the allegation of impropriety or illegality is founded and that the court will order the immediate release of the detainee on pain of the jailer being cited for contempt.

4- Commencement by Petition

A petition is a written complaint, in the nature of a pleading setting out the facts of the petitioner's case succinctly. This method is usually used in cases of electoral fraud particularly in parliamentary elections. Divorce and some other matrimonial proceedings are commenced in this way. Actions against the government where they lie are usually commenced by petition.

CHAPTER THREE
SIMPLIFIED RECOVERY PROCEDURES

Having discussed OHADA briefly in the introductory part of this course, it is relevant to mention here that the OHADA harmonization process is realised through the adoption of texts known as the Uniform Acts (UA) which are applicable over the National Legislations of the contracting states. Many UA have been adopted through the instrumentality of OHADA. Examples include among others:

- Uniform Act relating to General Commercial Law,
- Commercial companies and Economic Interest Groups
- Simplified Recovery Procedure and Measures of Execution,
- Security
- Accounting law,
- Arbitration law etc.

These Uniform Acts are directly applicable throughout the member States of which Cameroon is represented. The Uniform Act on Simplified Recovery Procedures and Measures of Execution which is of interest to us in this course is made up of two Books. The first deals with Simplified Recovery Procedures, which is the subject of this chapter and the second, is consecrated on Measures of Execution. Part 1 of Book 1 deals with the traditional order to make payments while the innovative order to deliver or to return an object is dealt with in part 2.

This law replaced the Cameroonian position contained in Law No 96/10 of 5 August 1996 modifying and completing Law No 89/21 of 29 December 1989 relating to the simplified recovery of an unquestionable liquid and due civil or commercial debt. The new law has also replaced in Anglophone Cameroon the Undefended List otherwise known as Summary Judgment which had been governed by the SCCPR. For a better understanding of the innovations brought forth by OHADA, it is necessary to study the law on recovery as it existed before the advent of OHADA

The law on recovery procedures in Cameroon before OHADA

Before OHADA, some laws had governed the quick recovery of debts: the undefended list, law No 89/21 of December 29, 1989 and law number 96/10 of August 5th 1996.

The Undefended List: (See Order 3 Rules 9 to 14 SCCPR).

The general pattern of litigation is that the defendant would raise a defence to the plaintiff's writ. The Rules of the Supreme Court made provisions for cases where, in the opinion of the plaintiff, the defendant has no defence to his writ. These are cases where applications for the issue of a writ of summons are in respect of a claim to recover a debt or liquidated money. In such cases, the rules of court provided that the plaintiff should file

along with his application for the issue of a writ of summons an affidavit in which he swears that the defendant had no defence to his action. (Order 3 rule 9)

The plaintiff in applying for a writ of summons in respect of a claim to recover a debt or liquidated money demand had to support his application with an affidavit in which he would set out the grounds on which the claim was based and deposed that in his belief, the defendant had no defence to the claim. If the court was satisfied, that the defendant had no defence to the claim, it would enter the suit for hearing in what was known as the undefended list. The registrar would mark the writ accordingly and enter it for a suitable date for hearing. It was the court and not the registrar who decided whether or not an action should be placed on the undefended list. The plaintiff was required to make as many copies of the affidavit as there were copies of the writs and to each copy of the writ was annexed a copy of the affidavit (Order 3 Rule 10).

The defendant was not obliged to do anything if he did not dispute the plaintiff's claim. In which case at the hearing, the matter was heard undefended and any judgment given was on the merits and could only be set aside on appeal. **U.A.C (Technical) Ltd V. Anglo Canadian Cement Ltd (1966) NMLR.**

The defendant might have intended to defend the plaintiff's case. In such a case, on receipt of the plaintiff's writ of summons and the affidavit annexed to it, the defendant had five clear days within which to file a notice of intention to defend in writing and that notice must be accompanied by an affidavit in which the defendant had to set out the grounds of the defence. Once the defendant did that, the action was placed in the general cause list for hearing. (Order 3 Rule 11).

Under Order 3 Rule 11, the defendant did not need to disclose any defence on the merit in his affidavit. All he needed to do was to set out the grounds for his defence. Once he did that, the court was obliged to place the matter for hearing in the general cause list. **Olubusola Stores V. Standard Bank of Nigeria Ltd (1975) 4 S.C 51**. See also **Banque de L'Afrique Occidentale V. Alhadji Baba Sharfad and others (1963) NNLR 34.**

The defendant might neglect the delivery of the notice of the intention to defend the affidavit within the time prescribed by Rule 11. Rule 12 came in to help the defendant. Under this Rule, the courts might at anytime before judgment and upon the application by the defendant permit such defendant to deliver a notice of intention to defend, supported by an affidavit outside the 5 days period prescribed under the Rule 11.

The difference between Rules 11 and 12 is that under Rule 11, the defendant could proceed under the prescribed period, and his affidavit would only be required to set out the grounds for his defence. The defendant needed not disclose the merits of his defence under Rule 11. Once he did that, the matter would generally be placed under the general cause list for hearing. The court had no option, no discretion in the defendant's rights.

But under Rule 12, the affidavit must disclose a defence on the merits which must be to the satisfaction of the court. The affidavit must also disclose the defendant's neglect in filing his notice of intention to defend and the court might if it deemed fit let the defendant to defend upon such terms as it might think just. Under Rule 12, a general statement in the defendant's affidavit that "He has a good defence" would not suffice. The court would refuse to allow a defaulting defendant to defend an action brought on the undefended list if such a general statement on the defence was unsupported by particulars, which if proved, would constitute such a defence. **John Holt and Co (Liverpool) Ltd V. Henry Fajemirokun (1961) All NLR 492**. See also **Eastern Nigeria Development Corporation V. Felix Duruna (1956-57) 10 ENLR 211.**

Where the defendant did not comply with rule 11 and the court had not let him to defend in accordance with the provisions of Rule 12, the action or suit was heard as an undefended suit and the court might not necessarily call upon the defendant to produce witnesses to prove his case. On the other hand, the court might, if it so wished, demand that there should be oral evidence at any stage of the proceedings before it delivered judgment. See Rules 13, 14 and 9 of Order 3 SCCPR.

Since the undefended list (summary judgment) dealt with liquidated damages which is also the case with the 1989 law, the 1996 law and the OHADA Uniform Act, there is thus need to distinguish between liquidated and unliquidated damages.

Liquidated damages

This is a genuine pre-assessment of loss. A liquidated damage clause is binding on the parties and the sum demanded should not be more or less than the sum fixed. Here, no claim can be made for unliquidated damages. Do not confuse between penalty and liquidated damages. In **Dunlop Pneumatic Tyre Co V. New Garage and Motor Co Ltd (1915) AC 75,** it was held that it is a penalty when the sum is extravagant. It is liquidated damages when the sum is a genuine pre-estimate of the loss.

Unliquidated Damages

These are damages where the amount of money is not certain as in cases of libel, slander and assault or battery. They arise from wrongs which threaten the insured party's morals or reputations. Unliquidated damages are awarded where a plaintiff claims damages for breach of contract and the court assesses the money value of the loss suffered and grants this as damages. In other words, unliquidated damages is an order by the court to a party in breach to pay the sum fixed by the court as compensation to the other party. Unliquidated damages can take one of 3 forms:

- Substantial damages: which is pecuniary compensation intended to put the plaintiff in the position he would have enjoyed had the contract been performed.
  (Restitution *in integrum*).

- Nominal damages: which is a small token awarded where there has been an infringement of a contracted right but no actual loss has been suffered.
- Exemplary damages: when the sum awarded is far greater than the pecuniary loss suffered by the plaintiff.

The 1996 Law

The measure where by a creditor quickly obtains an executory measure i.e. a judicial decision condemning a debtor to the payment of a debt is contained in law no. 96/10 of 5 August 1996 modifying and completing law No 89/21 of 29 December 1989. The general provision of this law is that all applications of payment of an unquestionable civil or commercial debt may be subject to the summary payment injunction procedure governed by this law. In this provision the measure is the injunction to pay and it is defined as a fast and less expensive procedure which from the origin permitted the recovery of small commercial debt and later on, its application was extended to the recovery of civil debts. It is clear from the foregoing that for the competent court to issue such an order to pay, the debt has to be liquid. i.e. to say the applicant must state the specific amount of money claimed. This is, in a way, liquidated damages.

Chapter 2 of the 1996 law contains the procedural method of such an application. The plaintiff shall submit to the competent court a simple letter containing a complete address of the defendant and the origin of the debt. If such an application is dismissed by an order disclaiming competence it cannot be subject to an appeal. But in case it is approved, the registrar will issue a certified copy for notification on the debtor by the plaintiff's counsel after haven ensured that the order is registered at the expense of the plaintiff.

From the date of notification of the order on the debtor or in his residence, the law gives 15 days in case of an objection. The objection shall be presented in the form of a simple letter filed to the registrar in chief, who will issue to the opposing party the merits of the objection and notify the amount of the caution. This will be refunded if the debtor wins the case. But if it is not paid on time, and at the request of the creditor, the order will become executory.

The registrar in chief has 72 hours after the payment of the caution to serve the parties with written proof or notice to appear before the court for hearing which is fixed at least 15 days and at most 20 days after the dispatch of summons. A maximum of 3 months is given to the debtor to honour his commitments. The judicial decision stands as a judgment after trial and the ruling of the said session could follow within a limited period of 30 days. In the case where one party is absent, the deliberation shall take place in a chamber.

In modifying and completing the provisions of the previous law, the 1996 law in its section 11 added the possibility to make an appeal within 15 days after the delivery of the judgment of the objection which had to run from the date of the said judgment. The procedure of this appeal requires that within 5 days after the payment of the caution, the file will be transmitted to the registry of the Appeal Court and within 10 days the lower courts should forward this after the payment to the letter of the claim. The procedure of this subsequent appeal shall be made in conformity with the time provided for by section 8 of the law. The whole of this procedure is supposed to be registered by the court registrar.

Simplified recovery procedure under the OHADA Uniform Act (UA)

The UA on Simplified Recovery Procedure and Measures of Execution has not only incorporated the summary payment injunction procedure but has also instituted a summary procedure for the delivery and restitution of personal property. (See generally Book 1, parts 1 and 2 of the UA).

The summary payment injunction procedure enables the creditor to rapidly obtain judgment for the payment of a sum of money certain in amount and the summary injunction procedure for the delivery and restitution of personal property enables the owner of such property to obtain rapidly the specific performance of an obligation of restitution or delivery. The debt and/or specific property sought to be recovered through summary judgment must have originated either in a contractual transaction or in a commitment arising from the issuance or acceptance of any negotiable instrument or cheque for which cover was found to be inexistent or insufficient. (See section 2 of the UA). The debt to be recovered through the summary procedure must be unquestionable, liquidated and due payment.

Unquestionable Debt

An order of injunction to pay can only be granted if it is found that the debt in question is one that can not be disputed or doubted. Thus the applicant must annex to his application documents attesting the source from which arose the debt and also that the defendant has refused to pay. To this effect Article 4 (2) of the UA provides that the application should contain under pain of inadmissibility originals or certified copies of the document in proof thereof. The judge sitting on an ex-parte application must ensure that the debt actually exists and thus unquestionable. E.G. in the case of a contractual dispute, he may have to look at the contract and seek proof that the goods were supplied and received in good condition, that they conform to sample and the like, and that the debtor, having received them, has refused to pay.

Liquidated money demand

An injunction to pay can only be granted when the amount was pre-assessed, fixed and binding on the parties. Article 4 (2) clearly stipulates that the petition shall contain an indication of the exact amount of the claim and an account of the different components of the debt, as well as the bases thereof. It will therefore be wrong for a judge to make an order of injunction to pay if the amount of the debt is yet to be determined. A simple arithmetical calculation will nevertheless not bar the judge from making the order. (See relevant cases).

The debt must due payment

This implies that before the application is made the debt must not be subject to any condition. It is thus the duty of the petitioner as provided by article 13 of the UA to prove his claim. Unlike petition to pay where the debt must be unquestionable, liquidated and due payment, the petition for the delivery or restitution of specific personal property must under penalty of inadmissibility contain an exact description of the property which is being claimed as well as the original or certified true copies of all documents in proof of the petition. (Article 21 UA)

Competent jurisdiction to entertain summary procedures

The jurisdiction of the court to grant summary procedure depends on the habitual residence of the debtor or holder of the specific property and the quantum of the claim. This implies that jurisdiction in Cameroon before which an application for an order to pay, deliver or return specific personal property may be made is determined in two ways:

Firstly this could be the competent court of the place of residence or place of abode of the debtor or holder of the specific personal property. (Articles 3 and 20 of the UA). (See relevant cases)

Secondly parties may derogate from the above rules as to jurisdiction through the election of residence in their contract. (See relevant cases)

It is the duty of the judge or the magistrate to reject the application if it is concluded that the debtor or holder of the property is not resident within the jurisdiction and that the parties in their contract did not elect residence as to ground jurisdiction. Lack of jurisdiction may also be raised by debtor or holder of specific personal property during the examination of the opposition filed by him. (Articles 3 and 20 of the UA)

Whether the act commencing the proceeding is to be addressed to the president of the court of First Instance or High court depends on whether the amount to be recovered is below or above 10.000.000 CFA Frs. **See S. 15(1)(b) of 2006 Law on Judicial Organization.** Similarly when it concerns the summary procedure for the delivery or return of specific personal property, this will depend on whether or not the preliminary

evaluation of the property in question is below or above 10.000.000 CFA Frs. Where there is doubt, it is submitted that it would be addressed to the president of the High Court. (See relevant texts and cases)

Summary judgment procedure

Procedures for an order of injunction to pay, deliver or restitute specific personal property are virtually the same. (See Articles 4 (1) and (2) and 21 of the UA). The applicant through a motion ex-parte addresses his application to the president of the competent court. The application must contain:

-The full names, profession and residences of the parties or for corporate bodies their legal form, name and registered office.
- An indication of the exact amount of the claim and an account of the different components of the debt, as well as the bases thereof in case of an application for injunction to pay
- An exact description of the property which is being claimed in case of an injunction to deliver or return specific personal property.
-The application shall be accompanied by the originals or certified true copies of all documents in proof of the petition.

This implies that to the motion ex-parte, the applicant must annex an affidavit setting out the facts upon which he relies and which he intends to convince the court to make the order sought. Where the petition emanates from a person not resident in the State of the competent court to which the matter is referred, it shall contain the election of residence in the jurisdiction of the said court.

The judge may make the order sought or an order dismissing the application. If the application is dismissed, the documents are returned to the applicant (See articles 6 (2) and 24 of the UA), and the only cause opened to him is to go before the court of competent jurisdiction by way of an application for a writ of summons or other originating process (such as the undefended list) since such orders are not subject to appeal. (Article 5(2) and 22 of the UA)

If the judge makes the order sought then the court shall issue or cause to be issued to the applicant a certified copy of the application together with the order for service on the debtor by a bailiff. (As to the form content and manner of service see articles 8 and 25 of the UA)

Be it an order of injunction to pay or an order to deliver or return specific personal property, it contains a notice to the debtor or holder of specific personal property to avail himself of a defense by filing an opposition within 15 days following the day the order was served. Thus if the debtor or holder of property intends to defend the plaintiff's

claim, when he receives the injunction order he has 15 days within which to file a written or verbal notice of intention to defend, to the court which made the order. If he fails to do so the order shall become final and enforceable. (Articles 9, 10 and 25(2) of the UA). The order shall be null and void where it is not served within three months from the date it was made (articles 7 and 25 of the UA).

If after the expiration of 15 days, the respondent does not file an opposition, then upon the request of the applicant, the court may grant an executory clause to be appended to the order. However if the judge thinks that the debtor or holder of the property was not properly served, he may demand service to be done all over again. Service here should be personal having regards to the fact that the order was obtained ex-parte. **(See T. Boniface V. Nzitouo Thomas (unreported) in MBAH-NDAM J., p.108).**

Once service has been properly effected the respondent may act in one of the following ways:

- He may pay the debt, deliver or return the specific personal property. This will bring the whole procedure to an end.
- He may file an opposition: This is the only avenue available to the debtor or holder of specific personal property to challenge the propriety of such an order. The court having received the opposition attempts to reconcile the parties. Where reconciliation fails the court immediately rules on the application even in the absence of the debtor who filed the opposition. (Article 12 (2) of U.A.) The decision of the court shall have the same force as a judgment after trial.
- He may choose to do nothing. The debtor or holder of specific personal property may decide to be indifferent. If he does nothing within the 15 days provided to file an opposition, or had filed an opposition and later on withdrew it, the applicant will demand for an executory clause to be appended to the order which shall produce the effect of a decision after trial and shall not be subject to appeal. (Article 16 of the UA) The request to insert the executory clause shall be filed to the registry by a written or verbal declaration within two months following the expiration of the time limit for opposition or withdrawal by the debtor.

Innovations Brought By the Simplified Recovery Procedure under OHADA.

The Uniform Act on Simplified Recovery Procedure and Enforcement Measure entered into force on 10 April 1998 replacing law No 96/10 of August 1996 enforced in Cameroon as the undefended list which had been enforced in Anglophone Cameroon. The aim of this UA is to simplify recovery proceedings as rapid as possible and provide for relatively short deadlines once an order has been issued. It has therefore brought some innovations to the Cameroonian law, which innovations can be seen from the subject of the injunction, conditions, procedure and competent jurisdiction.

Subject of the injunction

Unlike the previous laws which dealt only with summary payment injunction procedures, the UA has instituted a summary injunction procedure for the delivery or restitution of personal property. This procedure enables the owner of such property to obtain judgment rapidly for specific performance of an obligation of restitution or delivery.

Conditions of the injunction to pay

The recovery of an unquestionable debt due for the immediate payment may be secured through the injunction to pay procedure. The injunction to pay procedure may be initiated where:

i. The debt arises from a contract
ii. The commitment arises from the issuance and acceptance of any negotiable instrument or any cheque for which cover was found to be inexistent or insufficient. See Articles 1 and 2 of the U.A.

It is clear from the foregoing that there must be a contractual debt (which may be civil or commercial debt or arising out of the issuance or acceptance of any negotiable instrument or a cheque for which there is insufficient cover. A contractual debt may also be a statutory debt of a copy or an economic interest group. This is why Art 4(1) of the Uniform Act has also used the word "Corporate Body" to disclose the name of the company when giving the complete address for the application of the injunction measure. These two innovations facilitate the injunction procedure in the sense that anything short of the conditions laid down in the law will be inadmissible. Furthermore, as far as the cheque issue is concerned, the beneficiary can now use this measure to quickly enter into possession of his money. It should be noted that the non-payment of a cheque, i.e. a cheque without cover, is a criminal offence. **(See S. 253 of the Penal Code).**

Procedural innovations

The request shall be made in the form of a petition to the competent court of the residence or place of abode of the debtor or one of the debtors in the case of several debtors. The parties may derogate from the above rules of jurisdiction through the election of residence in the contract. Lack of jurisdiction may only be raised by the court to which the matter is referred or by the debtor during the examination of the opposition filed by him. (See Art 3 UA)

The U.A. of the Simplified Recovery Procedure and Enforcement Measure has brought in some innovations. This is particularly in Article 4 where the plaintiff is not the

only person who can file the application but also his representative or any person authorized by the law of each contradicting state.

Secondly, the application shall now be accompanied by the original or certified true copies.

Thirdly, the election of the domicile seems to be necessary because it permits the debtor to choose a fast and easy means to pay their debts.

Fourthly, in Article 11, the changes occur in the Cameroonian law when the Uniform Act precises that once the injunction to pay is issued, the notification shall be made within 3 months, failing which the order will be null and void.

Fifthly, there is also the innovation brought by Art 3 in the sense that it increases the time limit to 15 days with regard to the distance of the debtor.

Furthermore, the Uniform Act has extended the date limit of hearing the matter after the opposition, not exceeding 30 days which was 20 days in the old law.

In addition, before the matter goes to court the competent jurisdiction under the OHADA procedure attempts to reconcile the parties. This situation in the opinion of Jean Allain Penda is open to 2 hypotheses whether or not it succeeds.

If the attempt of conciliation succeeds, the president of the competent court shall draw up a conciliatory report which shall be signed by the parties but where the conciliation attempt fails, the court shall immediately rule on the petition of recovery even in the absence of the debtor who files the opposition. However, the judgment of the opposition is still open to appeal and as another innovation, the time limit of this appeal has been extended from 15 days in the Cameroonian law to 30 days under the Uniform Act.

One other innovation is contained in Art 52 of the Rule of Procedure of the Common Court of Justice and Arbitration (CCJA) which states that an appeal for annulment of a judgment by which a national court making a final ruling did not recognize the judgment of the CCJA (See Art 18 of the treaty of the Uniform Act), yet all national appeals are still opened to appeal in the CCJA based at Abidjan. This has been confirmed by a CCJA decision in judgment No 002/2001 of January 2002 which held that an appeal filed before the CCJA against a judgment of the commercial court in Bamako-Mali which had confirmed an order to pay was inadmissible and that the appeal should have been filed in accordance with the national law of Mali.

The above innovations not withstanding the Uniform Act has a few shortcomings especially as it has not always been clear with drafting the simplified procedure. In the words of Jean Allain Penda “the more it has simplified, the more it has rendered difficult

the comprehension when needing either a precision or a concision in certain areas through the procedure".

For example in Art 12, in simplifying as rapid as possible as compared to the Cameroonian position, the uniform act has instead made procedure long in the sense that the conciliation process will take more time and the court proceedings will be longer. This will become much longer in a situation where the conciliation attempt fails and the parties have to continue the procedure in court.

Secondly, with regard to the competent court, the problem of the expenditure in litigation may be posed when the parties are living in different states. Despite these short comings mentioned and many more to be mentioned, the general tendency is that the law on the U.A. should be applied particularly as the new procedure on its face value is simpler and more complete than the old law.

It is difficult to end discussion on this topic without pointing out that the Uniform Act does not specify which court has jurisdiction nor does it specify the nature of the court decision which rules upon distribution of the proceeds.

Fortunately, section 3 (1) of law No 2007/001 of 19th of April 2007 to institute a judge in charge of litigation related to the execution of judgment and lay down conditions for the enforcement in Cameroon of foreign courts decisions publications and arbitral awards provides as follows:

1. "The president of the court from which the contested decision was delivered, acting as a matter of urgency or the judge of this court delegated for this purpose by the said president, shall be the judge in charge of litigation related to the execution of judgments regarding national court decisions.
2. Where the execution is to be effected outside the territorial jurisdiction of the court that delivered the judgment, the matter (oppositions) taken before the same type of court in that area, in accordance with the rules of territorial jurisdiction provided for in the Uniform Act on the organization of the simplified procedure recovery and methods of execution.
3. The judge in charge of litigation related to the execution of judgment shall have a time limit of 30 days within which to deliver the judgment.
4. Where the judge in charge of litigation related to the execution of judgments is the president of the court of first instance or the President of the High Court or the judge delegated for this purpose by the said president, the decision may be appealed against within 15 days from the date of delivery. The time limit for the appeal as well as the introduction of the said appeal shall not stay execution of the decision unless the president of the court of Appeal takes a particularly reasoned decision to the contrary.
5. Where the judge in charge of litigation related to the execution of judgments is the president of the court of Appeal or a judge of the court he has delegated for this

purpose, the decision may be appealed against within 15 days from the date of delivery. The time limit for the appeal as well as the introduction of the said appeal shall not stay execution of the decision unless the president of the Supreme Court takes a particularly reasoned decision to the contrary.

6. Where the judge in charge of litigation related to the execution of judgment is the first president of the Supreme Court or a judge delegated by him for this purpose, his decision shall not be subject to appeal"

Section 4 provides that the president of the court of first instance of the place or likely place of enforcement shall be the judge in charge of litigation related to the execution of judgment regarding National Public Acts and in particular notified deeds. See Prof. Martha Simo Tumnde Njikam, "The Applicability of the OHADA Treaty in Cameroon: Problems nd Prospects", Proceedings of the OHADA Seminar held at the University of Buea 18th to 19th September 2003, in which the learned Professor articulates on the problem posed by Article 32 of the Uniform Act.